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Director, Regulations and Rulings Division
Alcohol and Tobacco Tax and Trade Bureau
Attn: Notice No. 73, P.O Box 14412
Washington, DC 20044

Thank you for the opportunity to comment on Notice No. 73, Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages. This rulemaking could lead to one of the most far-reaching revisions of wine label requirements, look and feel in the history of wine in America. While the motives behind the proposed rules are admirable, the somewhat limited helpful information that would be provided to consumers should be balanced against the burdens these changes would have on over 5,000 American wineries, the vast majority of which are small businesses.

Sincerely,

Bill Nelson, President
WineAmerica

Submitting Organization

WineAmerica is the National Association of American Wineries. With more than 800 members in 48 states, it is the only winery trade association with national membership. The mission of WineAmerica is to encourage the dynamic growth and development of American wineries and winegrowing through the advancement and advocacy of sound public policy.

WineAmerica thanks the Bureau for extending the comment period on this rule. The extension has greatly facilitated comments from many of this country's more than 5,000 wineries.

Overview

Notice No. 73 seeks comments on expanding the required information on alcoholic beverage labels to include information about serving size, calories, carbohydrates, fat and protein, and alcohol by volume.

In 1993 ATF conducted rulemaking on the issue of requiring calorie and nutrient information on alcohol beverage labels. At that time the Bureau concluded that there was no significant consumer interest in receiving such information (Notice No. 73, FR 41860). In the Notice, TTB mentions that there is now great interest in obesity, weight control and calorie management, and that without serving fact information "consumers cannot adequately judge the consequences of beverage selections."

For wine there is a real doubt about whether mandating such information on wine labels will significantly enhance consumer knowledge. For consumers seeking information about wine calories, it is a simple matter of consulting one of the many Internet sites which currently list average calories for wine or provide calculators for determining calories from alcohol content.

Virtually all common wines fit into a very narrow band of calorie content per serving, about 120 calories (USDA database). Consumers naturally compensate for wine calorie variations by reducing serving sizes for very sweet (late harvest) or very alcoholic (over 16% by volume) wines. Difficulties in evaluating calories argue for approximate calorie disclosure. Thus it would be reasonable to simply publicize that a typical wine has approximately 120 calories per serving, indicating serving size for table wines, sweet wines and dessert wines.

The analytical method for determination of carbohydrates in dry wines is seriously flawed and produces significantly misleading results which are sure to confuse consumers. Protein and fat levels in standard wines are below threshold. Wine is not consumed for basic nutritional content. Mandating labeling of carbohydrate, protein and fat content, with all the underlying flaws in analytical techniques and interpretation, might be more misleading than informative.

Given the narrow range for wine calories, flaws in carbohydrate analysis and limited utility of the resultant data, WineAmerica fails to see compelling reasons for making a drastic change in labeling regulations for wine. Furthermore, these changes would have very negative economic effects on more than 5,000 wineries in this country.

WineAmerica is further concerned that some of the proposed information as it pertains to wine is confusing, misleading and inaccurate even under the most favorable conditions. The data on nutritional information, calories, carbohydrates, fat and protein are more working operational estimates based on artifacts of imperfect analytical techniques than fundamentally sound and specific scientific information. Such information may be of some value to consumers. However, requiring specific values would have multiple negative effects on wineries. This rulemaking should be considered in light of the imperfection and lack of precision of the underlying techniques and the lack of strong consumer and regulatory interest in requiring individual label disclosure of this information.

WineAmerica strongly urges TTB to retain its current policy of not mandating nutritional information on wine labels except when nutritional or caloric claims are made. As an alternative, TTB in conjunction with other government agencies, could undertake to disseminate the relevant information, primarily caloric content of typical wine servings, to consumers.

