BEFORE THE
DEPARTMENT OF THE TREASURY
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU

Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages
Notice No. 41

Comments of the Staff of the
Bureau of Consumer Protection,
the Bureau of Economics,
and the Office of Policy Planning of the Federal Trade Commission

September 26, 2005*

*These comments represent the views of the staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission. They are not necessarily the views of the Federal Trade Commission or any individual Commissioner. The Commission has, however, voted to authorize the staff to submit these comments.

I. INTRODUCTION

The Alcohol and Tobacco Tax and Trade Bureau ("TTB") of the U.S. Department of Treasury has requested comments on an advance notice of proposed rulemaking ("ANPRM") with regard to labeling and advertising of beverage alcohol.[1] The ANPRM requests, *inter alia*, comments regarding whether TTB should require mandatory labeling about alcohol and nutrient content per serving;[2] what areas need further research before TTB can decide whether and how changes can be made;[3] whether labeling should include information about the amount of drinking considered to be "moderate" under the U.S. Dietary Guidelines;[4] and whether any new labeling requirements should apply equally to advertisements.[5]

The FTC has substantial experience challenging unfair or deceptive acts and practices related to alcohol advertising and labeling[6] as a violation of Section 5 of the Federal Trade Commission Act.[7] The FTC shares with TTB jurisdiction over the labeling and advertising of alcohol, and the two agencies often coordinate activities to provide consistent guidance regarding matters within their joint jurisdiction.

The FTC staff also has conducted extensive empirical research concerning the effect of advertising claims, including health and nutrient content claims for foods.[8] This research suggests that government regulations that require or allow marketers to provide such information to consumers may have a significant effect on the type and amount of health information they receive, which, in turn, affects the products they purchase. It also suggests that such regulations may facilitate competition among marketers based upon disclosed attributes, potentially leading to useful product innovations.

Drawing on its law enforcement experience and its research, FTC staff has filed comments with other agencies advocating policies regarding health claims and nutrient content claims that it believed would benefit consumers, including comments addressing such claims for beverage alcohol[9] and foods.[10] FTC staff appreciates the opportunity to provide views to the TTB as part of this rulemaking proceeding.

The FTC staff believes that TTB's regulations[11] should be amended to require that beverage alcohol labels disclose alcohol and nutrient content per serving, because such a change is likely to have beneficial effects on consumers and competition. Information on labels about the attributes of alcoholic beverages would help consumers select beverages consistent with their preferences, including making selections consistent with the recommendations of public health agencies. In addition, it would encourage manufacturers to compete based on the nutritional (*e.g.*, calories, carbohydrates) attributes of their beverages.

Accordingly, in the absence of information demonstrating that disclosures would impose significant costs on marketers, FTC staff recommends that the TTB amend its rules to require that alcohol labels disclose:

- serving size,
- number of servings per container; and,
- for each serving,

    - the fluid ounces of ethyl ("pure") alcohol,
    - calories,
    - fat and saturated fat (in grams), and
    - carbohydrates (in grams).

We also recommend that, before adopting a particular format for such label disclosures, TTB conduct empirical research to ensure that the disclosures are understandable and informative to ordinary consumers. FTC staff recommends against applying these disclosure requirements to advertising because the costs would likely exceed the benefits.

Marketers have expressed an interest in describing how the amount of alcohol in their beverages compares to government health guidelines regarding moderate consumption; however, expert sources appear to provide conflicting information about the quantity of alcohol in a standard "drink" as described in those guidelines. FTC staff recommends that TTB confer with public health agencies to resolve this uncertainty. We recommend that TTB thereafter allow marketers the option of making truthful, non-misleading representations comparing the amount of alcohol in a serving of their beverage to a standard drink or to dietary guideline recommendations.

