



## **Voluntary Nutrient Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages**

*Truthful, accurate, and specific voluntary statements about nutrient content, including calorie and carbohydrate content, in the labeling and advertising of wines, distilled spirits, and malt beverages are authorized under this ruling and TTB Ruling 2004–1. Serving Facts statements in the labeling and advertising of wines, distilled spirits, and malt beverages are authorized. Truthful, verifiable numerical statements of alcohol content may be included in Serving Facts statements as an option. TTB Ruling 2004–1 is modified and amplified.*

### **TTB Ruling 2013–2**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has reviewed its position regarding the use of “Serving Facts” statements on labels and in advertisements for alcohol beverages. Pending the completion of rulemaking on nutrient content statements, TTB will allow the use of either statements of average analysis or Serving Facts statements on labels and in advertisements, in accordance with the terms of this ruling.

As set forth in greater detail below, TTB has proposed to issue regulations requiring Serving Facts statements on alcohol beverage labels. However, pending the completion of rulemaking, TTB has decided to issue guidance to the industry on the voluntary use of Serving Facts statements on labels. We wish to advise the public and the industry of our policy with regard to the use of such statements and representations in the labeling and advertising of alcohol beverages. We also wish to clarify that we will take appropriate action with regard to labeling or advertising representations that mislead the consumer about the nutritional value or health effects of alcohol beverages.

Accordingly, pending the completion of rulemaking on this matter, we are issuing this interim policy on the use of Serving Facts statements in the labeling and advertising of alcohol beverages. This ruling is largely consistent with TTB Ruling 2004–1, although it also modifies and amplifies certain provisions, as set forth below.

### **Background**

#### Law and Regulations

The Federal Alcohol Administration Act (FAA Act) provides for regulation of the labeling and advertising of distilled spirits, wine, and malt beverages in 27 U.S.C. 205(e) and 205(f). These sections give the Secretary of the Treasury the authority to issue regulations intended to prevent deception of the consumer, to provide the consumer with adequate information as to the identity and quality of the product, and to prohibit false or misleading statements.

Additionally, the law provides the Secretary with the authority to prohibit, irrespective of falsity, statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that are likely to mislead the consumer.

The FAA Act generally requires bottlers and importers to obtain a certificate of label approval in accordance with regulations prescribed by the Secretary for wine, distilled spirits, or malt beverages before bottling them or removing them in bottles from customs custody for introduction in interstate or foreign commerce. In the case of malt beverages, the labeling and advertising provisions of the FAA Act apply only if the laws of the State into which the malt beverages are to be shipped impose similar requirements. The implementing regulations, which appear in 27 CFR parts 4, 5, and 7, also contain more specific prohibited practices with respect to the labeling and advertising of alcohol beverages. The regulations prohibit the use of labeling or advertising statements that are false or untrue in any particular. The regulations also prohibit, irrespective of falsity, statements that tend to create a misleading impression directly; by ambiguity, omission, or inference; or by the addition of irrelevant, scientific, or technical matter. See 27 CFR 4.39(a)(1), 4.64(a)(1), 5.42(a)(1), 5.65(a)(1), 7.29(a)(1), and 7.54(a)(1).

The statutory requirements with respect to alcohol content statements on alcohol beverage labels differ among the three product categories. The FAA Act provides the Secretary with the authority to issue regulations that require alcohol content statements on labels of distilled spirits products. The law also provides the Secretary with the authority to require alcohol content statements for wines with an alcohol content of over 14 percent alcohol by volume, leaving such statements optional for wines with an alcohol content at or below 14 percent. The FAA Act contains language that specifically prohibits placement of alcohol content statements on malt beverage labels, unless required by State law (27 U.S.C. 205(e)(2)). In 1995, however, that ban was invalidated by the U.S. Supreme Court in *Rubin v. Coors Brewing Company*, 514 U.S. 476 (1995), which held that truthful, verifiable numerical statements about the alcohol content of malt beverages constituted commercial speech protected by the First Amendment.

