



Submitted via the Federal e-Rulemaking Portal

Alcohol and Tobacco Tax and Trade Bureau
Attn: Amy Greenberg, Director
Regulations and Ruling Division
1310 G Street, N.W., Box 12
Washington, DC 20005

Re: TTB Notice No. 237, *Alcohol Facts Statements in the Labeling of Wines, Distilled Spirits, and Malt Beverage*

Dear Director Greenberg,

I write on behalf of the Brewers Association (BA) to provide written input on TTB Notice No. 237, *Alcohol Facts Statements in the Labeling of Wines, Distilled Spirits, and Malt Beverage*.¹ We appreciate the extension of the comment period for this notice and respectfully submit these written comments on behalf of America's small and independent brewers. We thank you in advance for your time and attention to these comments.

As you know, The Brewers Association is a 501(c)(6) not-for-profit trade association of brewers, for brewers and by brewers. We have approximately 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.

The Brewers Association has long championed transparency in the labeling and advertising of malt beverages (those subject to the Federal Alcohol Administration Act² – FAA Act) and all beer. We have called for mandatory alcohol content labeling and disclosure of major allergens³ for many years. But America's small and independent brewers also face unprecedented headwinds today. A crowded marketplace, consumption declines, rising supply and labor costs, financially challenged consumers, and other difficulties have seen the market for our members' beer (and, indeed, all beer) contract and brewery closings outpace openings last year for the first time in decades.

¹ 90 Fed. Reg. 6651 (Jan. 17, 2025).

² 27 U.S.C. § 201 *et seq.*

³ The subject of TTB Notice 238, 90 Fed. Reg. 5763 (Jan. 17, 2025).

Given these headwinds, we urge TTB to pay special attention to small businesses' needs in proceeding with any new labeling mandate. TTB and its predecessor have considered mandatory nutrient and nutritional labeling regulations since the 1970s, belying any argument that new regulations are urgently needed. Moreover, while Notice 237 embraces some ideas – notably more generous tolerances and a five-year phase-in period – that would mitigate a final rule's impact on small business, substantial burdens remain. Those burdens will fall with particular force on small batch products of small producers, tilting the playing field even more in favor of large multinational brewers. We urge TTB to consider carefully the impact of its actions on small American manufacturers as it moves forward.

1. History Justifies a Healthy Skepticism About this Rule

Any keen observer of the federal regulation of labeling and marketing of malt beverages, wine, and distilled spirits must surely get a sense of “déjà vu all over again”⁴ when reviewing the nutritional disclosure mandates proposed in Notice 237. In addition, taking a broader societal look at the record of such nutritional disclosure mandates, it is hard not to question their effectiveness in achieving their objectives.

TTB's predecessor, the Bureau of Alcohol, Tobacco, and Firearms (ATF), first proposed nutrient labeling rules, in the form of mandatory ingredient labeling, in the 1970s. ATF proposed ingredient labeling and then withdrew the proposal in 1975, concluding that the costs of the proposal outweighed any benefit to consumers.⁵ The federal Food & Drug Administration (FDA) promptly stepped in, proposing ingredient labeling for alcohol beverage labels imposed under its existing federal Food, Drug, & Cosmetic Act (FD&C Act) authority.⁶ A legal challenge to FDA's action helped persuade FDA to abandon that effort, deferring to ATF on products subject to the primary labeling jurisdiction of the FAA Act.⁷

With FDA deferring to ATF, ATF itself commencing rulemaking to impose an ingredient (nutrient) labeling regime of its own on FAA Act-regulated products, with regulations published in 1980.⁸ The incoming Administration of President Ronald Reagan sought to withdraw these regulations, eventually succeeding after a series of court decisions to resolve a legal challenge to ATF's decision to withdraw the rule.⁹ The saga, of course, was not over, and the next round of proposals, this time with mandatory nutritional information in addition to nutrient/ingredient disclosures, emerged in the early 2000s. Notice 237 acknowledges and catalogues those and subsequent nutritional labeling efforts by TTB.¹⁰

⁴ A phrase often attributed to baseball great Yogi Berra.

⁵ See 40 Fed. Reg. 52613 (Nov. 11, 1975).

⁶ See 41 Fed. Reg. 18538 (May 5, 1976).

⁷ See *Brown-Forman Distillers Corp. v. Mathews*, 435 F. Supp. 5 (W.D. Ky. 1976).

⁸ See 45 Fed. Reg. 40538 (June 13, 1980).

⁹ See, e.g., 48 Fed. Reg. 10309 (March 11, 1983) (notice of withdrawal); *Center for Science in the Public Interest, v. Donald T. Regan, Secretary of the Treasury*, 802 F.2d 518 (D.C. Cir. 1986); *Center for Science in the Public. Int. v. Dept. of Treasury*, 573 F. Supp. 1168 (D.D.C. 1983).

¹⁰ See 90 Fed. Reg. at 6656-6664.

While the ATF and TTB concluded, multiple times, to focus limited resources elsewhere in the past fifty years, other parts of the federal government pursued an agenda of mandatory nutritional labeling on multiple fronts. Efforts to impose nutritional labeling on food kicked off in 1969 with the White House Conference on Food, Nutrition, and Health recommending FDA regulations.¹¹ By 1973, that recommendation had yielded final FDA regulations that were mandatory for foods making any nutrition claims or when nutrients were added to the food. By the late 1980s, a chorus of advocacy called for universal nutritional labeling on food, and amidst multiple FDA proposals, Congress responded by passing the Nutrition Labeling and Education Act (NLEA).¹² The NLEA gave FDA explicit authority to require nutritional labeling on most food packages and resulted in final FDA regulations that were published in 1993.