Wine is Different

Wine is the product of fermentation of a variable fruit, influenced by location, climate, type of fruit and winemaking technique. It is not a product consistently produced to uniform specification. That is why TTB allows vintage labeling, why wineries have so many small lots and different labels and why there are so many prices and products coexisting in the marketplace. Wine is more like fresh produce than manufactured food. Its composition varies according to the grapes or fruits from which it is made as well as from lot to lot, and from year to year.

In addition, wine is not a food consumed primarily for nutritional purposes. Prominent, standardized display of nutritional information may imply that wine has nutritional value, which is misleading to the consumer.

Wineries are Small Businesses

The United States Small Business Administration (SBA) provides the definition of what constitutes a small business based on size standards. Wineries are considered small if they employ less than 500 employees. Based on 2002 data from the SBA, 98% of all wineries met the SBA small business definition. This is consistent with the recent history of wine production in the United States which has been characterized by an enormous increase in the number of small, family run operations. Since 1980, the number of wineries has increased five fold, from 919 in 1980 to more than 5,000 in 2007. Of these, more than 95% qualify for favorable treatment under the small producer tax credit.

America's wineries are primarily small businesses. Extra care should be taken to avoid economic damage to these businesses. The TTB should act carefully after considering the impact of the proposed changes on the wine industry

Impact of Nutritional Labeling on Wineries

In 2007 TTB approved 111,354 wine labels, 87% of all label approvals for the year. Even more than that are in use in this country at any one time since some approvals last more than one year. Such variability presents enormous challenges and potential daunting costs to wineries, especially small wineries that might have to spend thousands of dollars each just to have nutritional testing done. Multiple label modifications will eliminate economies of scale in printing. If TTB chooses to require a serving facts panel rather than a linear presentation, very high additional costs will be incurred to purchase equipment for an additional label, design the label, and reprint it for each lot or vintage.

In 2005 WineAmerica surveyed its members to gauge the impact of label changes discussed in ANPRM #41. Responses were received from 106 members, mostly small or medium size wineries. These responses confirmed the very high and continuing costs required for analysis, annual label changes, label redesign and capital for application of an additional label.

Most wineries will have to consider adding a back label to provide space for a serving facts panel. For small or even many medium sized wineries this will require upgrading existing labeling equipment to accommodate the additional label. The additional cost of replacing labelers to gain the ability to apply front and back labels is estimated between \$10,000 and \$40,000 per bottling line. Wineries already equipped for back labels will have to sacrifice the space currently used to present their message to the consumer. Such a loss is hard to quantify but quite significant. Producing wine labels is a very sensitive, expensive and artistically important task for wineries.

Redesigning labels will involve one time costs of about \$2,000 to \$5,000 for each general label style. While some wineries only have one label style with different information depending on the type of wine, many have three or more. Therefore, the label redesign costs are likely to range from a low of \$2,000 to a high of \$15,000. In many cases the label redesign will require the production of new dies for cutting labels in different shapes.

Mandating detailed and specific nutritional information will require annual analysis of each wine produced and reprinting of labels in smaller and more frequent lots. The cost for printing each label each year in smaller lots could easily be in the range of \$200 - \$300 per label. Typically very small wineries have around 15 labels, so they would have to invest between \$3,000 and \$5,000 each year in extra printing costs.

Additional analysis costs will be engendered by the proposed changes. While wineries already perform alcohol testing, no small winery does nutritional testing. The cost of nutritional label analysis from independent laboratories is at least \$250 per sample. For the 15 label average of smaller wineries the cost would be about \$4,000 per year. Besides the actual cost of outside analysis, wineries must bear the burden of the complicated task of sending samples to laboratories and waiting an estimated 2-4 weeks in order to receive the information back. They must then order labels printed before bottling. The entire process could easily delay bottling schedules by 3 months, a delay which will certainly extend release dates and impose hardship on wineries that are anxious to get new wines into the marketplace by early spring.