II. ALCOHOL CHARACTERISTICS AND EFFECTS

The Department of Health and Human Services and the United States Department of Agriculture recently issued guidelines ("2005 Dietary Guidelines") on what consumers should eat and drink.[12] The 2005 Dietary Guidelines state that the "consumption of alcohol can have beneficial or harmful effects depending on the amount consumed, age, and other characteristics of the person consuming the alcohol, and specifics of the situation."[13] According to the 2005 Dietary Guidelines, "heavy alcohol consumption" causes "increased risk of liver cirrhosis, hypertension, cancers of the upper gastrointestinal tract, injury, violence, and death."[14] Alcohol also varies significantly in calories per serving. The Guidelines also place a strong emphasis generally on the importance of limiting calorie and fat consumption.[15] As further discussed below, the Dietary Guidelines recommend that adults who drink beverage alcohol limit their consumption to "up to one drink per day for women and up to two drinks per day for men."

The Commission also has recognized the specific risks of injury to underage consumers who drink alcohol.[16] The FTC's 2003 Report on Alcohol Marketing and Advertising emphasized that "drinking by minors remains high." The Report further noted that "[t]he manner in which minors drink places them at risk of significant harm. Excessive drinking is associated with a variety of risky behaviors and injury, including drunk driving accidents, suicide, sexual assault, and high risk sexual activity."

The amount of alcohol in beverages varies widely. Many popular beverages – 12 ounces of regular beer containing 5% alcohol by volume ("ABV"), 5 ounces of wine containing 12% ABV, or 1.5 ounces of 80 proof distilled spirits – deliver 0.6 ounces of pure alcohol.[17] Numerous other popular beverages, however, contain more or less alcohol. Beers in the marketplace range from approximately 3.3% to 17% ABV,[18] thus delivering between 0.39 and 2 ounces of pure alcohol per serving. Wines range from 6% to 18% ABV,[19] *i.e.*, providing between 0.3 and 0.9 ounces of alcohol in a 5-ounce serving. Distilled spirits range from 15% to 75% ABV, *i.e.*, providing 0.22 to 1.1 ounces of alcohol per serving.[20]

Alcohol also varies significantly in calories per serving. Calories in a serving of beer range from 95 to 340;[21] in spirits, from 48 to 180;[22] and in wine, from 100 to 235.[23] Similarly, beverage alcohol varies significantly in terms of other nutrients, such as carbohydrates and fat. The limited data that are publicly available suggests that beers range from 5 to 22 grams of carbohydrates per serving;[24] spirits may contain between 0 and 18 grams of carbohydrates;[25] and wines may contain between 1 and 18 grams of carbohydrates.[26] In addition, while FTC staff is unaware of any beers or wines that contain fat, there are a number of distilled spirits products that contain fat from cream, milk, or coconut.[27]

III. FTC STAFF RECOMMENDATIONS FOR LABEL DISCLOSURES

Beverage alcohol labels can play an important role in providing information to consumers. Consumers often will see beverage alcohol labels before they consume the product. Approximately 75% of alcohol is purchased by consumers for use "off premise," *e.g.*, purchasing beer, wine, or spirits for consumption at home, and 25% is consumed "on premise," *e.g.*, ordering a cocktail, beer, or wine at a restaurant. Because consumers purchasing beverage alcohol for consumption off-premises will have a chance to examine the label prior to purchase, the label may be an effective means of conveying important alcohol and nutrient content information to consumers.

Because alcohol and nutrients in beverage alcohol can affect health, information about these ingredients on beverage labels may help consumers make better-informed decisions. About 62% of American adults consume alcohol,[28] and most adults who consume beverage alcohol drink products in more than one of the three alcohol categories (beer, wine, and spirits).[29] Research shows that in many instances, consumer decisions are made at the point of purchase.[30] As a result, label disclosures about alcohol and nutrient content may assist consumers in choosing among categories and brands. For example, labels with calorie and alcohol content information could permit consumers to select a wine containing fewer calories or a distilled spirit containing less alcohol.

Empirical research suggests that disclosures about nutrient content on the Nutrition Facts Panel of food labels have assisted consumers in making better-informed choices among competing foods.[31] They also help consumers to comply with recommendations contained in the

U.S. Dietary Guidelines and other sources regarding calorie, fat, saturated fat, and other nutrient intake. As health consequences became a more important consideration for consumers, the mandated disclosures have given producers a powerful economic incentive to develop and market foods based on their nutritional attributes.