Under the regulations implementing the FAA Act and the Internal Revenue Code of 1986 (IRC), alcohol content statements are required for all distilled spirits. See 27 CFR 5.32(a)(3), 5.37, and 19.517. The current regulations implementing the IRC with regard to wine require alcohol content to be labeled on all containers and require a percentage of alcohol statement on labels for wines containing less than 7 percent alcohol by volume. See 27 CFR 24.257(a)(3). Wines containing more than 14 percent alcohol by volume also must bear alcohol content statements expressed as a percentage of alcohol by volume, while wines with alcohol content of at least 7 percent and not more than 14 percent may be labeled with the designation "table wine" or "light wine" in lieu of a percent by volume alcohol content declaration. See 27 CFR 4.36(a). Finally, with the exception of certain flavored malt beverages that contain alcohol derived from added ingredients (see 27 CFR 7.22(a)(5)), malt beverages are not currently required to bear an alcohol content statement. Wine and malt beverage labels that are not required to bear a statement disclosing the percentage of alcohol by volume in the product may include such statements on a voluntary basis. The regulations generally provide that alcohol content statements should be stated as a percentage of alcohol by volume. However, the distilled spirits regulations authorize the inclusion of an optional

statement of alcohol content in degrees of proof if this statement appears in direct conjunction with the percent alcohol by volume statement.

TTB administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law. TTB and its predecessor agencies have utilized rulings to express interpretations of the regulations implementing the labeling and advertising provisions of the FAA Act.

#### TTB Ruling 2004–1

Under the above authority, TTB issued Ruling 2004–1, Caloric and Carbohydrate Representations in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages (April 7, 2004). Ruling 2004-1 clarified TTB’s position with respect to statements about calorie and carbohydrate content on labels and in advertisements of wines, distilled spirits, and malt beverages and set forth TTB’s policy on the use of nutrient statements in the labeling and advertising of alcohol beverages. It is TTB’s position that such statements are permitted by current regulations, as long as they are truthful and do not mislead consumers.

The policy set forth in TTB Ruling 2004–1 provided, in part, that calorie or carbohydrate representations on product labels or in advertisements would be considered misleading unless they include a statement of average analysis that lists the number of calories and the number of grams of carbohydrates, protein, and fat contained in the product based on a single serving. In Frequently Asked Questions issued shortly after the ruling, TTB clarified that this policy did not apply to advertisements where the only caloric or carbohydrate representation appearing in the advertising materials is a brand name incorporating the term “light” or “lite.” However, if the brand or product name, or the advertising material in general, includes any additional caloric or carbohydrate representations such as “low carb” or “low calorie,” any specific calorie or carbohydrate claims, or similar representations, the provisions of the ruling regarding a statement of average analysis would apply.

For purposes of inclusion in the statement of average analysis, TTB Ruling 2004–1 defined a single serving as 12 fluid ounces for malt beverages, 5 fluid ounces for wine, and 1.5 fluid ounces for distilled spirits, regardless of the alcohol content of the product. The ruling allows the statement of average analysis to be stated per container size only if the container is equal to or less than a single serving size. The ruling did not authorize the appearance of additional information in the statement of average analysis.

#### Serving Facts Rulemaking Proposal

On July 31, 2007, in response to increased interest in calorie, alcohol content, and nutrient disclosures on alcohol beverage labels, TTB published Notice No. 73, a proposed rule entitled “Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages,” in the **Federal Register** (72 FR 41860). In that Notice, TTB proposed amending parts 4, 5, 7, and 24 of the TTB regulations to set forth requirements for mandatory alcohol content labeling for products not currently required to bear such statements and for the presentation of certain calorie and nutrient information in a mandatory Serving Facts panel for all alcohol beverage products.