Following the imposition of near-universal nutritional labeling for packaged foods, food service at restaurants represented the next frontier. The Patient Protection and Affordable Care Act of 2010 (ACA)¹³ required chain restaurants (those that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items) to disclose calorie and other nutrition information to consumers at the point of sale. FDA regulations implementing the ACA's mandate went into effect in 2018,¹⁴ although multiple cities and states already had mandated calorie and nutritional disclosures for restaurants earlier.

All told, since 1970 the subject of nutrient and nutritional disclosures for foods has taken up thousands of pages of the Federal Register, along with numerous rulings, interpretive guidance documents, and official government websites. The primary purpose of all these mandates has been to induce Americans to eat healthier, with a particular emphasis on controlling excessive calorie intake. One would think, then, that fifty-plus years of federal government action would have produced a track record of success, with Americas eating healthier than ever before.

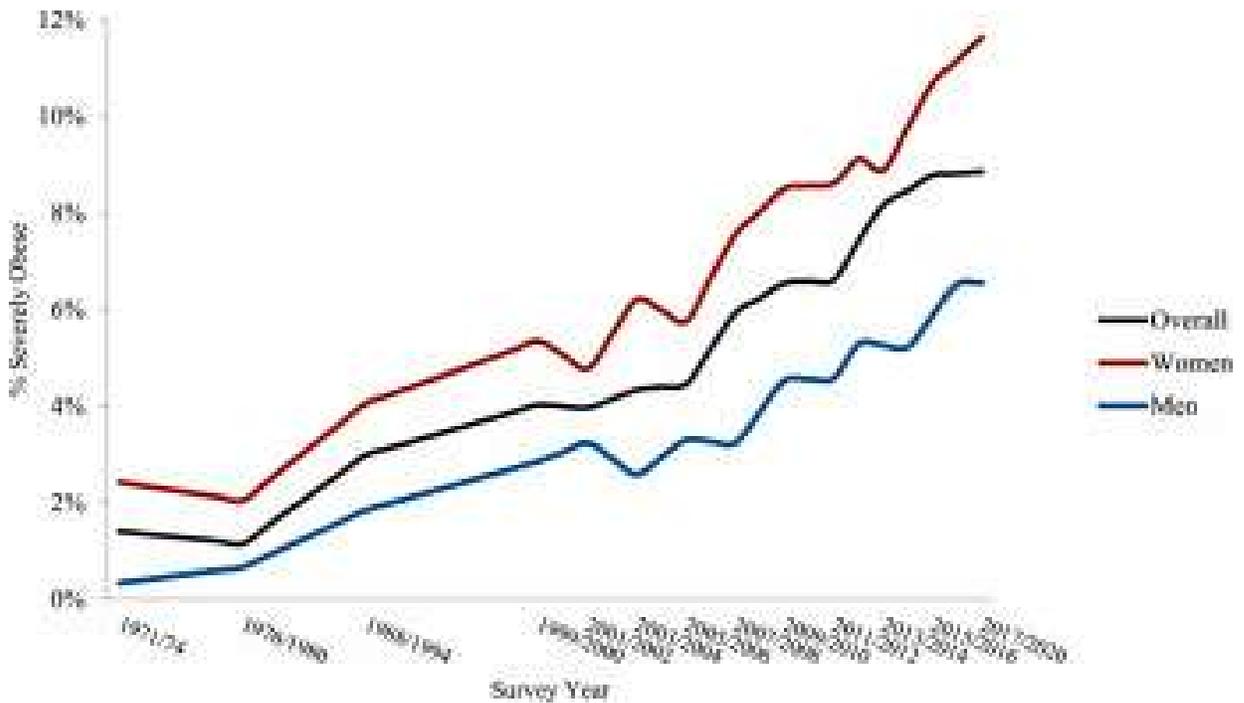
Of course, history tells a very different story. Obesity rates have soared, with each new round of mandatory nutritional labeling having no discernable impact on the crises.

¹¹ See NIH National Library of Medicine, *History of Nutrition Labeling*, available at <https://www.ncbi.nlm.nih.gov/books/NBK209859/> (last visited August 7, 2025).

¹² See Public Law No. 101-535.

¹³ See Public Law No. 111-148.

¹⁴ See 79 Fed. Reg. 71156 (Dec. 1, 2014).



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In sharp contrast, per-capita alcohol consumption has remained remarkably steady since 1970, largely tracking demographic and economic patterns.¹⁶ Indeed, in the past three years alcohol beverage consumption has fallen to historic lows.¹⁷ In short, decades of real-world experience provide zero evidence that nutritional labeling leads to healthier eating choices, nor that the absence of such labeling on alcohol beverages increases unhealthy consumption.

Finally, we cannot help but note the irony that the current effort to impose nutritional labeling on alcohol arose from 2022’s *Treasury Report on Competition*.¹⁸ The *Treasury Report* found 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” and urged the TTB to take action to revive rulemaking on nutrition labelling, among several subjects.¹⁹ But even a casual review of Notice 237 would conclude that it is about consumer information and education, not competition. Indeed, by mandating a uniform set of disclosures by nearly all alcohol beverage producers, any final rule will have the effect (like all regulations) of removing an

¹⁵ Ashley W. Kranjac and Dinko Kranjac, *Explaining adult obesity, severe obesity, and BMI: Five decades of change*, *Heliyon*, Vol. 9, Issue 5, Fig. 2 (May 2023).