FTC staff believes that disclosure of alcohol and nutrient content information on beverage alcohol labels could have similar beneficial effects on consumers and competition. Such information would increase the ability of consumers to evaluate their actual alcohol, calorie, carbohydrate, and fat intake.[32] It would also increase the incentives for alcohol marketers to engage in product innovation.

Accordingly, FTC staff recommends that beverage alcohol label regulations be modified to require disclosure of the following information: serving size (in fluid ounces) and the number of servings per container; and, for each serving, the fluid ounces of pure alcohol (to the nearest tenth of an ounce), calories, fat (in grams), saturated fat (in grams); and carbohydrates (in grams).

In addition, FTC staff recommends that TTB mandate serving sizes for various beverages.[33] Establishing standard serving sizes will make it easier for consumers to compare the alcohol, calorie, carbohydrate, and fat content of beverage alternatives.[34] Further, standardized serving sizes would avoid the presentation of such information for atypical or contrived serving sizes.[35]

TTB also has requested comment on proposed formats for these disclosures.[36] FTC staff recommends that TTB adopt a standardized format, analogous to the "Nutrition Facts" labels on foods.[37] This format should mandate the order in which items appear and the language, including abbreviations, to be used. Use of this format will speed consumer familiarity with the disclosures and more readily enable consumers to compare alcohol and nutrient content of different beverages when making purchase decisions. Before adopting any particular format, however, TTB should conduct consumer research to ensure that it is understandable and informative to ordinary consumers in making purchasing decisions.

IV. LABEL REFERENCES TO STANDARD DRINKS OR HEALTH GUIDELINES

TTB also requests comments on various proposals designed to assist consumers in comparing their alcohol intake to the guidance of health authorities. The 2005 Dietary Guidelines caution consumers to drink "in moderation," defined as the consumption of:

> up to one drink per day for women and up to two drinks per day for men. Twelve fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof distilled spirits count as one drink for purposes of explaining moderation.[38]

TTB requests comments on a proposal to permit or require that labels bear the statement, "U.S. Dietary Guidelines advice on moderate drinking: no more than two drinks per day for men, one

drink per day for women."[39] Additionally, it requests comments on proposals to permit or require that labels compare the amount of alcohol in a serving of a beverage to a standard drink.[40]

Given the wide variety of alcohol levels in various beverages, however, consumers may not know what constitutes a "drink" or whether their consumption is "moderate." Although some government health publications state that a standard drink contains 0.6 ounces of pure alcohol, others state that a standard drink contains 0.5 or 0.54 ounces of alcohol.[41] Researchers have noted that the lack of standard information about what constitutes a "drink" poses problems in evaluating alcohol intake, particularly for consumers who choose atypical beverages.[42] Thus, any statement about limits on alcohol intake must identify how much pure alcohol is contained in a "drink" or a "standard drink," if it is to be useful to consumers.

FTC staff therefore recommends that TTB confer with the National Institute on Alcohol Abuse and Alcoholism ("NIAAA") and USDA to establish the alcohol content in a standard "drink." Once this issue is resolved, we recommend that TTB *permit* marketers who so choose to include truthful, non-misleading statements comparing the amount of alcohol in a serving of their product to a standard "drink" or to the 2005 Dietary Guidelines' recommendations.

The FTC staff takes no position, however, on whether TTB should *mandate* such a disclosure on labels. FTC staff does not have sufficient information as to the costs and benefits of such disclosures to marketers, consumers, and others. However, based on information submitted to the agency during this rulemaking proceeding, including information from government health agencies, TTB may be able to determine whether the benefits from a mandated label disclosure outweigh its costs.[43]

V. DISCLOSURES IN ADVERTISING

TTB also seeks comment on whether any new labeling requirements should apply equally to advertising.[44] FTC staff recommends that TTB not impose new labeling disclosure requirements equally to advertising. Advertising differs from labeling in important ways that make it likely that the costs of mandatory disclosure in advertisements would outweigh its benefits.