Loss of precious label space for wineries to tell their story will be very detrimental to wineries. The proposed serving facts panel will require a lot of space on the bottle. Wine labels are a very important promotional tool for wineries. Customers often make their final wine purchase decision based on what they see and read on the wine label.

Additional mandatory information on wine labels means less “precious real estate” for wineries to get out their message and to differentiate themselves from other wineries with similar products.

Alcohol by Volume

WineAmerica urges TTB to retain the flexibility in wine labeling provided by the ability to label wines with alcohol levels between 7 and 14% as “Table Wine.” Many wineries benefit from this provision by printing larger label runs and being able to use these labels over several years.

Serving Sizes

WineAmerica believes that typical wine serving sizes are easily gauged by examining practices of restaurants which serve wine by the glass. Such restaurants almost uniformly provide a pour of about 5 ounces in a serving for ordinary wines. These include wines which may be as high as 16% alcohol by volume as many wines are now a little more than 14% by volume.

Restaurants, however, do not pour the same quantity of dessert wines in their by-the-glass programs. Typically, very sweet or high alcohol wines are marketed in half bottles, are poured into glasses which are about half the size of regular glasses¹ and the restaurant will serve roughly the same number of pours from a half bottle of such wines as they do for dinner wines which come in a full bottle.²

Thus WineAmerica recommends defining serving sizes of wine as 5 ounces for all wines below 16% alcohol by volume and 2.5 ounces for all wines with alcohol above 16% by volume.

Misleading Aspects of Carbohydrate Reporting for Wine

The standard A.O.A.C. difference method for determining carbohydrates is significantly flawed when applied to wine and, for dry wines leads to data which are substantially at variance with nutritional science. This method is “operational.”³ The result you get is not accurately related to metabolic or underlying nutrition parameters needs but is largely the product of testing methodology. After consulting experts at USDA-ARS we believe the carbohydrate difference

¹ Riedel recommended competitive dessert wine glasses are 10 ounces, Chardonnay 21 ounces, Cabernet Sauvignon 21.5 ounces. <http://www.wineglassguide.com/> Accessed January 19, 2008.

² Confirmed by Morrell Wine Bar, N.Y. Phoned January 19, 2008

³ Even the most basic concepts in science, like "length," are defined solely through the operations by which we measure them, is the discovery of [Percy Williams Bridgman](#), whose methodological position is called **operationalism**. The fact we in practice measure "length" in different ways (it's impossible to use a [measuring rod](#) if we want to measure the distance to the Moon, for example) must mean that "length" logically isn't *one* concept but *many*. Each concept is *defined by* the measuring operations used.

technique applied to wine measures many components with widely variable “Atwater factors”⁴ thus leading to confusion in terms of caloric and nutritional importance. To calculate calories in wine the USDA uses blended factors of 3.92 calories per gram of carbohydrate, 6.93 for alcohol, 8.37 for fat and 3.36 for protein. The superficial simplicity and precision of these factors mask substantial disparity in the metabolic usefulness of the underlying wine components. For example, tartaric acid, an important component of carbohydrate by difference (CBD) in wine has virtually no metabolic availability in humans, malic acid has a value of 2.4 cal/g, lactic 3.6 cal/g and citric 2.471.⁵ Glycerol, an important component of wine CBD has a caloric value of 4 cal/g⁶ but is not metabolized in the same manner as typical carbohydrates as it enters glycolysis at a later stage. Phenols and polyphenols, a substantial component of CBD in red wines have dubious caloric value and are not metabolized through carbohydrate pathways.⁷ For dry wines then, the CBD is a mishmash compilation of problematic components of questionable utility and dubious relation to dietary carbohydrates.

All told, it is hard to find clear and non-misleading justification for dissemination of carbohydrate values for the vast majority of wines. The public interest would be served by focusing purely on wine calories.