¹⁶ See *Beverage Alcohol Consumption Tracks Demographic and Economic Changes*, available at <https://www.brewersassociation.org/insights/beverage-alcohol-consumption-tracks-demographic-and-economic-changes/> (last visited August 7, 2025).

¹⁷ See Lydia Saad, *U.S. Drinking Rate at New Low as Alcohol Concerns Surge*, *Gallup* (Aug. 13, 2025), available at <https://news.gallup.com/poll/693362/drinking-rate-new-low-alcohol-concerns-surge.aspx> (last visited August 14, 2025).

¹⁸ Dept. of the Treasury, *Competition in the Markets for Beer, Wine, and Spirits* (Feb. 2022), available at <https://home.treasury.gov/system/files/136/Competition-Report.pdf> (last visited August 12, 2025). The *Treasury Report*, in turn, was set in motion by the Executive Order on Promoting Competition in the American Economy, E.O. 14036 (Jul. 9, 2021), which was revoked on August 13, 2025.

¹⁹ See *Treasury Report* at 61.

aspect of competition (competing for consumers by providing more nutritional information) and replacing it with a government mandate. A government mandate replacing competition is the antithesis of fostering competition. Moreover, as explained further below, by imposing disproportionate burdens on small producers versus large, new nutritional disclosure mandates could further tilt the playing field towards large market share companies and against market entrants and upstart competitors.

2. A Final Rule will Burden Small Producers

The Brewers Association appreciates TTB's efforts to mitigate the impact of the proposed nutritional mandate on small businesses. While Notice 237's broader tolerances for calculating alcohol content and nutritional measures and its five-year implementation period certainly help, we wish to emphasize that a final rule will impose substantial burdens on many small and independent brewers, as well as small wineries, distilleries, and cider makers.

More generous tolerances will often allow a brewer to promulgate compliant nutritional measures (calories, carbohydrates, fat, and protein) using typical values charts, but only for "standard products"²⁰ (e.g., a beer made from only malted barley, hops, water, and yeast). Similarly, the +/- 1% alcohol by volume (ABV) tolerance proposed in Notice 237 will allow brewers to calculate alcohol content without outside testing or sophisticated equipment. But in today's innovative brewing industry, a great many products use other ingredients in brewing, such as exotic grains, fruits, nuts, herbs and spices, flavorings, and a myriad of other food products. For example, this spring the Brewers Association solicited comments from its members on topics related to Notice 237, including whether they produce products made with non-standard ingredients. Of the 83 respondents, 77 (over 90%) indicated that they make some beers using special ingredients. We believe that the respondents provide a representative sample of today's craft brewers.

TTB's Public COLAs Registry confirms that non-standard malt beverages make up a substantial part of today's total malt beverage market. A search of the Registry earlier this month²¹ identified a total of 29,752 malt beverage label approvals in the past year. Of those, 9,159 were class/type 906, malt beverage specialties – flavored malt beverages. In other words, over thirty percent of new malt beverage labels likely contain flavorings or other ingredients that could render the use of typical values tables non-compliant. For such products in interstate commerce, expensive testing – either by an outside lab or by purchasing new equipment – would be required to ensure compliance.

In addition, although many Brewers Association members change labels at least once every five years, many do not. The responses to the Brewers Association survey contain many too general to clearly denote whether product labels change more- or less than every five years. But roughly one-third of the respondents appear

²⁰ A point TTB appears to recognize. See 90 Fed. Reg. at 6667.

²¹ On August 7, 2025.

to change labels less often (some indicating they never update labels on existing products unless required to do so), and another one-third provided ambiguous answers suggestive of long waits before label re-design. While the five-year cycle likely holds true for the large brewers and most other large suppliers, it does not appear to reflect the entirety or even a substantial majority of the craft beer market.

Notice 237, as written, will particularly impact practices of craft brewers to vary recipes of a particular brand. This practice occurs most frequently in the case of seasonal products, with an annual release (for example, a holiday ale) delighting consumers with variations in the recipe, keeping the brewery's customers interested in trying the beer year after year. Brewers employing this practice will need to either print new labels each year, something many do not do today, or stop varying the recipe each year. In short, Notice 237 could force many brewers to choose between increased costs (to print new labels every year) or reduced innovation (by keeping recipes consistent year-over-year).

In sum, while Notice 237 takes some steps to mitigate its impact on small producers, it will still have a negative impact on our members, with the biggest burden falling on the smallest packaging brewers with the least ability to absorb additional costs. The result will be a combination of greater costs, reduced innovation, and simple non-compliance.

3. The Brewers Association Continues to Believe that Differentiating Between Large and Small Batch Products is Appropriate and Within TTB's Authority

There is no question that a nutrition labeling rule will impose burdens on small producers and the viability of small-batch products. Although the more realistic tolerances proposed in Notice 237 partially blunt these burdens, flavored and other specialty malt beverages will continue to face a difficult choice under final rules if adopted as proposed: (a) invest in expensive equipment to test such products; (b) send such products to an outside laboratory at considerable expense; or (c) discontinue such products in interstate commerce to avoid the added expense. In light of this, the Brewers Association renews its call for TTB to adopt a different standard for small producers or low-volume products – which would include most products from small producers – to mitigate a nutrition labeling rule's impact on small businesses and on product innovation.

TTB's reasoning²² for rejecting differentiation between small-batch products and others does not withstand closer scrutiny. As a threshold observation, TTB's regulations are full of differential treatment for brewers based on size.²³ In its explanation for rejecting this approach, TTB notes – but tellingly without claiming a lack of statutory authorization – that the statutory text of the FAA Act does not explicitly authorize different treatment between large and small entities or between large and small batch size products. But that text also does not reference

²² See 90 Fed. Reg. at 6687.