The food or beverage product label traditionally serves as a conduit for product information that a regulatory agency determines is important for consumers to receive. Within a confined physical space, the label is a vehicle for disclosure of a product's objective characteristics. Labeling regulations may specify in considerable detail the language and other information that is to be presented and the relative prominence of one piece of information as compared to another.

In contrast, advertising is designed to provide consumers with a potentially wide variety of objective and subjective information about products.[45] This diverse focus increases the costs of mandated disclosurse because there is no equivalent "back of the label" place for the required

information, although the costs would vary with the nature of the disclosure and the advertising format.[46] More importantly, it is the FTC staff's belief that disclosure of detailed health-related information – such as alcohol and nutrient content disclosures – as part of an advertisement with a fundamentally unrelated message is unlikely to be effective and, therefore, may provide little benefit for consumers.[47] As a result, FTC staff recommends that TTB not apply new labeling requirements equally to advertising[48]

VI. CONCLUSION

The FTC staff believes that TTB's beverage alcohol label regulations should be modified to require disclosures regarding serving size and the number of servings per container, and, for each serving, the quantity of pure alcohol, calorie, fat, saturated fat, and carbohydrates. Disclosing such information is likely to benefit consumers and competition. We believe that the development and adoption of such requirements will lead to better-informed consumers who will be able to make choices based upon relevant attributes, and potentially result in useful product innovations. Any proposed label format should be subject to consumer research, prior to adoption, to ensure that the disclosure is understandable to the ordinary consumer.

FTC staff also recommends that TTB, in consultation with public health agencies, establish the alcohol content in a standard "drink." Once this amount has been established, TTB should permit marketers to make truthful, nondeceptive claims comparing the quantity of alcohol in their beverages to that standard or to the 2005 Dietary Guidelines' recommendation.

Respectfully submitted,

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ENDNOTES

1. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, *Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Request for Public Comment*, 70 Fed. Reg. 22274 (Apr. 29, 2005).

2. *Id.* at 22280-82.

3. *Id.* at 22275.

4. *Id.* at 22280-82.

5. *Id.* at 22275.

6. *E.g.*, *Allied Domecq Spirits & Wine Americas, Inc.*, 127 F.T.C 368 (1999) (consent order) (prohibiting deceptive "low alcohol beverage" claim for a premixed cocktail containing 5.9 percent alcohol by volume); *Canandaigua Wine Co.*, 114 F.T.C. 349 (1991) (consent order) (prohibiting deceptive low alcohol claims for high alcohol fortified wine).

7. 15 U.S.C. § 45 *et seq.*

8. *See, e.g.*, P. Ippolito & J. Pappalardo, *Advertising Nutrition & Health: Evidence from Food Advertising 1977-1997* (FTC Bureau of Economics Staff Report) (Sept. 2002); D. Murphy, T. Hoppock & M. Rusk, *A Generic Copy Test of Food Health Claims in Advertising* (FTC Bureaus of Economics and Consumer Protection Staff Report) (Nov. 1998); P. Ippolito & A. Mathios, *Information and Advertising Policy: A Study of Fat and Cholesterol Consumption in the United States, 1977-1990* (FTC Bureau of Economics Staff Report) (Sept. 1996); P. Ippolito & A. Mathios, *Health Claims in Advertising and Labeling: A Study of the Cereal Market,* FTC Bureau of Economics Staff Report (1989).

9. Comments of the Bureau of Economics of the Federal Trade Commission on Use of the Word "Light" (Lite) in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages, BATF Notice No. 659 (Nov. 15, 1988).

10. *See, e.g.*, Comments of FTC Staff in the Matter of Food Labeling; Health Claims; Dietary Guidance (Docket No. 3003-0496) (Jan. 26, 2004), *available at* http://www.ftc.gov/opa/2004/01/foodlabeling.html; Comments of FTC Staff in the Matter of Obesity Working Group; Public Workshop: *Exploring the Link Between Weight Management and Food Labels and Packaging*, FDA No. 2003N-0338 (Dec. 12, 2003), *available at* http://www.ftc.gov/be/v040003text.pdf; Comments of FTC Staff in the Matter of Food Labeling: *Trans Fatty Acids in Nutritional Labeling*, Docket No. 03N-0076 (Oct. 9, 2003), *available at*

http://www.ftc.gov/os/2003/10/fdafattyacidscommenttext.pdf.