Misleading Aspects of Calorie Reporting for Wine

The caloric value for alcohol is also problematic because ethanol has an unusually high “loss of energy due to heat produced” of about 25%.⁸ It is with good reason that Saint Bernard dogs are often pictured as rescue dogs with brandy casks around their necks – a considerable portion of alcohol consumed leads to an increase in body heat. “A higher thermogenic response was observed after a meal rich in alcohol than after meals rich in protein, fat, or carbohydrate...”⁹

A popular web site “Alcohol Problems and Solutions” states on its page labeled “Alcohol, Calories & Weight”:

Drinking alcohol does not contribute to weight gain, according to scientific medical research.

The Data

Alcohol contains calories, but drinking alcohol doesn't lead to weight gain, according to extensive medical research, and many studies report a small reduction in weight for women who drink.

⁴ Atwater factors are the standard means of calculating calories. Merrill, A. and B. Watt: **Energy Value of Foods ...basis and derivation**, Agriculture Handbook No. 74, revised 1973, Published by the Human Nutrition Research Branch, Agricultural Research Service, USDA.

⁵ Merrill & Watt, op. cit. page 7.

⁶ <http://waterhouse.ucdavis.edu/winecomp/glycerol.htm> accessed January 18, 2008.

⁷ <http://www.sdaws.org/Articles/Article11.htm> accessed January 18, 2008.

⁸ Suter, P.M, E. Jequier & Y. Schutz; American Journal of Physiol.-Regulatory Integrative Comp. Physiology **266**: 1204-1212, 1994.

⁹ Raben, A., L Agerholm-Larsen, A. Flint, J. Holst, & A. Astrup; Am.J. Clin. Nutr **77**: 91-100, 2003. Dietary induced thermogenesis was larger after the alcohol meal by 27% compared with carbohydrate and fat.

The reason that alcohol doesn't increase weight is unclear, but research suggests that alcohol energy is not efficiently used. Alcohol also appears to increase metabolic rate significantly, thus causing more calories to be burned rather than stored in the body as fat. Other research has found consumption of sugar to decrease as consumption of alcohol increases.

Whatever the reasons, the consumption of alcohol is not associated with weight gain and is often associated with weight loss in women. The medical evidence of this is based on a large number of studies of thousands of people around the world. Some of these studies are very large; one involved nearly 80,000 and another included 140,000 subjects.¹⁰

A consumer reading a typical wine label to obtain useful dietary information about calories and carbohydrates will clearly be receiving misleading information.

Summary

WineAmerica believes the Bureau should balance the limited utility of reporting nutritional information for wine with the burdens such reporting would place on all wineries and especially on smaller wineries. A need for a reasonable balance should be considered given the imprecision of even the best analytical data of the two key reported items, carbohydrates and calories. Protein and fat are below threshold in almost all wines.

The consumer, for whom this rulemaking is intended, would receive very little, if any benefit from the proposed additional label information. This information may actually be detrimental to the consumer by detracting from important existing information such as the Government Warning, the sulfite statement and alcohol content while causing the potential for information overload.

Within broad and reasonable parameters wine is a fairly consistent product. TTB's standards of identity limit the variation of chemical and caloric composition of wine. Thus the consumer who actually cares about the caloric content of wine servings is easily served by consulting one of the many good websites which list calories of wine per serving.¹¹

Because wine is not a nutritional food, carbohydrate, fat and protein disclosure is fundamentally misleading and of limited utility. Standard wines do not have above threshold levels of fat or protein. Carbohydrate content is something of a misnomer because wine carbohydrates, (as determined through the difference technique), with the exception of residual sugar, are not metabolized in the same manner, with the same biological consequences as typical carbohydrates. It little serves the consumer to mandate labeling of confusing nutritional information for wine. The possible exception might be residual sugar which could have some

¹⁰ <http://www2.potsdam.edu/hansondj/AlcoholCaloriesAndWeight.html> accessed January 18, 2008.