²³ See 27 C.F.R. §§ 25.91, 25.93, 25.164-25.165, & 25.297.

nutritional labeling and a host of other subjects now addressed in existing TTB regulations. Notice 237 itself invokes the Agency’s “broad authority” to regulate alcohol.²⁴ Notwithstanding the lack of an explicit statement in the statutory text, we believe it is well within the TTB’s discretion to create different rules based on producer size, product volume, and batch size.

Notice 237 additionally asserts that an exemption or differential treatment would undermine the “primary” purpose of the rule, which is providing more information to consumers.²⁵ Before addressing the substance of this position, we note that this assertion undermines both the original impetus for initiating this rulemaking (premised on competition as announced in the *Treasury Report on Competition*), and TTB’s claimed basis for imposing alcohol content labeling on non-FAA Act products (premised on protection and collection of excise tax revenue).

There is no reason a final rule cannot balance consumer information with the need to protect competition and the interests of small businesses. We acknowledge, of course, that exempting or loosening standards for some small subset of the market would marginally limit the information available to consumers. But TTB and other food labeling authorities already do this in a myriad of ways:

- The nutritional labeling requirements (calories, carbohydrates, fat, and proteins) only apply to products moving in interstate commerce, thereby already exempting many products that do not cross state lines.
- Several categories of alcohol beverages, notably including fermented hard seltzers, most hard ciders, and other low-alcohol wines, would not fall under Notice 237’s nutritional label rules. While some of these (depending on production quantity and business size – see below) would fall under FDA’s nutritional labeling requirements, those requirements are different in multiple respects from the requirements proposed in Notice 237.
- The primary regulator imposing nutritional and other food label disclosures, the FDA, exempts products produced in quantities under 100,000 units in a year from its nutritional labeling requirements.²⁶
- The FDA also exempts from those regulations retailers who have no more than \$500,000 in direct sales to consumers or no more than \$50,000 in sales of food or dietary supplements to consumers.²⁷
- The FDA’s requirement for menu labeling disclosures only applies to restaurants and similar retail establishments that are a part of a chain with 20 or more locations and doing business under the same name.²⁸

²⁴ See, e.g., 90 Fed. Reg. at 6654.

²⁵ See 90 Fed. Reg. at 6687.

²⁶ See 21 C.F.R. §§ 101.9(j)(18) and 101.36(h)(2).

²⁷ See 21 C.F.R. §§ 101.9(j)(1) and 101.36(h)(1).

²⁸ See 21 C.F.R. § 101.11(a) (defining “covered establishment”).

In short, a sensible exemptions or adjustments for small batch products or small businesses would hardly be unprecedented and, in our view, would strike the appropriate balance between informing the consumer and promoting rigorous competition and consumer choice.

A different requirement for small-batch products would be no harder to administer than a host of other TTB rules that rely on industry member representations to make determinations during the Certificate of Label Approval (COLA) review process. On issues as varied as class/type designation, alcohol content, interstate jurisdiction, and method of manufacture, TTB relies on the industry members providing it with truthful information to review and approve COLAs. TTB then polices the market to ensure that the industry member did not, for example, fill a container labeled with one TTB beverage type with liquid that constitutes another type. TTB could easily add a field to its COLA application form²⁹ to identify whether or not a product qualifies for different treatment under a small-batch or small business threshold. Should an industry member rely on such a COLA for products that have exceeded the threshold, TTB would retain its considerable enforcement authority to police the market and punish non-compliance. As a reminder to the industry member, TTB can also “qualify” a label approval for a small-batch product, just as it does for Certificates of Exemption from Label Approval and in other appropriate circumstances.

4. If Regulations are Adopted, TTB Should Use the Term “Serving Facts” instead of “Alcohol Facts”³⁰

Notice 237 adopts the term “alcohol facts” as a shorthand for the specific nutritional and other disclosures it would mandate, and the term would accompany the disclosures on actual labels. The Brewers Association opposes this departure from TTB’s current term for voluntary nutritional labels, “serving facts,” and urges TTB to revert to that term should it move forward with Notice 237.

For over a decade consumers have seen the term “serving facts” on FAA Act-regulated alcohol beverages bearing voluntary nutritional information.³¹ Consumers, particularly those with an interest in such information, now recognize and understand the label and rely on it. Moreover, we are not aware of any problems or confusion arising from use of the term “serving facts.” As such, the reasoning behind the proposed change is not readily apparent.

The term “alcohol facts” seems, at best, incongruous, and at worst, misdescriptive. Most of the nutritional information proposed for disclosure in Notice 237 are, in fact, facts about various nutritional measures (not alcohol) per serving – in other words, serving facts. Surely consumers think of information on calories, carbohydrates, fat, and protein as serving facts, regardless of whether that

²⁹ TTB F 5100.31.

³⁰ Responsive to questions posed in Section VII.B.1., 90 Fed. Reg. at 6664-65.

³¹ See *TTB Ruling* 2013–2 (May 28, 2013).

information relates to a product containing alcohol or not. In contrast, the term “alcohol facts” implies facts about alcohol consumption, which the information proposed for disclosure in Notice 237 does not contain.

The Brewers Association disagrees with the suggestion, apparently made by certain commenters and accepted by TTB, that “serving facts” would confuse consumers about the alcoholic nature of products. As noted above, the Brewers Association is not aware of any problems with the voluntary use of “serving facts” under current TTB policy and rulings. Moreover, there are *many* label indicia under existing regulations governing FAA Act-regulated products signaling that a product contains alcohol, including:

- The mandatory government warning statement.
- The class and/or type designation.
- The alcohol content statement on most products, which Notice 237 would extend to all products, including all malt beverages and wines.