11. Currently, TTB's regulations do not require that beverage alcohol labels disclose alcohol or nutrient content per serving. TTB's implementing regulations require that alcohol labels contain the following disclosures: brand name; product identity (*e.g.*, "rum"); the name and address of the bottler, packer, or importer; the net contents in the package (*e.g.*, "12 ounces"); the presence of sulfites, FD& C Yellow No. 5; and, in the case of malt beverages, the presence of aspartame. Distilled spirits and wines with an alcohol content exceeding 14% by volume are required to disclose alcohol content by volume. Wine with an alcohol content between 7 % and 14% by volume may list alcohol content or the designation "table wine." Beers are required to comply with TTB's alcohol labeling rules, and also to disclose alcohol by volume, only to the extent that the laws of the state into which the malt beverages are to be shipped impose similar requirements. *See* ANPRM at 22275-6.

12. *See* United States Department of Agriculture, *Dietary Guidelines for Americans* (2005), *available at* http://www.healthierus.gov/dietaryguidelines/htm.

13. *Id.*, Ch. 9, Alcoholic Beverages, available at http://www.health.gov/dietaryguidelines/dga2005/document/html/chapter9.htm.

14. *Id.*

15. *Id.*, Chapters 3 (weight management), 6 (fat intake), and 9 (alcohol).

16. Because consumption of alcohol by underage consumers poses serious risks of harm and is unlawful, the Commission engages in and supports aggressive government efforts to prevent and discourage underage consumers from consuming beverage alcohol, including binge drinking.

17. Examples include:

5% ABV beers	Budweiser, Coors Original, Miller Genuine Draft
12% ABV wines	Franzia Chardonnay Box, Fetzer Valley Oaks Chardonnay, Sterling Sauvignon Blanc, Paul Masson Rose, Robert Mondavi White Zinfandel, Ecco Domani Chianti, Bolla Valpolicella, Carlo Rossi Burgundy
40% ABV (80 proof) spirits	Jim Beam Bourbon, Gilbey's Gin, Absolut Vodka, Bacardi Light Rum, and Jose Cuervo Classic White Tequila

See Realbeer.com, *Calories, Carbs and Alcohol, available at* http://www.realbeer.com/edu/health/calories.php; Washington State Liquor Control Board, *Price List* (May 2005), *available at* http://www.liq.wa.gov/PriceBook/PriceListWeb_Index.asp. Although the level of alcohol in beers and wines is generally reported in terms of ABV, the level of alcohol in spirits is often reported in terms of the "proof," reflecting the percentage of alcohol by volume multiplied by two. Thus, a distilled spirit labeled as "100 proof" contains 50% alcohol ABV.

18. Examples of beers with lower and higher alcohol levels include:

Anchor Small	3.3% ABV
Amstel Light	3.5% ABV
Mickey's Ice	5.9% ABV
Colt 45	6.0% ABV
Guinness Foreign Extra Stout	7.5% ABV
Sierra Nevada Big Foot	9.6% ABV
Sam Adams Triple Bock	17.0% ABV

See www.realbeer.com, *Calories, Carbs and Alcohol*, note 17 *supra*.

19. Examples of wines with lower and higher alcohol levels:

Wild Vines Raspberry Zinfandel	6.0% ABV
Tosti Asti Spumanti Italy	7.5% ABV
Riunite Lambrusco	8.0% ABV
Gallo White Zinfandel Blush	8.5% ABV
Ravenswood Vintage Blend Shiraz	14.5% ABV
Toasted Head Chardonnay	14.5% ABV
Hogue '00 Reserve Chardonnay	14.7% ABV
Noilly Prat Dry Vermouth	18.0% ABV
Gallo Dry Sherry	18.0% ABV
Nuernberger Gluhwein	20.0% ABV

See Washington State Liquor Control Board May Price List (May 2005), *supra* note 17.

