



---

440 First Street, NW, Suite 350  
Washington, DC 20001

---

Phone 202.737.2337  
Fax 202.737.7004

BeerInstitute.org

August 2, 2017

Division of Dockets Management (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane Rm.1061  
Rockville, MD 20852

**Re: Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments [Docket No. FDA-2011-F-0172]**

Dear Sir or Madam:

The Beer Institute (“BI”), an industry trade association whose members include domestic brewers and beer importers, of all sizes, submits these comments to the U.S. Food & Drug Administration (“FDA”) regarding the extension of the compliance date for the final rule *Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments* (hereafter referred to as “final rule”).

The BI and its members thank the FDA for the opportunity to comment on the extension of the compliance date, as we seek clarification and guidance on a number of the requirements in the final rule. The BI views the inclusion of calorie and other nutritional information on restaurant and other food retailer menus to be of great importance to the American consumer, particularly when pairing food with alcohol beverages. The BI appreciates the FDA’s consultation with the Alcohol and Tobacco Tax and Trade Bureau (“TTB”), the alcohol industry’s primary regulator, prior to including beverage alcohol in the menu labeling requirements. Covered establishments, as defined in the final rule, often list beer, wine, and drinks made with distilled spirits alongside food on their menus.

**Summary of Comments**

The BI’s comments can be summarized in the following five points that warrant further clarification:

1. Standard Nutrition Information
2. Reasonable Bases
3. Calorie and Other Nutrient Disclosures
4. Standard Menu Items vs. Food on Display Disclosures
5. Nontraditional Covered Establishments



### **Standard Nutrition Information**

A single disclosure standard that provides consumers with greater, more consistent information on their dietary sources, including alcohol, is useful for greater consumer understanding and information. The *2015-2020 Dietary Guidelines for Americans* (“dietary guidelines”) state that “if alcohol is consumed, calories from alcoholic beverages should also be accounted for...to keep total calorie intake at an appropriate level.” As noted in the BI’s prior comments on the final rule (see ID: FDA-2011-F-0172-0608; Tracking Number: 1jz-8m1a-fq17), BI and its members support listing the calories for each individual brand of beer, glass or bottle of wine, and each drink made with distilled spirits listed on an alcohol drink menu. Providing complete caloric and other nutrient information for each drink will better enable the consumer to make an informed choice about their diets should they choose to include an alcohol beverage with a meal.

### **Reasonable Bases**

In *A Labeling Guide for Restaurants and Retail Establishments Selling Away-from-Home Foods – Part II (Menu Labeling Requirements in Accordance with 21 CFR 101.11): Guidance for Industry (April, 2016)* (“final guidance”), we appreciate that FDA acknowledges that a restaurant or similar retail food establishment may utilize a variety of sources to calculate calories and determine nutrient disclosures, such as: the U.S. Department of Agriculture (“USDA”) National Nutrient Database for Standard Reference (“USDA database”); the TTB rulings; private databases; cookbooks; recipe books; manufacturer-provided information; serving facts labels; nutrient laboratory analysis; and, others. For example, because the USDA database only includes references for general categories of beer and a few specific Anheuser-Busch products, it is not a reasonable source for all beers and/or all of the required nutritional values, while a brewer-provided serving facts label may be.

The BI applauds the recommendations in the final guidance regarding allowable uses of calorie ranges for beers listed as standard menu items usually offered for sale. The final guidance recognizes that there are only extremely limited cases where a calorie range is acceptable, such as when a covered establishment only makes fewer than three varieties available. In relatable instances, and only very rarely, the BI supports disclosure of a single calorie reference for a category or group of beverage alcohol products, provided all products have the exact same nutritional values for each serving size provided to the consumer. This would only be acceptable in instances when this disclosure provides the consumer with the maximum amount of information available. But we wish to reiterate our opposition to the use of a single, limited disclosure based on averages for all beer,



wine, or drinks made with distilled spirits, such as was allowed in King County, Washington (<http://www.kingcounty.gov/depts/health/environmental-health/food-safety/food-business-permit/~media/depts/health/board-of-health/documents/code/BOH-Code-Title-5.ashx>). BI supports disclosures that reflect portion sizes, as well as any added ingredients (such as mixers) in alcohol beverages.