Under the proposal, a Serving Facts statement would include information about the number of calories, as well as the number of grams of carbohydrates, fat, and protein per serving, in a box entitled “Serving Facts.” Under the Serving Facts proposal, alcohol content as a percentage of alcohol by volume would be permitted as part of the Serving Facts statement. As an additional option, the number of fluid ounces of pure ethyl alcohol per serving could also be disclosed, but only if this statement appeared in conjunction with the percent-by-volume statement. The proposed regulations also specified new reference serving sizes for wines, distilled spirits and malt beverages that were largely based on the serving sizes specified in TTB Ruling 2004–1; however, the proposed reference serving sizes also took into account the variations in the way that different commodities are consumed, and the fact that there are significant variations in alcohol content within the different categories of malt beverages, wines, and distilled spirits.

In response to the proposed rule, TTB received many comments which it continues to consider. Pending the completion of rulemaking on this issue, TTB has not issued certificates of label approval for products bearing a Serving Facts information statement on their labels.

#### **A. Serving Facts Statements**

TTB believes that it is appropriate to allow the use of optional Serving Facts statements on labels and in advertisements on an interim basis pending the completion of rulemaking. We are making this change to allow industry members to provide truthful, accurate, and specific information to consumers about the nutrient content of their products on a per serving basis. Although TTB currently allows nutrient content information to appear on labels and in advertisements in the form of a statement of average analysis, TTB is aware that some alcohol beverage industry members are interested in voluntarily labeling their products with this information in a Serving Facts statement. A Serving Facts statement, as proposed in TTB Notice No. 73, is merely a statement of average analysis, which TTB already permits, with the addition of a title, a serving size that reflects how the product is typically consumed, information about the number of servings per container, a specified format, and the option of providing information about alcohol content. Industry members are reminded that the issuance of a final regulation on the Serving Facts issue might impact their labels.

TTB is also aware that the serving sizes recognized by TTB Ruling 2004–1 for wines, distilled spirits, and malt beverages may not always be representative of how all products in the product category are typically consumed. The serving sizes outlined in TTB Ruling 2004–1 did not take into account non-standard products for which those defined serving sizes may be inappropriate. For example, a 355 ml. (12 fl. oz.) can containing a distilled spirits specialty product with 5 percent alcohol by volume would rarely be consumed in a 1.5 fl. oz. serving. Thus, the labeling of the calories and carbohydrates contained in such a 1.5 fl. oz. serving might tend to mislead consumers, who would most likely consume the entire can (roughly 8 servings, as defined by TTB Ruling 2004–1) of the product as a single serving.

As a result, TTB believes that it is appropriate to consider alternative serving sizes for products depending on their alcohol content and how they are typically consumed, especially where the bottlers or importers of these products are concerned that the serving sizes provided for in TTB Ruling 2004–1 may result in the labeling of their particular alcohol beverages in a manner that does not provide the most complete information to consumers. Although the serving size

found in a nutrient content statement is not intended as a recommended serving amount, we do not believe that it is appropriate for TTB to require that a serving size be listed in a voluntary nutrient content statement without regard to the alcohol content of a product, which affects how a product is typically consumed. Pending the completion of rulemaking on this issue, we believe that it is appropriate to allow industry members to use alternative serving sizes on their labels to address these concerns.

Accordingly, this ruling provides that, pending the completion of rulemaking on Serving Facts statements, TTB will allow the use of Serving Facts statements on labels and in advertisements on a voluntary basis. As indicated in the serving size chart below, bottlers and importers of alcohol beverages that choose to provide voluntary Serving Facts statements may do so if they use these serving sizes, which take into account the fact that there are significant variations in the alcohol content of different products within each commodity. Furthermore, where statements or representations of calorie or carbohydrate content are made on labels or in advertisements, they must be truthful, accurate, specific, and non-misleading. It continues to be TTB's policy that such statements are misleading within the meaning of the applicable regulations when not accompanied by a statement of average analysis in accordance with TTB Ruling 2004-1; however, a Serving Facts statement will also satisfy this requirement. The other elements of TTB Ruling 2004-1 continue in force, and statements of average analysis without an accompanying Serving Facts statement may continue to be used.