Moreover, consumers respond to common-sense information such as the brand name of the product, as brand conveys important clues to consumers about the nature of the products they buy (*i.e.*, consumers associate “Sierra Nevada” with malt beverages and “Pepsi” with soft drinks). The notion that a consumer will ignore all such information and instead focus myopically on the words “serving facts” to infer a product contains no alcohol makes no sense.

Finally, Notice 237 ignores the reality that another subset of alcohol beverages already use a different term than “alcohol facts” without any apparent problem. Products labeled under the primary labeling jurisdiction of the FDA must use the term “nutrition facts.”³² Such products include fermented hard seltzers, most hard ciders, and other low-alcohol wine products. Yet to our knowledge, use of the words “nutrition facts” has not misled consumers about the alcoholic nature of these beverages.

If mandatory nutritional labeling rules are finalized, they should use the term “serving facts” and not “alcohol facts.”

5. If Regulations are Adopted, the Brewers Association Supports the Decision to Keep Disclosures Consistent with the Current Statement of Average Analysis³³

The Brewers Association supports Notice 237’s approach to limit nutritional disclosures to those familiar to consumers of light beer and other existing products – calories, carbohydrates, fat, and protein. These four measures have graced the labels of many malt beverages since 1980, when TTB’s predecessor ATF first

³² See 21 C.F.R. § 101.9.

³³ Responsive to questions posed in Section VII.B.2., 90 Fed. Reg. at 6666-67.

mandated the use of a statement of average analysis on “light”/“lite” beer labels.³⁴ We see no reason to depart from that successful policy.

The Brewers Association does not support a rule that would mandate more extensive nutritional disclosures, like those mandated under the FD&C Act.³⁵ Should TTB proceed with a nutritional disclosure rule, the information required under Notice 237’s proposed rule already will depart from FDA-mandated information due to the inclusion of alcohol content information. Moreover, labels of FAA Act regulated products will depart from FDA-regulated products in multiple other ways, including the inclusion of the mandatory Government Warning Statement, a different standard of identity system, and the lack of ingredient labeling information. While FDA regulations and policy can provide useful guidance in appropriate circumstances, we do not believe that a lock-step adoption of FD&C Act nutritional information is appropriate.

In implementing nutritional labeling disclosures, the Brewers Association recommends a common-sense refinement where multiple measures would round to zero. In such cases, industry members should have the option of truncating the disclosure of multiple measures as “0.” This would amend currently proposed regulations, if finalized, to instead provide the option of stating “0 [the measures that would display as zero].” For example, many malt beverages contain zero fat and zero protein. In such a case, the label could state “0 fat and protein.” This option would provide flexibility and might save a little label space for other purposes.

A question in Notice 237 about the nutritional disclosures specifically calls out whether a final rule would have competitive effects. As explained in Section 1 above, the connection between mandatory nutritional disclosures and traditional notions of competition are not clear and, indeed, replacing competition with a uniform government mandate is not typically viewed as a pro-competitive policy. But the differential burden that the regulations proposed in Notice 237 will place on large versus small businesses will further tilt the playing field towards big producers and high-volume brands. The rule as proposed would apply equally to small-batch products and would require expensive testing (whether by an outside lab or in-house using costly equipment) for some, “non-standard,” products. As such, there can be no doubt that Notice 237 as written favors high-volume products that can spread the cost of compliance across larger revenues from a particular brand.

Another question asks whether a final rule would burden small producers. As explained in Sections 2 and 3 above, mandatory nutritional labeling rules will, even as promulgated with broad tolerances and a five-year implementation date, place a burden on small businesses. We urge TTB to revisit the question of an exemption or different rules for small-batch products or small businesses to alleviate this burden.

³⁴ See *ATF Ruling* 80-3.

³⁵ See *generally* 21 C.F.R. § 101.9.

6. If Regulations are Adopted, the Brewers Association Supports TTB's Objective Standard Approach, but Burdens Remain³⁶

The Brewers Association has long advocated for objective and realistic labeling tolerances for small producers. Subjective tolerances leave industry members guessing about their compliance obligations. And tight tolerances inherently favor large producers, who can afford the machinery for tighter production runs and possess the equipment necessary to test and adjust batches (e.g., by adjusting water addition, as is commonplace in high-gravity brewing) to meet labeled values.

For the reasons above, the Brewers Association applauds the +/- 20% tolerance proposed in Notice 237 for calories, carbohydrates, fat, and protein. The tolerance is easily understood and does not leave brewers guessing about whether they are in or out of compliance. And, as already noted, a 20% tolerance is broad enough to allow many (but not all) malt beverages to provide compliant label disclosures using “typical value” charts that do not require sophisticated equipment or outside testing.

The Brewers Association also applauds the broader tolerance of +/- 1% ABV for labeled alcohol content on malt beverage and beer labels. For most malt beverage and beer products, a 1% ABV tolerance allows for compliant disclosures using simple measurements, such as hydrometer measurements, and straightforward calculations. Departure from the existing 0.3% standard is overdue.

We wish to emphasize, however, that even the expanded and objective tolerances will not allow reliable measures for the growing number of innovative brewery products made with unusual ingredients or employing unusual processes. Adding fruit, fruit puree, or fruit juice to a malt beverage has become commonplace in the past decade and a half. The addition of such materials, and many others (e.g., chocolate), make reliance on a “typical value” chart unreliable. Indeed, as Notice 237 itself notes, the proposed tolerances allow calculations or average value tables to work only for “standard products.”³⁷ A great many malt beverages – roughly 30% based on the last year of COLA approvals – cannot reliably use typical values or simple calculations to comply with the nutritional disclosure requirements of Notice 237.