20. Examples of spirits with lower and higher alcohol levels are:

Island Breeze by Bacardi	8.0 % ABV
DeKuyper Sour Apple Schnapps	15.0% ABV
Bailey's Irish Cream	17.0% ABV
Kahlua Coffee	20.0% ABV
Captain Morgan Parrot Bay Coconut Rum	21.0% ABV
many brands of	

flavored vodkas	35.0% ABV
Maker's Mark Bourbon	45.0% ABV
Tanqueray Gin	46.0% ABV
100 proof vodkas	50.0% ABV
151 rums	75.5% ABV

Id.; *See* F.M. Sherbert, *Light Delight: Can Bacardi's breakthrough Island Breeze low-cal brand create a new category of light spirits?*, Market Watch, Apr./May 2005, at 65. Additional information regarding the level of alcohol in spirits, beer, and wines is available on the Vermont Department of Liquor Control's website, *available at* http://www.state.vt.us/dlc/retail/descriptions/.

21. Light beers have approximately 95 calories per serving. Beers with higher calorie levels include:

Lowenbrau	160 cal.
Michelob Honey Lager	175 cal.
Red Hook IPA	188 cal.
Sam Adams Triple Bock	340 cal.

See Realbeer.com, note 17 *supra*.

22. *See* Dietary Guidelines, *supra* note 13 (providing calorie information for several beverage categories); Anne Collins, *supra* note 22; Bacardi USA, Inc., http://www.islandbreezelite.com/home/default.aspx. Examples of higher calorie distilled spirits include flavored vodkas (150 cal.) and Southern Comfort (180 cal.). *See*, Anne Collins, Spirits 1 & 2 and Liqueurs 1 &2, available at http://www.annecollins.com/calories/htm.

23. *See* Dietary Guidelines, Chapter 9, *supra* note 14; Anne Collins, *Anne Collins Weight Loss Program 2005*, *available at* http://www.annecollins.com/calories/calories-wine.htm. In some cases, these cites report calories in a three- or four-ounce serving; they have been converted to a five-ounce serving for purposes of comparison. Wines with lower and higher calorie levels include:

sauvignon blanc	100 cal.
white zinfandel	100 cal.
dry champagne	131 cal.
madeira	200 cal.
ruby port	231 cal.

Id.

24. *See* www.realbeer.com, *supra* note 17.

25. Many distilled spirits (gin, vodka, whiskey, rum) contain no carbohydrates; flavored spirits contain between 1.5 and 7 grams of carbohydrates per serving; and liqueurs may have between 7 and 18 grams of carbohydrates per serving. *See* Atkins Nutritionals, *Carb Gram Counter*, *available at* http://atkins.com/img/assets/609/atkins_carbgramcounter.pdf (Triple Sec); Bacardi USA, Inc., *supra* note 23, (Island Breeze Lite); Captain Morgan Rum Co., *FAQ*, *available at* http://www.captainmorgan.com/CMWebApp/common/showFaq.do#faq8 (Captain Morgan Parrot Bay); R&A Bailey and Co., *Frequently Asked Questions*, *available at* http://www.baileys.com/Baileys/openFAQ.do?topsection=-1 (Bailey's Irish Cream).

26. *See* Diageo Chateau & Estate Wines Announces "Low Carb" Wines (Apr. 20, 2004), available online at http://www.sterlingvineyards.com/news/low-carb-wines.html; Weight Loss For All.com, *Wine Carbohydrates Table*, *available at* http://www.weightlossforall.com/carbohydrates-wine.htm.

27. Beverages that appear to contain fat include Bailey's Irish Cream, Amarula, Carolans Irish Cream, Bushmills Irish Cream Liqueur, Limoncello, Mr. Boston Egg Nog, Chi Chi's Mexican Mudslide, Chi Chi's Pina Colada, Kahlua With Milk, Cruzan Rum Cream, Tequila Rose and KeKe Beach (strawberry and lime cream liqueurs) and many others. By way of example, Bailey's Irish Cream contains 5.8 grams of fat and 3.5 grams of saturated fat per serving. R&A Bailey and Co., *supra* note 25.

