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NCL 100 YEARS
CONSUMER ADVOCACY NATIONAL CONSUMERS LEAGUE
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Theodore R. Deheo, Jr. On The Proposed Rule on Flavored Malt Beverages (FMBs) and Related Proposals
Secretary 68 Fed. Reg. 14292 (March 24, 2003)
Jack Blum
Counsel

The National Consumers League (NCL) is pleased to submit comments to the
Evelyn Dubrow Alcohol and Tobacco Tax and Trade Bureau (TTB) on the Proposed Rule, Flavored
Honorary Chair Malt Beverages (FMBs) and Related Proposals, 68 Fed. Reg. 14292 (March 24,
Erma Angevine

Honorary President 2003). While NCL is pleased to see TTB mandate alcohol content labeling for
FMBs, we are very concerned with other aspects of the proposed rule. Specifically,
Judy Asazawa NCL opposes the perpetuation of policies that differentiate malt-based alcoholic
Morton Bohr
Dehra Berlyn beverages from distilled alcoholic beverages. In NCL's view, ethyl alcohol is the
Alan Bosch same, regardless of whether it is in beer, wine, or distilled spirits. Basing public
Delores Langford Bridgette policy upon whether a drink is fermented or distilled misleads consumers.

Jim Conran
Glenn English
Mary Finger NCL is the oldest consumer advocacy organization in the
David J. Frederickion United States.
Dorothy Garrick Since 1899 NCL has worked to protect and promote the economic and social
Pasusr Herrera, Jr. interests of America's consumers, using education, research, science, investigation,
Mary Heslin publications, and the public and private sector to accomplish that mission. We are
Arlene HoltBaker
Andrew J. Imparato concerned that goods be produced and distributed and services rendered not only at
Ruth Jordan reasonable prices and in adequate quantity, but under fair, safe, and healthy working
Harry Kranz
Robert N. Mayer conditions that foster quality products for consumers and a decent standard of living
Joyce D. Miller for workers. Our priority is always be to promote the welfare of those consumers,
Larry Mitchell
Brandolyn T. Clanton PinksWage earners, and income recipients least able to protect themselves, and to assist
Cal Rapson them in developing their own capabilities to the extent possible.

Alma Morales Riojas
Pedro Rodriguez
Patricia Royer NCL has been involved in consumer education and advocacy regarding
Chely Schaffer alcohol issues for many years. NCL along with other public interest groups is
Bert Seidman
Ciro Manuel Stamatoss petitioning TTB for mandatory "Alcohol Facts" labeling that includes, among other
Ricki Stochaj things, the beverage's total alcohol content expressed as a percentage of volume,
Patricia Tyson
Gladys Gary Vaughn serving size, and the amount of alcohol and number of calories per serving.
Clinton Warne
Lora H. Weher
Frances West
Betsy Woodward

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NCL has published information on alcohol equivalency. Copies are attached. We have worked hard to dispel the myth that the source of the alcohol and the type of alcohol are material.

Summary Of The Proposed Rule

TTB's proposed rule would affect the composition, labeling, and advertising of FMBs, 68 Fed. Reg. at 14292. As NCL understands this type of product, FMBs are derived from a malt beer base. The brewer removes certain characteristics of malt, such as the traditional flavor and color, then adds flavors that are frequently delivered in an ethyl alcohol vehicle, as well as water, sweeteners, and other ingredients.

NCL understands that FMBs are currently regulated most similarly to beer. The alcohol content of an FMB is similar to that of most beers -4 to 6% by volume. They are taxed at the same level as beer. The distribution is similar to that of beers. The restrictions that currently exist upon the sale and promotion of beer are also applicable to FMBs. The more stringent requirements and higher taxes applicable to distilled spirits do not apply to FMBs.

The proposed rule would require that no more than 0.5% of the alcohol content of an FMB could be derived from distilled spirits, with the remainder from fermented malt beverages. Alternatively, TTB would require that at least 51% of the alcohol content of an FMB be derived from malt. 68 Fed. Reg. at 14295-96.

The proposed rule would require that the "brand" (i.e., front) label of any malt beverage that contains any alcohol derived from added ingredients state the alcohol content of the beverage. 68 Fed. Reg. at 14296-97, 14301; proposed 27 C.F.R. § 7.22. TTB does not currently require that other malt beverages, such as beer, bear a statement of alcohol content. TTB would also prohibit FMB advertising and labeling from referencing distilled spirits.

