

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 892; Re: Notice No. 884]

RIN 1512-AB97

Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcohol Beverages (99R-199P); Public Hearing

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of public hearings on a proposed rule.

SUMMARY: ATF is announcing the dates and locations of five public hearings that it will hold concerning health claims and other health-related statements in the labeling and advertising of alcohol beverages. In an earlier notice published in the Federal Register, we detailed a proposal to, among other things, prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified, balanced, sufficiently detailed and specific, and outlines the categories of individuals for whom any positive health effects would be outweighed by

numerous negative health effects. In consideration of the comments received, ATF has determined that the public interest would be best served by the holding of public hearings on this matter. One purpose of the hearings is to gather additional information to determine whether the negative consequences of alcohol consumption or abuse disqualify, as misleading, these products entirely from entitlement to any health-related statements.

DATES: See Supplementary Information section for hearings dates.

ADDRESSES: See Supplementary Information section for hearings addresses.

Letter notifications and written comments are to be submitted to:

Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; ATTN: Notice No. 892. Submit e-mail comments to: nprm@atf.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more

than three pages 8 ½" x 11" in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See the Participation section of this notice for alternative means of providing letter notifications and written comments.

FOR FURTHER INFORMATION CONTACT: Nancy Kern or Jim Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8210).

SUPPLEMENTARY INFORMATION:

Background

In February 1999, ATF approved two directional statements on wine labels. One directed consumers to their family doctors for information regarding the "health effects of wine consumption." The second referred consumers to the Federal Government's "Dietary Guidelines for

Americans" for such information. Based on the evidence before us, including a consumer survey conducted by the Substance Abuse and Mental Health Service Administration's Center for Substance Abuse Prevention (CSAP), we concluded that we had an insufficient record to disapprove the labels. The CSAP survey concluded that the drinking patterns of most of those who participated in the study would not be influenced by these messages.

The approval of these labels generated considerable interest from Federal health officials, members of Congress, and public advocacy groups, who expressed concern about consumer perception of the label statements. Surgeon General David Satcher, in particular, stated that

people might draw an incorrect message from these labels. Moreover, we have become aware of a number of press accounts interpreting the directional statements as actual health claims about the benefits of alcohol consumption and the government's approval of the labels as an endorsement of drinking.

On October 25, 1999, we invited comments on our current policy on health claims and health-related statements by publishing the policy as a proposed regulation in the Federal Register (Notice No. 884; 64 FR 57413). The regulation would specifically prohibit the use of any health claim in the labeling or advertising of alcohol beverages unless it is balanced, properly qualified, sufficiently detailed and specific, and outlines the categories of persons for whom any positive effects would be outweighed by the numerous negative health effects.

We also sought comments on whether even such balanced and qualified statements should be prohibited because the negative consequences of alcohol consumption are so serious as to make any health-related statement on labels or in advertisements inherently misleading. In addition, we sought comments on whether directional health statements such as those approved in February 1999, tend to mislead consumers about the health consequences of alcohol consumption.

The comment period for Notice No. 884 was scheduled to close on February 22, 2000.

Hearings

On December 9, 1999, we announced in a press release that after the close of the comment period we would hold public hearings in cities and dates to be announced. The hearings would provide us with a comprehensive record on which to base final regulations on health claims.

Due to the adverse consequences of alcohol abuse, ATF is concerned about any risk of misperception resulting from the two approved label statements. Because we are seeking public comments on this very issue, we also announced that we would suspend action on any new applications for label approval bearing similar "directional" health-related statements pending the completion of the rulemaking proceedings.

The schedules of dates and locations of the five public hearings have been set as follows:

Cities Dates Locations

Washington, DC..... April 25-April 27..... Washington Convention Center,
900 Ninth St., NW.,

Washington, DC.

San Francisco, CA..... May 23-May 25..... Embassy Suites San Francisco

Airport, 150 Anza Blvd.,

Burlingame, CA.

Atlanta, GA..... June 27-June 29..... Embassy Suites Hotel at

Centennial Olympic Park,

311
Mari
St.,
NW..

Atlar
GA.

Chicago, IL..... July 25-July 27..... Radisson Hotel & Suites

Chicago, 160 East Huron St.,

Chicago, IL.

Dallas, TX.

The number of days for each hearing may change depending on the volume of requests to testify. The hearing schedule for each site will be as follows: 9:30 a.m.-12 noon and 1:30 p.m.-5 p.m. (an evening session(s) may be held if necessary)

Persons desiring to make oral comments at the hearings should submit a letter, on or before April 7, 2000, notifying ATF of their intent to comment. Any person unable to attend the hearings or who

prefers not to present oral comments may submit written (or e-mail) comments before or after the hearings. ATF will accept written (or e-mail) comments until September 29, 2000. Written (or e-mail) comments, including comments addressing Notice No. 884, must be received on or

before September 29, 2000.