28. Adams Liquor Handbook (2004), p. 282.

29. Multi-sponsor Surveys, Inc., *The 2004 Gallup Study of Changes in Consumers' Attitudes Toward and Consumption of Alcoholic Beverages* (Aug. 2004). In 2004, 45% of consumers drank beer, 44% drank wine, and 43% drank spirits. *Id.*

30. According to a 1996 survey of 4,200 food shoppers, 70% of brand purchase decisions are made at the store, the point at which consumers are being directly exposed to label information. Point of Purchase Advertising Institute, *1996 POPAI Consumer Buying Habits Study 8* (1996).

31. Research indicates that the Nutrition Labeling and Education Act's ("NLEA") food labeling requirements "positively influence consumers' acquisition and comprehension of nutrition information at the point of sale. Specifically, consumers spend more time searching in the post-NLEA condition than in the pre-NLEA condition. In addition, consumers have greater comprehension of nutrition information in the post-NLEA condition than in the pre-NLEA condition." *See* C. Moorman, *A Quasi Experiment to Assess the Consumer and Informational Determinants of Nutrition Information Processing Activities: The Case of the Nutrition Labeling and Education Act*, 15 J. Pub. Pol. & Mktg. No. 1, Spring 1996, at 39-40.

32. The U.S. Dietary Guidelines place a strong emphasis on the importance of managing calorie intake and restricting intake of fat, particularly saturated fat. *Dietary Guidelines*, *supra* note 13, Chapters 3 (weight management), 6 (fat intake), and 9 (alcohol).

33. For a discussion of the importance of establishing a uniform system of measurement, also referred to as a "metric," *see* H. Beales, R. Craswell, S. Salop, *Information Remedies for Consumer Protection*, American Economic Review, Vol. 71, No. 2, Papers and Proceedings of the Ninety-Third Annual Meeting of the American Economic Association (May, 1981), at 410-413, *available at* http://links.jstor.org/sici?sici=0002-8282%28198105%2971%3A2%3C410%3AIRFCP%3E2.0.CO%3B2-7.

34. It appears that the appropriate serving sizes ordinarily would be 12 ounces of beer, 5 ounces of wine, and 1.5 ounces of spirits, consistent with numerous statements by health and safety authorities, as well as TTB itself. *See* U.S. Dietary Guidelines, *supra* note 13; National Institute of Alcohol Abuse and Alcoholism ("NIAAA"), *Alcohol Alert: Alcohol Metabolism* (Jan. 1997) *available at* http://www.niaaa.nih.gov/publications/aa35.htm; National Highway Transportation Safety Administration ("NHTSA"), *The ABCs of BAC* (Feb. 2005), *available at* http://www.nhtsa.dot.gov/people/injury/alcohol/ABCsBACWeb/page2.htm; NIAAA, *Risky Business. Alcohol: What You Don't Know Can Harm You, available at* http://www.collegedrinkingprevention.gov/students/risky/alcohol.aspx; TTB, *Caloric and Carbohydrate Representations in the Labeling and Advertising of Wine, Distilled Sprits, and Malt Beverages,* TTB Ruling 2004-1 (Apr. 2004), at 6, *available at* http://www.ttb.gov/alcohol/info/revrule/rules/2004-1.pdf. Establishment of serving sizes consistent with longstanding health authority guidance will facilitate the consumer learning process. However, if a product is sold in a can or bottle that contains more than one but less than two ordinary servings, such that a consumer is likely to consume the entire contents of the container, it may be appropriate to require that the contents of the container be deemed to constitute a single serving. *See* note 41, *infra*.

35. FTC staff recently submitted comments to FDA regarding the importance of proper serving sizes and the need to make clear to consumers the relationship between serving size, calorie, and nutrient disclosures. FTC Staff Comments in the Matter of Obesity Working Group, (Dec. 12, 2003), *available at* http://www.ftc.gov/be/v040003image.pdf.

36. *See* ANPRM at 22279-82.