#### **B. Inclusion of Information About Alcohol Content in Serving Facts Statements**

As stated above, in addition to proposing to require a Serving Facts panel for all alcohol beverages, Notice No. 73 proposed amending the regulations to require a statement of alcohol content, expressed as a percentage of alcohol by volume, on all alcohol beverage products. Notice No. 73 also proposed allowing industry members to choose to disclose in the Serving Facts panel the number of U.S. fluid ounces of ethyl alcohol per serving as part of a statement that includes alcohol content expressed as a percentage of alcohol by volume. TTB stated that it did not believe that the disclosure of alcohol in fluid ounces is inherently misleading, but it believed that consumers were used to seeing alcohol content expressed as a percentage of alcohol by volume and might be confused by a statement of alcohol in fluid ounces without some context in which to evaluate this information. Accordingly, pending completion of rulemaking on this issue, it had been TTB's policy to not approve labels that include such statements. TTB Ruling 2004-1 did not provide for the inclusion of any additional information, including alcohol content, in a statement of average analysis.

TTB recognizes that some industry members wish to include information about the alcohol content of their products as part of an optional Serving Facts statement. The regulations do not prohibit the placement of an alcohol content statement in more than one location on the label. Thus, this ruling will allow for the optional inclusion of a statement of alcohol content as a percentage of alcohol by volume in a voluntary Serving Facts statement. The inclusion of an alcohol by volume statement as part of a Serving Facts statement does not excuse industry members from complying with existing regulations regarding the placement of mandatory alcohol content statements. For example, if the regulations require the placement of alcohol content as a percentage of alcohol by volume on the brand label, labels must still comply with this requirement.

Additionally, in light of the interest in providing per serving information about alcohol content, TTB believes that it is also appropriate to allow the voluntary inclusion of information about the fluid ounces of alcohol contained in a serving in an optional Serving Facts statement, pending completion of rulemaking. TTB believes that labels should be allowed to present this type of truthful, verifiable numerical statement regarding the amount of alcohol contained in a specific product on a per serving basis, as long as it appears together with the percentage of alcohol by volume. Information regarding fluid ounces of alcohol is merely a mathematical expression of the alcohol content of the product, and many governmental and public health agencies provide consumption advice based on fluid ounces of alcohol. TTB believes that listing the number of fluid ounces of alcohol per serving on the alcohol beverage container provides useful information to consumers who may use it to understand those consumption guidelines.

Accordingly, pending completion of rulemaking on this issue, this ruling permits the listing of the number of U.S. fluid ounces of pure ethyl alcohol per serving as part of the voluntary Serving Facts statement, when coupled with a statement of the percentage of alcohol by volume. This information is optional, and industry members may choose instead to use a Serving Facts statement that provides no alcohol content information, or one that provides alcohol content only as a percentage of alcohol by volume. As previously noted, industry members may also continue to use a statement of average analysis in compliance with TTB Ruling 2004-1, which does not contain any alcohol content statement. Finally, industry members who do not wish to make nutrient content claims on labels or in advertisements may choose not to include a Serving Facts statement or a statement of average analysis.

Industry members that choose to include an alcohol content statement in the optional Serving Facts statement are reminded that the use of this statement does not excuse them from compliance with the requirements of the regulations with regard to the placement of alcohol content statements on labels. A statement of the number of fluid ounces of alcohol per serving does not satisfy the requirements of the regulations regarding mandatory alcohol content statements on labels. If the regulations require an alcohol content statement on the brand label, an industry member may choose to include an additional alcohol content statement on a separate label that bears a Serving Facts statement. TTB does not consider a truthful and accurate statement of fluid ounces of alcohol per serving, presented as part of a Serving Facts statement including a percentage of alcohol by volume in accordance with this ruling, to be misleading within the meaning of the regulations or prohibited by 27 CFR 7.29.

