



Food & Beverage ADVISORY ■

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A Modern Take on an Old-Fashioned: Phase 2 of the TTB's Updates to Alcohol Labeling and Advertising Regulations

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If you are like us and like to scroll through Parts 5 and 7 of Title 27 of the Code of Federal Regulations, do not be alarmed if they look a little different. You are probably seeing [Phase 2](#) of the Alcohol and Tobacco Tax and Trade Bureau's (TTB) ongoing rulemaking initiative to update and modernize the labeling and advertising regulations for wine, distilled spirits, and malt beverages, which went into effect on March 11.

In 2018, TTB introduced in its [Notice No. 176](#) a multiyear, phased rulemaking effort to amend, simplify, and restructure existing regulatory requirements on wine, distilled spirits, and malt beverages and, in doing so, lessen the regulatory burden on industry members. The TTB implemented "Phase 1" of its rulemaking plan on April 2, 2020, which (for the sake of brevity) increased alcohol content tolerance for distilled spirits, relaxed restrictions on the brand label placement on distilled spirits, permitted age statements for certain distilled spirits and vintage dates for some wines, and eliminated its prohibition against "strength" claims for malt beverages.

The TTB's "Phase 2" of this modernization effort covers distilled spirits and malt beverages, but with the same eye toward simplifying the regulatory burden on industry members and without the regulatory headache of requiring industry members to make affirmative changes to TTB-compliant labels or advertisements.

Now in effect, the Phase 2 final rule modernizes labeling requirements for distilled spirits and malt beverages by: (1) removing some mandatory disclosure requirements on the "brand label" of distilled spirits and malt beverages; (2) allowing industry members ineligible to obtain a certificate of label approval (COLA)—like retailers or non-bottler permittees—to get written authorization to relabel products in certain circumstances; (3) authorizing the addition of labels on malt beverages that identify wholesalers, retailers, or consumers; and (4) relaxing keg labeling restrictions (i.e., "keg collars" and "tap covers") so that kegs can be reused by different brewers.

The final rule also clarifies certain labeling regulations for industry members: (1) expanding the definition of "grain" in the distilled spirits regulations to include all cereal grains and some "pseudocereals"; (2) incorporating TTB guidance (rulings and industry circulars) into the regulations; (3) tailoring its regulations proscribing the use of "disparaging" statements about competitors' products and the use of the American flag on labels and advertisements to prohibit only claims that are false or misleading; (4) aligning the labeling of malt beverages with "trade understanding" and

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terminology instead of composition statements; and (5) allowing descriptive terms (like “amber,” “red,” “dry,” and “cream”) to be used on malt beverage labels.

Equally interesting is what is *not* in the Phase 2 regulations. For instance, the TTB specifically declined to consider a number of comments as out of scope, such as serving facts, allergen warnings, and a number of requests by industry members to recognize new classes of distilled spirits products. What’s more, after receiving a range of comments from industry members, the TTB walked back proposed rules regarding what a COLA does—and does not—authorize, finding that they created more confusion than clarity.

What’s Next?

The TTB is currently working on rolling out “Phase 3” of its rulemaking effort. According to the agency, this next phase will restructure the labeling regulations for wine, address other wine-related labeling issues, and finalize certain regulations related to the advertising of wine, distilled spirits, and malt beverages. The TTB also committed to reviewing its [distilled spirits and malt beverage public guidance](#) and industry member comments for future rulemaking and industry guidance. Although at times a deliberate, methodical process, the TTB’s work in a quickly changing industry is far from over. We’ll keep tabs on what the TTB brews in its next round of updates and bring you the latest on the new rules and changes.

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