37. The Nutrition Facts Panel is an effective means of conveying nutrient information about foods to consumers. "The provision of information under the NLEA is viewed as more effective because it mandates disclosure on all food products, standardizes label definitions and metrics, and regulates label placement, size, and other display features . . . the NLEA increases the opportunity to process nutrition information while potentially reducing the required ability and motivation." *See* C. Moorman, *A Quasi Experiment, supra* note *31*, at 39-40.

38. Dietary Guidelines, Chapter 9, *available at* http://www.health.gov/dietaryguidelines/dga2005/document/html/chapter9.htm.

39. ANPRM at 22279.

40. *Id.*

41. *See* NIAAA, *Helping Patients With Alcohol Problems* (Mar. 2004), *available at* http://www.niaaa.nih.gov/publications/Practitioner/HelpingPatients.htm#standard (0.6 ounces of alcohol in a standard drink); U.S. Department of Transportation, National Highway Transportation Safety Administration, *The ABCs of BAC* (Feb. 2005) (0.54 ounces); NIAAA, *Better Safe Than Sorry*, at 26, (.5 ounces) *available at* http://www.niaaa.nih.gov/publications/Science/Power%20Point/FAS.pdf.

Assuming that health authorities such as USDA and NIAAA agree that a standard drink contains 0.6 ounces of alcohol, a disclosure could, for example, contain this information: "A 1.5-ounce serving of this beverage provides 0.6 ounces of pure alcohol. Moderate drinking means no more than 1.2 ounces of pure alcohol per day for men, 0.6 ounces per day for women."

42. *See* Deborah A. Dawson, Ph.D., *Methodological Issues in Measuring Alcohol Use*, Sidebar, *available at* http://www.niaaa.nih.gov/publications/arh27-1/18-29.htm. Dawson notes that "beverages whose container or serving sizes do not correspond to standard drinks may pose problems for drinkers, both when they try to report their level of alcohol consumption and when they try to adhere to low-risk drinking guidelines that are stated in terms of standard drinks." *Id*; *see also*, M. Dufour, *What is Moderate Drinking? Defining "Drinks" and Drinking Levels*, Alcohol Research & Health, Vol. 23, No. 1 (1999), *available at* http://www.niaaa.nih.gov/publications/arh23-1/05-14.pdf, at 7 (noting that variations in alcohol content of various beverages, such as 40 ounce beers and fortified wines, makes it difficult for consumers to determine actual consumption).

43. The primary effect of this disclosure on a beverage alcohol label would be on adult consumers exposed to the label at point of purchase. In considering the costs and benefits of mandating such a disclosure, the TTB also may want to consider the secondary effects on other consumers (e.g., underage consumers) who may be exposed to the disclosure in other contexts.

44. ANPRM at 22275.

45. Although the role of advertising differs from that of labeling, advertising can still play a critical role in educating consumers, raising "consumer awareness about the attributes and significance of the nutrients in particular foods and prompt consumers to examine the food label for more nutrition information." FTC Staff Comment in The Matter of Obesity Working Group; Public Workshop; Exploring the Link Between Weight Management and Food Labels and Packaging, Docket No. 2003N-0338 (Dec. 12, 2003), at 7, *available at* http://www.ftc.gov/be/v040003text.pdf.

46. In weighing the costs and benefits, one must consider the disclosure in the context of the ad, which could be a 15-second radio ad, a 30-second "image" ad on television, or an Internet banner.

47. FTC Staff Comment in the Matter of Request for Comments on Consumer-Directed Promotion, Docket No. 2003N-0344 (Dec. 1, 2003), at 19-25 (recommending that FDA not require that a substantial proportion of prescription drug product labeling be featured in direct-to-consumer advertising).

48. There may be circumstances in which the failure to disclose nutrient information would make a beverage alcohol advertisement deceptive. For example, in the case of foods, certain health claims in advertising may trigger the need for a disclosure about the presence in the food of other risk-increasing nutrients. *See* FTC, *Enforcement Policy Statement on Food Advertising*, *available at*
http://www.ftc.gov/bcp/ policystmt/ad-food.htm#Introduction.