### **C. Tolerances and Other Laboratory Procedures**

TTB Procedure 2004–1 sets forth the methods that TTB uses to test the calorie, carbohydrate, protein and fat content of wines, distilled spirits, and malt beverages in order to verify labeling and advertising claims. This procedure also addresses tolerance ranges with regard to labeled statements of calorie, carbohydrate, protein and fat content. This procedure applies to statements made in accordance with this ruling. Tolerances for alcohol content statements, expressed as a percentage of alcohol by volume, are set forth in the regulations at 27 CFR 4.36, 5.37 and 7.71.

**TTB Finding:**

Held, this ruling modifies and amplifies TTB Ruling 2004–1 to permit the use of Serving Facts statements on labels and in advertisements. Statements of average analysis that comply with the requirements of TTB Ruling 2004-1 may continue to be used on labels and in advertisements.

Held further, a Serving Facts statement within the meaning of this ruling includes the serving size, the number of servings per container, and the number of calories and the number of grams of carbohydrates, protein, and fat per serving size.

Held further, any caloric or carbohydrate statement or representation in the labeling and advertising of wines, distilled spirits, and malt beverages will continue to be viewed by TTB as misleading unless it provides complete information about the calorie, carbohydrate, protein, and fat content of the product. TTB will not sanction the use of any caloric or carbohydrate references on labels or in advertisements that do not contain either a statement of average analysis in accordance with TTB Ruling 2004–1 or a Serving Facts statement that complies with the requirements of this ruling. The labeling provisions of this ruling apply to all containers used for the sale of wines, distilled spirits, or malt beverages at retail, including kegs. This holding does not apply to advertisements where the only reference to calories or carbohydrates is the use of a brand name including the term “light” or “lite.”

Held further, a Serving Facts statement appearing on a label or an advertisement may be stated per container size only if the container is equal to or less than a single serving size. However, as an option, the Serving Facts statement may be presented in dual-column format which provides information both per serving size and per container size. Otherwise, the Serving Facts statement must be stated per serving size, and must specify the serving size as part of the statement. Serving sizes for purposes of Serving Facts labeling are specified in the chart below and should be rounded to the nearest quarter of a serving.

Serving Size	Alcohol Percent by Volume		
	Wine	Distilled Spirits	Malt Beverages
1.5 fl oz (44 ml), or 50 ml for 50 ml containers of distilled spirits		Above 24%	Above 24%
2.5 fl oz (74 ml)	Above 16 to 24%	Above 16 to 24%	Above 16 to 24%
5 fl oz (148 ml)	7 to 16%	Above 7 to 16%	Above 7 to 16%
12 fl oz (355 ml)		Not more than 7%	Not more than 7%

Held further, if an approved label is being changed only to include a statement of average analysis in accordance with TTB Ruling 2004–1 or a Serving Facts statement in accordance with this ruling, and the format used is one that is depicted in the examples provided in the attachment to this ruling, the submission of a new application for a certificate of label approval (COLA) is not necessary. Accordingly, labels covered by existing approved

COLAs that are revised solely to include a statement of average analysis or Serving Facts statement in accordance with this ruling are considered approved by TTB, and it is not necessary to submit a new COLA application. This would include the addition of a new neck or strip label solely for that purpose. Additional label changes other than those permitted in accordance with this Ruling or the instructions listed on the COLA application form, TTB F 5100.31 (which also appear on COLAS Online for electronic submitters) will require filing a new COLA application. Other formats for this type of information will be considered on a case-by-case basis and will necessitate the submission of a new COLA application. In considering other formats, TTB will take into consideration whether a proliferation of formats might tend to confuse consumers.

Held further, Serving Facts statements may include information about the alcohol content of the product on an optional basis. Alcohol content may be presented as a percentage of alcohol by volume. In addition, if alcohol content is expressed as a percentage of alcohol by volume, the Serving Facts statement may also include a statement of the fluid ounces of pure ethyl alcohol per serving (rounded to the nearest tenth) as part of the alcohol by volume statement. The inclusion of an optional alcohol content statement as part of a Serving Facts statement does not excuse industry members from compliance with existing regulations regarding the placement of mandatory alcohol content statements. However, alcohol content statements may appear in more than one place on the container, provided that they are consistent and in compliance with all regulatory requirements.