Alcohol Is Alcohol

It is the view of NCL, and that of many other respected authorities, that alcohol is alcohol, regardless of source. As NCL has stated in its consumer publications, it does not matter whether the beverage is beer, wine, a wine cooler, a cocktail, or a mixed drink. What matters is only one thing: alcohol content in the drink. The current Dietary Guidelines for Americans, published by the U.S. Departments of Health and Human Services and Agriculture, define a drink of alcohol as 12 oz. of regular beer, 5 oz. of wine, or 1.5 oz. of 80-proof distilled spirits.

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Standard serving sizes of all alcohol beverages - beer, wine, and liquor - all contain the same amount of alcohol and have a similar impact upon the average consumer.

Most consumers do not understand these fundamental facts of alcohol equivalency. A survey by Yankelovich Partners showed that only 39 percent of Americans know single servings of alcoholic beverages all contain the same amount of alcohol. Fifty-three percent believe a typical mixed drink, like a Bloody Mary or a rum and Coke, is more "potent" than a 5-oz. glass of wine, even though the alcohol content is the same. In the same survey, 62 percent of Americans polled said that understanding the alcohol equivalency of standard serving sizes of different types of drinks is helpful to them in making decisions about responsible drinking.

Respected experts agree that alcoholic beverages are functionally equivalent on a serving-to-serving basis. For example, the Journal of the American Medical Association has stated, "... it is also important to dispel the myth that there are differences between 'hard' liquor and beer or wine. ..." Benefits and dangers of alcohol, J. Am. Medical Assn., Jan. 6, 1999;281:104. Further, the National Highway Traffic Safety Administration explains that "Alcohol is alcohol. Beer has the same effect as straight scotch. One 12-oz. beer has as much alcohol as a 1.5-oz. shot of whiskey or a 5-oz. glass of wine." (NHTSA Fact Sheet, "Myths and Facts about Alcohol and Drinking.")

It is no wonder that consumers continue to be confused by alcohol equivalency when the policies of TTB perpetuate these myths. NCL opposes the TTB proposed rule because it perpetuates policies that assume that different types of alcoholic beverages (beer, wine, distilled spirit) merit different regulatory treatment. NCL takes issue with such distinctions; indeed, in the case of FMBs, TTB is distinguishing even among different types of malt beverages.

The National Institute on Alcohol Abuse and Alcoholism (NIAAA) states, correctly, in the view of NCL, that the United States government's alcohol policies work at "cross purposes:"

[Chemically, alcohol is alcohol; the alcohol in spirits is no different than the alcohol in beer or wine. Federal public health officials have been engaged in educating the public about the equivalency of the alcohol in alcoholic beverages. At the same time, these beverages are taxed by the federal government at different rates - the federal excise tax rates per ounce of ethanol in beer and wine are lower than they are for spirits. The

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implicit message in this policy is that spirits cause more problems than beer or wine. As physicians know, the physical consequences from alcohol use develop just as readily from wine and beer as from spirits....

NIAAA Director Gordis, .J Am. Medical Assn., Dec. 3, 1997

Unfortunately, the FMB proposed rule perpetuates these ill-founded policies. The labeling provisions would require mandatory alcohol content labeling for FMBs, but not for beers. Alcohol content should be mandatory for all beverage alcohol. It should not be adopted in a piecemeal fashion. Prohibiting references to distilled spirits on FMB labeling and in FMB advertising implies that consuming malt beverages is somehow safer than distilled spirits when they are, in fact, identical in alcohol content on a serving-to-serving basis. As the NIAAA explains above, such distinctions carry an implicit, and totally erroneous, message that beer is deserving of more lenient treatment than other types of alcoholic beverages.

NCL Supports Mandatory Alcohol Content Labeling For All Alcoholic Beverages

TTB proposes requiring alcoholic content on FMB labels. NCL supports this requirement, but does not believe TTB goes far enough. For the above stated reasons, mandatory alcohol content labeling is critical, especially for all malt beverages. TTB should not be perpetuating the myth that FMBs, because they might contain some quantum of distilled ethanol, have a different alcohol profile than beer and that beer is therefore the preferred beverage. It is not. They are the same, and labels should be required to disclose that information.