7. The Brewers Association Supports Mandatory Alcohol Content Labeling for Beer and Malt Beverages, Within a +/- 1% ABV Tolerance³⁸

The Brewers Association has long supported alcohol content labeling for malt beverages, provided adequate tolerances are permitted. Assuming a +/- 1% ABV

³⁶ Responsive to questions posed in Section VII.B.3., 90 Fed. Reg. at 6667.

³⁷ See 90 Fed. Reg. at 6667.

³⁸ Responsive to questions posed in Section VII.B.4. & 5., 90 Fed. Reg. at 6669.

tolerance, as proposed by Notice 237, we accordingly support the proposed mandatory alcohol content labeling rule for malt beverages and non-FAA Act beer.³⁹

Alcohol content information helps consumers understand the alcoholic strength of a beverage so that they can better regulate their intake. Alcohol content information is also well-understood by consumers, as it has been mandated on all distilled spirits and most wines for nearly a century. Thus, unlike untested proposals for “standard drink” and similar labeling, alcohol content is a concept that consumers know and understand. Helping consumer regulate their alcohol intake using information on alcohol-by-volume will require no education and faces no “learning curve.”

Although we support mandatory alcohol content labeling, we also wish to underline that adopting the rule will not be cost-free for small brewers for the reasons explained in Sections 2 and 3 above.

Notice 237 asks whether a +/- 1% ABV tolerance is potentially misleading consumers. We do not think so. From a consumption standpoint, 1% ABV is simply not enough alcohol to make a material difference in the intoxication of a person consuming anything but absurd volumes of a malt beverage or beer. For a beer drinker to consume the equivalent in alcohol of one extra average-strength beer (5.0% ABV), that drinker would have to consume five beers, all containing more alcohol up to the maximum tolerance allowed, in a compressed amount of time. Such a consumer would already be intoxicated by any reasonable measure, regardless of the 1% ABV variance.

In addition, multiple policies of TTB already permit added small amounts of alcohol without a precise label disclosure, and those policies have not caused issues with the public’s ability to control their consumption. Malt beverages labeled “non-alcoholic” may contain almost .5% ABV. And many non-alcohol products (e.g., soft drinks) contain small amounts of alcohol, provided they remain under .5% ABV. In both examples, existing policy does not seek to disclose or regulate such *de minimis* amounts. We see nothing misleading about a 1% ABV tolerance. Sadly, it is not surprising that advocates for the largest multinational brewers seek a tighter tolerance, as a tight tolerance imposes costs on small brewers and accordingly provides large companies with a competitive advantage.

On the subject of alcohol statements, the Brewers Association was disappointed that Notice 237 does not contain any proposal to overhaul and modernize TTB’s

³⁹ In the case of beer products falling outside TTB’s FAA Act jurisdiction, we see a legitimate question as to TTB’s authority to mandate such disclosures, although we do not oppose them on policy grounds. Notice 237 asserts that mandatory alcohol content labeling for non-FAA Act beers (a category including most fermented hard seltzers) is warranted as a means to protect the revenue and enhance revenue collection. See 90 Fed. Reg. at 6667. We think this reasoning strains credulity. After all, and as already noted, alcohol beverage labels already contain numerous indicia that the products they identify are, in fact, alcoholic products subject to the federal excise tax. Among other things, the mandatory Government Warning Statement would tip off any taxpayer or TTB auditor about the presence of a taxable level of alcohol.

outdated regulations on the labeling and advertising of “non-alcoholic” and “alcohol free” beverages.⁴⁰ As TTB knows, consumer interest non-alcoholic beer has grown substantially in the past 7-8 years, and sales are increasing. In January 2020, the Brewers Association petitioned TTB to update its regulations governing such products, asking for common-sense changes in-line with the current market and consumers. TTB’s failure to act on the petition for over five years cannot be explained. We renew our call to modernize the regulations on labeling and advertising such products.

Notice 237 inquires about where the alcohol content statement should appear. In the case of malt beverage regulated under the FAA Act, if TTB mandates broader nutritional label disclosures on labels, then placement of alcohol content within the statement of other serving facts makes sense. For added flexibility, however, we think industry members should have the option of placing alcohol content elsewhere on the label, provided that the information meets the regulations’ general requirements like those for prominence, minimum type size, and contrast.⁴¹

8. TTB Should not Mandate a Statement of Alcohol in Fluid Ounces⁴²

The concept of measures-of-alcohol-per-container labeling is unfamiliar to U.S. consumers. This puts such information in marked contrast to familiar concepts like net contents and alcohol-by-volume measures. The Brewers Association accordingly does not support a mandate for a statement of alcohol in fluid ounces and, if TTB proceeds with some of Notice 237’s disclosures, urges TTB to remove the alcohol in ounces requirement from any final rules.

Consumers interested in moderating their intake understand that total alcohol intake is a function of volume and alcohol content. As TTB regulations have mandated net content information for many decades, and many FAA Act-regulated products (all distilled spirits, most wine, some beer) have had to display alcohol content for many years, this is a control method familiar to consumers. We are not aware of any significant confusion in using these measures.

But labeling with a statement of alcohol in fluid ounces can lead to significant consumer confusion. TTB’s labeling regulations, and those of its predecessors, have always put a premium on telling consumers the nature of the beverage in the container.⁴³ Labeling that reduces all alcohol beverages to a single number will only tend to confuse consumers into viewing all alcohol beverages as the same. This, of course, is not the case – each category (and indeed, class and type) of alcohol beverage has its own unique properties. One-size fits all obscures this reality in a misleading manner.

