

TTB PROPOSES TWO OPTIONS FOR SUBSTANTIAL CHANGES TO STANDARDS OF FILL FOR WINE AND DISTILLED SPIRITS



By: [Richard M. Blau](#), Chair
Nationwide Alcohol Industry Group

[Notice No. 210, Standards of Fill for Wine and Distilled Spirits](#), was published in the [Federal Register](#) on Wednesday, May 25, 2022. In this document, the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes two options for amending the regulations governing wine and distilled spirits containers:

1. TTB is proposing to add ten additional authorized standards of fill for wine to supplement the 12 existing standards, along with related technical and other harmonizing changes. The new standards of fill for wine would be: 180mL, 300mL, 330 mL, 360mL, 550mL, 620mL 700mL and 720mL, plus 1.8 L and 2.25L. The new standards of fill for distilled spirits would be: 330mL, 620mL, and 700mL, plus 2.25L sizes.
2. Alternatively, TTB also has proposed eliminating all existing standards of fill for wine and spirits (there have never been federal standards of fill for malt beverages) except for (i) the minimum standard of fill for wine containers (50 mL), and (ii) a minimum and maximum standard of fill for distilled spirits containers (50 mL and 3.785 Liters, respectively).

TTB cites several reasons for proposing these changes:

- Continuing petitions for special size exemptions, e.g., new petitions for 330 mL to accommodate the importation of South African beverage products; 620 mL to allow for the importation into the U.S. of the French product known as “*vin jaune*” (“yellow wine” in English), which is made in the Jura region of France, using a technique similar to that used for making sherry; 700 mL requested by the Government of Moldova to permit that country to export to America over a million bottles of aged wine currently held in Moldova’s National Treasury of Wine, which cannot be sold in the United States due to the U.S. bottle size

limitations; and 2.25 L for boxed wine containers that would significantly reduce the environmental impact of wine packaging, because each holds as much as three 750-milliliter wine bottles at half the weight of such bottles.

- The trade agreement of October 7, 2019, between Japan and the United States requires the U.S. to propose adding certain sizes of standards of fill for wine and spirits. A Side Letter to that trade agreement with Japan, which addresses issues related to alcohol beverages, requires the U.S. Department of the Treasury to undertake new rulemaking proposing additional standards of fill desired by the Japanese (i.e., 180mL, 300mL, 360mL, 550mL, 720mL and 1.8 L for wine, and 700mL, 720mL, and 900mL and 1.8 L for distilled spirits). See https://ustr.gov/sites/default/files/files/agreements/japan/Letter_Exchange_on_Alcoholic_Beverages.pdf.)
- The need to respond to the Treasury Department's report, "Competition in the Markets for Beer, Wine, and Spirits," that recommended rulemaking to "again consider eliminating the standards of fill requirements." That report, produced in response to [Executive Order 14036](#), "Promoting Competition in the American Economy" (published July 9, 2022, at [86 FR 36987](#)), noted "[c]ontainer size requirements can be a barrier to innovation and competition, insofar as producers must conform their packaging to the Treasury-mandated sizes."

TTB suggests that either proposal will help eliminate unnecessary regulatory requirements, reduce barriers to competition, provide suppliers more manufacturing options, and provide consumers broader purchasing options.

With regard to the proposal for eliminating all but the minimum and maximum standards, TTB contends that all the intermediary standards originally were adopted to assist with tax collection. However, the agency now believes all but the minimum and maximum standards of fill are no longer necessary to ensure accurate calculation of tax liabilities or to protect the revenue. TTB verifies tax liability on the basis of a producer's production and removal records, and TTB believes that allowing additional standards of fill would not undermine its efforts in this regard.

Not surprisingly, industry members have conflicting opinions on these new proposals.

Some suppliers welcome the expanded range of packaging options, while others balk at losing the competitive edge of having made substantial investments in an effort to conform with the existing standards.

Also, some beverage wholesalers are balking because they foresee the expansion (or elimination) of existing standards of fill as inevitably producing an explosion of varying package sizes, which will make distribution more challenging, and therefore expensive.

Suppliers, wholesalers, and retailers are also wondering about the phenomenon of *SKU-mageddon*, i.e., the concept that too many new products not only overcrowd retailer shelves, but lead to less rather than more consumer purchasing. Consumer consumption studies from as far back as the 1950s confirm that when presented with an oversaturation of choices, consumers tend to become indecisive and purchase less.

Sensitive to these conflicting sentiments, TTB has opened a public comment Web page for feedback from industry members and other concerned parties. Interested persons may electronically submit comments to TTB on these proposals, and view copies of the proposals themselves, its supporting materials, and any comments TTB receives on it within Docket No. TTB-2022-0004 as posted at <https://www.regulations.gov>. A direct link to that docket is available on the TTB website at <https://www.ttb.gov/laws-and-regulations/all-rulemaking> under Notice No. 210.

Alternatively, interested persons may submit comments via postal mail to:

The Director, Regulations and Ruling Division,
Alcohol and Tobacco Tax and Trade Bureau,
1310 G Street NW, Box 12, Washington, DC 20005.

Please note that public comments are due no later than July 25, 2022.

For more information, please contact GrayRobinson's [Nationwide Alcohol Industry Group](#) via telephone at (866) 382-5132, or via e-mail at beverage@gray-robinson.com.



Richard M. Blau leads GrayRobinson's Nationwide Alcohol Beverage and Food Law Department, focusing on the laws that govern the manufacture, importation, distribution, marketing, sale and consumption of beer, wine, distilled spirits and other licensed beverages. Richard devotes a substantial portion of his practice to trade regulation, brand development and protection, M & A compliance guidance, litigation and mediation involving the members of the alcohol industry.