NCL further favors mandatory "Alcohol Facts" information, akin to that now required for foods, dietary supplements, and over-the-counter drugs. NCL is working with other public interest groups to petition TTB for such mandatory labeling. Mandatory labeling will provide consumers with the information they need to make better, more informed choices about alcoholic beverage consumption. For these reasons, NCL supports TTB's proposal of mandatory alcohol content declarations on brand labels. To the extent that consumers are confused as to the ingredients and alcohol content of alcoholic beverages, including FMBs, disclosing alcohol content declarations on front labels will help dispel this confusion.

An "Alcohol Facts" panel on all alcoholic beverages would further alleviate any consumer confusion. The panel NCL supports would include, among other things, the beverage's total alcohol content expressed as a percentage of volume and

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the amount of alcohol per serving. Such information would enable consumers to make comparisons among alcoholic beverages, in much the same way that they can do now with foods, dietary supplements, and over-the-counter drugs.

The 0.5% Proposal "Misses The Point;" The 50/50% Proposal Might Be Beneficial For Consumer Understanding And Comprehension

TTB proposes requiring that no more than 0.5% of the alcohol content of an FMB could be derived from distilled spirits, with the remainder being derived from fermented malt beverages. TTB seeks comment on an alternative standard that would require that at least 51% of the alcohol content of an FMB be derived from malt.

NCL opposes the 0.5% proposal for the reasons stated above. TTB seems to be encouraging product reformulation of FMBs on the assumption that products with distilled spirit content are less preferable than those with malt beverage content. NCL vigorously disputes this assumption. The source of that alcohol is simply not material, and TTB should cease attempting to formulate public policy on this basis.

Requiring FMB reformulation with more alcohol content from malt is not, from a health, safety or consumer protection standpoint, better for the public. Alcoholism and deaths and injuries associated with drunk driving are as likely to be observed with beer as they are with "hard" liquor and indeed, some data indicates that beer is more likely to be abused. For instance, some data show that those who prefer beer typically drink to higher levels of intoxication, are more likely to drive after drinking, and tend to believe that driving while intoxicated to be less serious. (Journal of Studies on Alcohol. 1985 May; 46(3): 232-9, Berger & Snortum) The data further show that beer is more likely to be targeted to underage drinkers, more likely to be abused by all drinkers, and more likely to be the causative factor in accidents. It is not the innocuous beverage so many seem to believe it to be, and TTB should not be proffering policies that seem to favor beer and malt beverage formulations over other alcoholic beverages.

For these reasons, NCL opposes the 0.5% rule. NCL believes there may be greater merit to the 50/50% proposal that would require that FMBs derive a majority of their alcohol content from malt, rather than distilled spirits. The 50/50% proposal may reduce the potential for consumers to be misled or confused. As these products are labeled as "flavored malt beverages," requiring that the product derive a majority of its alcohol content from malt fermentation will assure that an FMB actually contains malt, and in a significant concentration. While NCL does question whether source of alcohol is in any way material to consumer choice, FMB compliance with the 50/50% rule will assure that consumers are not deceived as to product content.

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TTB proposes that, because consumers are or could be confused about the nature of FMBs, it will ban distilled spirit references in advertising and labeling such as "Made by Old Sourmash Whisky Company, City, State." Or "Jack Daniel's Hard Cola - Contains no whiskey." 68 Fed. Reg. at 14298. NCL believes such a ban may not be in consumers' interests. The solution lies in providing consumers with more and better information, not less. If a reference to whiskey is confusing to consumers, then further labeling information, such as, "Does not contain whiskey," might be more useful than an outright ban.

Conclusions

To the extent that TTB is proposing to subject FMBs to different standards than other alcoholic beverages, NCL opposes the proposed rule. There is no basis in science or public policy to support such distinctions; alcohol is alcohol and NCL does not support the piecemeal approach TTB proposes here. To the extent that TTB is seeking to reduce consumer confusion about the nature and content of FMBs, NCL believes the solution lies in requiring better and more complete labeling information, including clarifying disclosures, alcohol equivalency statements, and responsibility messages.

NCL thanks TTB for this opportunity to comment.

LINDA F. GOLODNER
President