Date Approved: May 28, 2013

/s/

**John J. Manfreda,**

John J. Manfreda  
Administrator

Alcohol and Tobacco Tax and Trade Bureau

Attachment

### Examples of Acceptable Serving Facts Statements

Examples of acceptable Serving Facts statements are depicted below. If one of the below formats is used, the submission of a new COLA application for the sole reason of including this additional information is unnecessary. While this ruling does not require specific fonts or type sizes that must be used to display Serving Facts information, the first example below includes specific font and type size information only for purposes of illustration.

- The following Serving Facts statement illustrates an acceptable panel display for a 750 milliliter bottle of wine containing 14 percent alcohol by volume and includes the optional percent by volume alcohol content declaration as well as the optional declaration of alcohol in fluid ounces.

<b>Serving Facts</b>	
Serving Size	5 fl oz (148 ml)
Servings Per Container	5
Amount Per Serving	
<b>Alcohol by volume</b>	14%
fl oz of alcohol	0.7
<b>Calories</b>	120
<b>Carbohydrate</b>	3g
<b>Fat</b>	0g
<b>Protein</b>	0g

- The following Serving Facts statement illustrates an acceptable panel display for a 750 milliliter bottle of wine containing 14 percent alcohol by volume and does not include the optional alcohol content information.

<b>Serving Facts</b>	
Serving Size	5 fl oz (148 ml)
Servings Per Container	5
Amount Per Serving	
<b>Calories</b>	120
<b>Carbohydrate</b>	3g
<b>Fat</b>	0g
<b>Protein</b>	0g

- The following Serving Facts statement illustrates an acceptable linear display for a 750 milliliter bottle of wine containing 14 percent alcohol by volume and includes the optional percent by volume alcohol content declaration.

**Serving Facts:** Serving size: 5 fl oz (148 ml); Servings per container: 5; **Amount Per Serving:** Alcohol by volume: 14%; Calories: 120; Carbohydrates: 3g; Fat: 0g; Protein: 0g

- The following Serving Facts statement illustrates an acceptable display for a 50 milliliter bottle of distilled spirits containing 40 percent alcohol by volume and includes all three optional alcohol content statements.

**Serving Facts:** Serving size: 1.7 fl oz (50 ml); Servings per container: 1; **Amount Per Serving:** Alcohol by volume: 40%; (80 proof); Fl oz of alcohol: 0.7; Calories: 131; Carbohydrates: 0g; Fat: 0g; Protein: 0g

- The following Serving Facts statement illustrates an acceptable display for a 23.5 fluid ounce malt beverage can containing 12 percent alcohol by volume and includes the optional alcohol content statements.

<b>Serving Facts</b>	
Serving Size	5 fl oz (148 ml)
Servings Per Container	4 3/4
<b>Amount Per Serving</b>	
<b>Alcohol by volume</b>	12%
fl oz of alcohol	0.6
<b>Calories</b>	140
<b>Carbohydrate</b>	14g
<b>Fat</b>	0g
<b>Protein</b>	0g

- The following Serving Facts statement illustrates an acceptable dual-column panel display for a 24 fluid ounce bottle of a malt beverage containing 12 percent alcohol by volume and includes the optional percent-by-volume alcohol content declaration as well as the optional declaration of alcohol in fluid ounces.

<b>Serving Facts</b>		
Serving Size	5 fl oz (148 ml)	
Servings Per Container	4 3/4	
	<b>Amt Per Serv.</b>	<b>Amt Per Bottle</b>
<b>Alcohol by volume</b>	12%	12%
fl oz of alcohol	0.6	2.9
<b>Calories</b>	139	660
<b>Carbohydrate</b>	14g	67g
<b>Fat</b>	0g	0g
<b>Protein</b>	0g	0g