

## TTB'S CONTINUING MODERNIZATION OF FEDERAL ALCOHOL BEVERAGE LABELING AND ADVERTISING REGULATIONS



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The **U.S. Alcohol and Tobacco Tax and Trade Bureau** (TTB) just published a [final rule](#) that will implement Phase 2 of its rulemaking to modernize the federal labeling and advertising regulations for the alcohol beverage industry. The Phase 2 final rule, which addresses regulations governing the distilled spirits and malt beverages segments of America's alcohol beverage industry, will become effective 30 days from date of publication in the Federal Register, *i.e.*, on Friday, March 11, 2022.

This effort to modernize the nation's federal alcohol regulations began in 2018, when TTB proposed labeling and advertising amendments in its [Notice No. 176, Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages](#). A Phase 1 proposed set of modernized regulations were opened for public comment, and subsequently resulted in TTB publishing a final rule, [T.D. TTB-158](#), on April 2, 2020.

### PHASE 1 OF TTB'S MODERNIZATION EFFORT

The Phase 1 rule adopted certain proposals from TTB's Notice No. 176. TTB adopted certain liberalizing and clarifying changes that could be implemented quickly and provide industry members greater flexibility.

However, TTB's Phase 1 rule did not adopt proposals that would have:

- (i) defined an "oak barrel" for purposes of aging distilled spirits;
- (ii) required that statements of composition for distilled spirits specialty products list components in "intermediate" products and list distilled spirits and wines used in distilled spirits specialty products in order of predominance; and
- (iii) adopted new policies on the use of cross-commodity terms.

Whether these particular initiatives will resurface in the future remains to be seen.

## THE PHASE 2 RULE

On Wednesday, February 9, 2022, the agency published the “Phase 2” final rule, which amends the labeling and advertising regulations for the distilled spirits and malt beverages segments of America’s alcohol beverage industry.

These updated regulations will improve the clarity and functionality of the regulations codified in 27 CFR Parts 5 and 7, while also liberalizing certain requirements and assist industry members in submitting compliant label and formula applications, which will help in improving turnaround times. The changes in this final rule will *not* require industry members to make changes to labels or advertisements; rather, the modernized regulations are intended to provide additional flexibility in the labeling and advertising of distilled spirits and malt beverages.

For example, the new final rule includes breaking up large existing sections into smaller sections to improve clarity, resulting in a larger number of overall sections but not a larger number of regulatory requirements. TTB is also adopting many proposals that incorporate current policy into the regulations, providing improved transparency for the industry and facilitating overall compliance.

The new Phase 2 final also seeks to incorporate market-driven changes as well. The new rule allows for the use of designations in accordance with trade understanding, rather than statements of composition, in the labeling of malt beverages that are flavored or fermented with ingredients TTB has determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as “beer,” “ale,” “porter,” “stout,” “lager,” or “malt liquor,” in accordance with TTB Ruling 2015-1. The new rule specifically permits certain descriptive terms (such as “amber,” “red,” “dry,” and “cream”) with the designation on malt beverage labels, to reflect existing policy and trade practice.

The new final rule also includes liberalizing changes for distilled spirits or malt beverages that are either unique to a single commodity (such as the keg collar amendments, which are specific to malt beverages, that provide additional flexibility in allowing the labeling of kegs with “keg collars” and “tap covers” that are not firmly affixed to the keg under certain circumstances, to facilitate the reuse of kegs by different brewers) or, which largely bring the distilled spirits and malt beverage regulations into conformity with current policy already adopted for wine labeling (such as the liberalizing changes that allow information previously required to appear on a “brand label” to appear anywhere on the container, as long as certain elements of mandatory information appear in the same field of vision).

TTB is also adopting clarifying and liberalizing changes that will remove certain outdated regulatory restrictions on labeling and otherwise allow additional flexibility in labeling requirements proposed in Notice No. 176. **Most significantly, the new final rule removes some outdated restrictions on the use of “disparaging” statements or depictions of the American flag on labels if such statements are truthful and non-misleading.** This change alone will have a significant impact on the content of product labels and advertisements.

As with Phase 1, the Phase 2 final rule *declined* to adopt certain proposals that were vigorously debated during the proposed rule's public comment phase. For example, the final rule does *not* deal with "Serving Facts" statements -- an issue that was the subject of TTB's 2007 notice of proposed rulemaking (see Notice No. 73, [72 FR 41860](#), July 31, 2007) and TTB Ruling 2013-2. Nor does the Phase 2 final rule address TTB's current policy requiring statements of average analysis on labels that include nutrient content claims. Industry members should continue to rely on TTB's published rulings and other guidance documents on these issues.

Likewise, TTB's policy on gluten content statements is still an interim one; therefore, that issue also is *not* addressed in the Phase 2 final rule (see TTB Ruling 2014-2). Substantive changes to allergen labeling requirements also are not addressed in the Phase 2 final rule. Nor are Standards of Fill requirements addressed; although, TTB plans to tackle these topics in the future.

## TTB's NEXT STEPS TOWARDS MODERNIZATION

TTB currently is working on Phase 3 of its modernization rulemaking, which will reorganize the wine labeling regulations, address the remaining labeling issues related to wine, and reorganize and finalize the regulations related to the advertising of wine, distilled spirits, and malt beverages.

TTB currently is reviewing its archive of distilled spirits and malt beverage public guidance, and will update those guidance documents consistent with the new Phase 2 final rule. Guidance materials that are fully incorporated into the regulations by TTB's final modernization rules will be designated by the agency as "superseded."

All of these changes will undoubtedly spur new questions regarding formulation, labeling, and advertising. For more information, contact [GrayRobinson's Nationwide Alcohol Industry Team](#) at via telephone at (866) 382-5132 or via email at: [beveragelaw@gray-robinson.com](mailto:beveragelaw@gray-robinson.com).



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