⁴⁰ Currently at 27 C.F.R. § 7.65.

⁴¹ See 27 C.F.R., Part 7, Subpart D.

⁴² Responsive to questions posed in Section VII.B.6., 90 Fed. Reg. at 6671.

⁴³ See, e.g., Statement of Joseph H. Choate, Jr., *Hearings on HR. 8539 Before the Committee on Ways and Means*, 74th Cong., 1st Sess. (1935), at 10 (Act would provide the consumer with “all the important factors which were of interest [to them] about what was in the bottle”).

Of course, we believe the proponents in favor of alcohol in fluid ounce labeling aim for exactly the sort of confusion noted above. The distilled spirits industry has long advocated for equating all alcohol beverages under a variety of slogans: “A drink is a drink”; “equivalency”; etc. Adopting this rhetoric will embrace a position in a longstanding policy debate that Congress, to date, has not embraced. TTB should not make this leap.

Notice 237 asks if its disclosures should reference the concept of a “standard drink” or otherwise reference the recommendations of the *Dietary Guidelines for Americans*. The Brewers Association would see such references as a substantial error. As TTB knows, the *Dietary Guidelines* are updated every five years. Indeed, as these comments are written,⁴⁴ substantial uncertainty surrounds what the next iteration of the *Dietary Guidelines* (for 2025-2030) will have to say about alcohol. TTB should not require a labeling rule subject to revision – requiring costly new labels and other burdens on government resources and the industry – every five years.

The proposed statement of alcohol in fluid ounces represents a significant and untested departure from longstanding policies designed to help consumers of alcohol beverages moderate their consumption. TTB should remove this feature from any final mandatory disclosure rule.

9. If Regulations are Adopted, a Linear Display and Partial Disclosure via Electronic Means Both Present Sound Options for Minimizing Regulatory Burdens⁴⁵

Should TTB proceed with a nutritional disclosure rule, the Brewers Association supports the current proposal to permit industry members to display those in a linear display. We do not view a text box as a significant improvement in visibility, and such a requirement would require far more extensive re-designs of industry member labels. The Brewers Association also urges TTB to re-consider its decision not to permit nutritional disclosures (calories, carbohydrates, fat, and protein) by electronic means, as such a system would reduce burdens on industry and government, provide greater flexibility, and facilitate the export of U.S.-made products.

A linear display gives producers more flexibility in designing their labels and avoids what would otherwise amount to a mandate for front-and-back labeling of products. TTB’s experience is instructive – “light”/“lite” beer has been on the market for 45 years bearing the same nutritional information as proposed in Notice 237. Calories and carbohydrates constitute a central aspect of the inter-brand competition between such products. Yet the statement of average analysis on a light beer appears in a linear display without any evidence, to our knowledge, that such information does not reach consumers, many of whom choose light beer precisely because of its reduced calories and/or carbohydrates. We fail to see why

⁴⁴ In August 2025.

⁴⁵ Responsive to questions posed in Section VII.B.7., 90 Fed. Reg. at 6672-73.

a text box is needed when decades of experience demonstrates that a linear display is sufficient.

Moreover, the amount of space on a beer label is quite finite. Adding a mandatory text box will take up substantial room on the label and would force some producers to re-tool their labeling in order to accommodate the added space. A brewer packaging in bottles, for example, might need to add back-labeling capabilities in order to accommodate an added text box. Conversely, because the space on a beer bottle or can is limited, it seems hard to believe that consumers will struggle locating a linear display of nutritional information.

Notice 237 asks whether TTB should abandon the maximum type size limitation on alcohol content statements for malt beverages. We wholeheartedly agree with such a repeal. As Notice 237 recognizes, alcohol content is important information to some consumers, helping them to regulate their alcohol intake. The type size limitation appears to be a vestige from before the Supreme Court's *Rubin v. Coors* decision,⁴⁶ when the FAA Act prohibited alcohol content statements on malt beverages. It is well-past the time to do away with the remnants of this paternalistic approach to malt beverage consumers.

We also renew our call for TTB to provide for the electronic disclosure of nutritional information as an option for the industry. An electronic disclosure option would strike the right balance between consumer transparency and avoiding undue burdens on businesses, especially small businesses. TTB's own figures show that even among groups with comparatively "low" access to smart phones, that access already reaches over three-quarters of the population. According to the Pew Research Center, as of last year 91 percent of all American adults have smart phones, and 98 percent have a cell phone of some kind.⁴⁷ Those numbers will only grow in the future. Notably, the Pew Research data shows that smartphone penetration is lowest (at a still substantial 79%) among persons over 65 years of age, who tend to own non-"smart" cellphones in greater numbers.⁴⁸ Today's 65+ cohort, with their relative resistance to smartphone technology, will shrink over time. Indeed, as the nutritional disclosures mandated by Notice 237 will not likely become mandatory until six or seven years after the close of the current comment period, smartphone ownership will likely be near-universal by the time any regulations become effective.

An electronic solution disclosing nutritional information via QR code would ease the burden of Notice 237 on small businesses. A QR code can accommodate variations of a recipe, whether inadvertent or deliberate, without the need to design and order new labels. The brewer would simply update information linked to the QR code, saving substantial resources. A QR code disclosure option also would permit brewers to provide this information in different formats (e.g., in European

⁴⁶ *Rubin v. Coors Brewing Co.*, 514 U.S. 476 (1995).