Participation

Any person desiring to testify at the hearings should notify ATF by submitting a letter. Such letter must contain the name of the person who will testify, the company/organization represented (if any), address, and daytime telephone number where such person can be contacted. Persons requesting to testify will also indicate in the letter a preference for the date and time (morning or afternoon) they wish to testify. To the extent possible, we will honor these preferences. The letter must be accompanied by an outline which briefly summarizes the topics the commenter will discuss and the information to be presented. Each topic to be discussed should be separately numbered and each numbered topic should specify the information to be presented.

You may submit letter notifications and written comments by facsimile transmission to (202) 927-8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½"x11" in size;
- Contain a legible written signature; and
- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

Any person unable to attend the hearings or who prefers not to present oral comments may submit written (or e-mail) comments before or after the hearings. ATF will accept written (or e-mail) comments until September 29, 2000. In written (or e-mail) comments, each topic to be

discussed should be separately numbered and each numbered topic should specify the factual basis supporting the views, data, or arguments presented. Written (or e-mail) comments addressing Notice No. 884 will also be accepted until September 29, 2000. All written (or e-mail)

comments received on or before September 29, 2000, will be considered in the development of a decision on this matter.

Special Accommodations

The hearing rooms are physically accessible to people with disabilities. A sign language interpreter will be present at all hearings. Requests for other auxiliary aids should be directed to Nancy Kern at (202) 927-8210 at least 10 days prior to the hearing date.

General Information on Hearing Procedure

The hearings will be conducted under the procedural rules contained in 27 CFR 70.701(a)(3) and will be open to the public, subject to the limitations of space. In the event attendance exceeds available seating space, persons scheduled to present oral comments will be given preference in respect to admission. Time limitations make it necessary to limit the length of oral presentations to five (5) minutes; however, the actual time available will be determined in part by the number of

registered speakers. While it is anticipated that all persons who desire to comment will have an opportunity to speak, time limits may not allow this to occur. For this reason, we encourage organizations to have one representative comment rather than individual members.

Commenters will not be permitted to trade their time to obtain a longer presentation period. However, the hearing officer may allow any person additional time after all other commenters have been heard. To the extent that time is available after presentation of oral comments by those who are scheduled to comment, others will be given an opportunity to be heard.

In order to ensure that ATF will have the full benefit of their views, even if time constraints limit an oral presentation, persons presenting oral comments are urged to supplement their oral statement

with a more complete written statement. A written statement submitted to ATF at the time of presentation of the oral comment will be considered part of the hearing record.

After making an oral presentation, a person should be prepared to answer questions from the hearing panel on not only the topics presented but also on matters relating to any written comments which he or she has submitted. Other persons will not be permitted to question a commenter. However, questions may be submitted, in writing, to the hearing officer who will evaluate their relevance. If the hearing officer determines that elicitation of further discussion would be

beneficial, they may be presented to a commenter for a response.

Persons will be scheduled, if possible, according to the date and time preferences mentioned in their letter notification to us. We will confirm by telephone the date and time a person is scheduled to present oral comments. Letter notifications received after the cutoff date, and up to two (2) working days preceding a scheduled hearing, will be honored to the extent practicable on a first-come-first-serve basis. Any scheduled commenter not present at a particular hearing when called

will lose his or her place in the scheduled order, but could be recalled after all other scheduled commenters have been heard.

We will prepare an agenda listing the persons scheduled to comment at a particular hearing and copies will be available at the hearing. In addition, copies of the notice of proposed rulemaking and all received written comments in response to the notice will be available at each hearing for public inspection.

Other formats for holding the hearings are being considered. For example, the hearing officer would oversee testimony presented by a panel of several persons during a specified time period (e.g., morning session) who share or represent similar views, e.g., members of the medical profession, representatives from health care organizations, representatives of various industry trade organizations, and representatives from consumer advocacy organizations. We will determine

the format for the hearings once we know the number of people interested in presenting oral testimony and the content of their testimony.

Comments

Any person participating in the hearings or submitting written comments may present such data, views, or arguments as they desire. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter. However, comments consisting of mere allegations or denials are counterproductive to the rulemaking process. We specifically request that commenters consider making comments on the following questions:

1. How do consumers perceive the two "directional" health-related statements approved by ATF?
2. Do consumers interpret the approved directional statements as actual substantive health claims about the benefits of alcohol consumption? Explain.
3. Do consumers interpret the Government's approval of the directional statements on labels as an endorsement of drinking? Explain.
4. Do directional health-related statements such as those approved by ATF tend to mislead consumers about the health consequences of alcohol consumption? Explain.
5. Do the negative consequences of alcohol consumption or abuse disqualify, as inherently misleading, any health-related statements on alcohol beverage labels, including directional statements? Explain.
6. The proposed regulations would prohibit any health claim in the labeling or advertising of alcohol beverages unless it is balanced, properly qualified, sufficiently detailed and specific, and outlines the categories of persons for whom any positive effects would be outweighed by the numerous negative health effects. Given the space limitations of an alcohol beverage label, what types of health claims would meet this standard? Explain.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 7

Advertising, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

This notice of hearing is issued under the authority of 27 U.S.C. 205.

Signed: February 22, 2000.

Bradley A. Buckles,

Director.

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