¹¹ Examples include the following all accessed January 19, 2008:

<http://www.calorieking.com/foods/search.php?keywords=wine&partner=&showresults=yes>

<http://www.myfitnesspal.com/food/calorie-chart-nutrition-facts>

<http://www.howmanycaloriesin.com/Category.aspx?group=2>

http://www.caloriesperhour.com/index_food.php

<http://www.freedieting.com/calories/alcohol.htm>

importance for diabetics. Even in this limited situation, a 4% residual sugar wine, quite high for table wines, contains only about 6 grams per serving of sugar carbohydrates or about 2% of the recommended daily value for carbohydrate consumption¹². Diabetics can easily manage their sugar intake from wine by only consuming wines which are not overtly sweet. Dry wines contain little or no glucose or fructose (less than 0.5 gram per serving) but will often test at approximately 4 to 5 grams/serving of carbohydrates. Thus the carbohydrate information for most wines will be misleading.

Almost all wines contain about 120 or slightly fewer calories per serving and the carbohydrate content is at best of very limited value and a very minor part of daily consumption. WineAmerica believes America's wineries and the public at large will be best served by continuing current requirements for serving fact disclosure. TTB and other government agencies could publicize that a serving of wine contains approximately 120 calories.

There are many websites which provide information about wine. A very useful website produced by Pernod Richard New Zealand provides straightforward information about calories indicating that most wines are between 110 and 120 calories per serving.¹³ It also provides a formula to calculate calories from alcohol and calories from residual sugar.

We ask that the Bureau refrain from mandating serving facts on wine labels except where voluntary caloric or nutrition claims are being made.

If the Bureau disagrees and decides to mandate calorie and/or nutritional information on wine labels we suggest attenuating the effects on wineries by allowing reasonably broad tolerances for all nutritional information and allowing no reporting of protein or fat when those levels are below 0.5 grams per serving.

A broad tolerance range would, in most cases, allow the winery to print labels well in advance and even to print labels for more than one lot and more than one vintage year without required modification.

Because the underlying data are only approximately useful to consumers, permitting broad tolerance of disclosed information would not be misleading.

If the Bureau chooses instead to mandate additional information on labels we urge the Bureau to allow broad tolerances for caloric and nutritional information in order to minimize the need for expensive testing and label change. It should also allow use of a linear presentation in small type size to minimize the space required and to attenuate the cost to wineries.

If the Bureau wishes, we would have no problem with requiring tighter and more specific tolerances, more in line with FDA standards, on labels where voluntary caloric or nutrition claims are being made.

¹² FDA Daily Values, 2000 calorie diet, <http://www.cfsan.fda.gov/~dms/foodlab.html#quick> accessed January 19, 2008

¹³ <http://www.pernod-ricard-nz.com/Pages/wines/calories.html> accessed January 20, 2008

WineAmerica supports current policy requiring disclosure on labels and advertising when calorie or carbohydrate or other nutritional claims are made.

Conclusion

Mandatory label disclosure of calories or carbohydrates per serving for wine provides little or no useful consumer information while placing severe financial and compliance burdens on all wineries and especially on small wineries. WineAmerica encourages TTB to retain its current policy regarding nutritional information on wine labels, allowing voluntary disclosure and requiring disclosure when caloric or nutrition claims are made.

List of Recommendations

1. Retain current TTB policy of allowing voluntary disclosure for nutritional information and mandating such information only when caloric or nutrition claims are made.
2. Continue to allow wineries to label any wine with alcohol between 7% and 14% by volume as “Table Wine.”
3. Define serving size for wine as 5 ounces for wines below 16% alcohol by volume and 2.5 ounces for wines above 16% alcohol by volume.
4. Nutritional information for wine should be limited to calories.
5. TTB in cooperation with other government bodies should publicize that a serving of wine contains approximately 120 calories.
6. If TTB mandates nutritional information on wine labels broad tolerances should be allowed in order to minimize analytical and printing costs.
7. If TTB mandates additional information, a linear presentation in small type should be allowed.