⁴⁷ See Pew Research Center, *Mobile phone ownership over time*, available at <https://www.pewresearch.org/internet/fact-sheet/mobile/> (last visited August 10, 2025).

⁴⁸ See *id.*

measures) for different markets without the need to redesign labels. This would help boost the competitiveness of American-brewed beer in foreign markets.

10. If Regulations are Adopted, Reference Amounts Should be Adjusted to Reflect Typical Serving Sizes of Beer⁴⁹

The Brewers Association believes Notice 237 needs to adjust its proposed reference sizes for malt beverages, specifically the five-ounce reference size for products between 7% and 16% ABV. Reviewing the proposed reference sizes, Notice 237 appears to embrace sizes more appropriate for wine products in this alcohol content range.

The Brewers Association agrees that a 12-ounce reference size is appropriate for beer containing not more than 7% ABV. But the standard twelve-ounce beer serving persists for stronger products than 7% ABV. Most craft brewers have a retail component to their business, selling beer directly to the public. Visiting almost any craft brewery will confirm that they do provide smaller pours for products somewhat above 7% ABV. The dividing line, however, generally is set around 8% ABV. We accordingly urge TTB to apply the 12-ounce reference amount to products containing not more than 8% ABV instead of 7% ABV.

In addition, in observing the service of beer at craft breweries across the country, products in the 8% ABV to 16% ABV range are often served in different sizes, generally consistent with strength. For products 8-12%, we believe an eight-ounce reference amount more accurately reflects the most typical pour size. Then, for products containing more than 12% ABV but not more than 16% ABV, the five-ounce reference amount proposed by Notice 237 appears appropriate. For the strongest products, the Brewers Association agrees with Notice 237's proposal of a two-and-a-half-ounce reference amount for products in the above 16% to 24% ABV range, and a one-and-a-half-ounce reference amount for products above 24% ABV.

The Brewers Association does not see any merit in tying recommended serving sizes to any concept like a "standard drink." As explained in Section 8, above, concerning fluid ounces per drink, this concept is unknown to the American consumer. Moreover, what constitutes a "standard drink" may be influenced by the *Dietary Guidelines*. As such, the label rule might require reevaluation every five years as the *Dietary Guidelines* evolve. Industry needs more certainty than that.

11. If Regulations are Adopted, we do Not See the Need to Further Complicate the Regulations with Specific Dual-Column Rules⁵⁰

The Brewers Association would not oppose the voluntary use of dual-column labeling by an industry member, provided that the information it displays is truthful and not misleading. But we do not see a reason to further complicated the regulations with specific instructions governing what is simply the presentation of

⁴⁹ Responsive to questions posed in Section VII.B.9., 90 Fed. Reg. at 6673.

⁵⁰ Responsive to questions posed in Section VII.B.10., 90 Fed. Reg. at 6673.

truthful, accurate, and specific “other information” on a label – something the existing malt beverage regulations already authorize.⁵¹

Notice 237 asks whether a voluntary “dual column” rule should be allowed on containers containing 200-500% of the referenced amount or on containers containing 200-300% of the referenced amount (the FDA rule). We believe such complexity is unnecessary, and producers should be able to choose either, so long as the information provided is truthful, accurate and specific. Greater complexity with a rule governing a voluntary labeling decision will only serve as a “trap of the unwary.”

12. If Regulations are Adopted, a Five-Year Implementation Period Will Help Mitigate its Impact on Small Businesses⁵²

Should TTB finalize a nutritional labeling rule, the Brewers Association supports a five-year compliance date. Many small brewers update their labels at least once every five years, reducing the added cost burden of a final rule. Nevertheless, some small and independent brewers will need to redesign labels outside their usual process. In our survey of members, roughly one-third indicated that at least some of their labels do not change within a five-year cycle. Another roughly one-third suggested that label redesigns are rare or infrequent but with less clarity on number of years, suggesting a longer time cycle for at least some of their labels.

The Brewers Association also supports Notice 237’s proposal to allow the addition of nutritional information without the need for a new COLA. Submitting and receiving label approval for a new COLA takes time and effort, and most small businesses do not have dedicated staff for such tasks. Eliminating the need for this regulatory step would save both government and industry resources.

Finally, today small and independent brewers, along with most of the alcohol beverage industry, face the prospect of three new federal labeling mandates:

- The nutritional, alcohol content, and possibly other disclosures contemplated by Notice 237;
- The mandatory allergen disclosures contemplated by TTB Notice 238;⁵³ and
- For alcohol beverages falling under FDA’s primary labeling jurisdiction, a front-of-label packaging mandate contemplated by FDA Docket No. FDA–2024–N–2910.⁵⁴

The prospect of implementing different labeling changes at different times is daunting to any industry member, but particularly to small producers. The Brewers

⁵¹ See 27 C.F.R. § 7.56.

⁵² Responsive to questions posed in Section VII.B.11., 90 Fed. Reg. at 6674.

⁵³ 90 Fed. Reg. 5763 (Jan. 17, 2025).

⁵⁴ 90 Fed. Reg. 5426 (Jan. 16, 2025).

Association accordingly urges TTB to coordinate any implementation date for Notice 237 with the mandatory effective date of any final allergen regulations flowing from TTB Notice 238 and any FDA front-of-package mandate applicable to alcohol beverages.

* * *

We thank you for your careful consideration of these comments and look forward to working with TTB on these important topics.

Sincerely,

A handwritten signature in black ink that reads "Marc E Sorini". The signature is written in a cursive, flowing style.

Marc E. Sorini
Vice President of Government Relations, Brewers Association

Cc: Bart Watson, President & CEO, Brewers Association