### **Calorie and Other Nutrient Disclosures**

We appreciate that FDA consulted with the TTB in developing the final guidance. This consultation avoided potential conflict with TTB's current calorie calculations of alcohol and rounding rules. This consultation also matched TTB's Ruling 2013-2 on voluntary Serving Facts statements with the FDA's final guidance. We agree with FDA's decision to defer to TTB on these matters, and allow the agency's rulings to serve as a reasonable basis for covered food retail establishments to disclose beverage alcohol nutritional information, which both supports the goals of menu labeling to reduce burdens on covered establishments and avoids unnecessary confusion in information provided to consumers about beverage alcohol products.

In July, 2016, the BI and its members were pleased to announce the Brewer's Voluntary Disclosure Initiative (VDI), through which participating brewers and importers will voluntarily include a serving facts statement, and freshness dating on their products, as well as ingredients on either the label itself or secondary packaging, via a website or QR code. Participating member companies include Anheuser-Busch, MillerCoors, Heineken USA, Constellation Brands Beer Division, North American Breweries, and the Craft Brew Alliance. Together, these companies produce more than 81 percent of the volume of beer sold in the United States and all have agreed to comply with the guidelines by 2020.

### **Standard Menu Items vs. Foods on Display**

The BI appreciates that the final guidance included recommendations for rounding calorie declarations for alcohol beverages. However, it would appear that the FDA requires beers offered on tap that are standard menu items to round calories to the nearest 5- to 10-calorie increment. Many covered establishments offer the same beers on tap in the same serving size as cans or bottles, which may also be offered for sale in those establishments. As previously discussed, the BI and its members are committed to disclosing exact calorie and other nutrient information on their labels or secondary packaging. One can easily envision a situation in which a covered establishment offering a beer on tap in the same serving size as the bottle or can would be required to disclose two different calorie declarations if both the beer on tap and bottle or can of beer are standard menu



items usually offered for sale. The BI urges FDA to clarify through guidance that any declarations included on a voluntary Statement of Average Analysis or voluntary Serving Facts Statement, such as those that are part of the BI's Voluntary Disclosure Initiative, on product packaging also apply to any draft beer listed as a standard menu item usually offered for sale, rather than rounding to the nearest 5- or 10-calorie increment. This will provide the consumer with more accurate and less confusing information, as well as impose a significantly lower regulatory burden on covered establishments.

In addition to requirements for disclosure of nutrient content for beer and wine, the BI supports FDA's requirement to disclose the caloric and other nutrient information for all beverage alcohol products that are standard menu items usually offered for sale. In instances where alcohol beverages that include distilled spirits are usually offered for sale, but are not standard menu items (such as alcohol beverages made with well spirits), we urge the FDA to provide guidance to require all covered establishments to provide calories and additional nutrition information for the nationwide 10 best-selling mixed drinks containing spirits ordered at these establishments. Excluding all bar-made drinks that are not on the menu as "food on display" puts the wine and beer segments within the alcohol industry at an unfair disadvantage, and does a disservice to consumers. Guidance that makes it clear that the rule applies equally, not selectively, and with as much information as is reasonably possible, better serves consumers.

### **Nontraditional Covered Establishments**

The BI appreciates the FDA's clarification in the Final Guidance that if an establishment meets the definition of a covered establishment and beer is the only alcohol beverage on the standard menu, such as concession stands within a sports stadium or other arena, that establishment must provide calorie and other nutrition information for such beer. However, what was not addressed is whether roaming beer sellers within the stadium or arena, who may be employees of a covered establishment, are also required to disclose calorie and other nutrition information. The BI requests clarification of whether those employees are required to disclose and display calorie and other nutrition information. Furthermore, guidance on whether these operators are considered "seasonal" would also be appreciated.

### **Summary**

In summary, we appreciate FDA's continued dedication to providing consumers with accurate and comprehensive dietary information on the foods and beverages they consume in restaurants. The BI and its members appreciate the opportunity to provide comment on the extension of the compliance date of the "Nutrition



Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments” final rule. We trust that the extension of the compliance date to May 7, 2018, will allow the agency to provide additional clarification and further guidance on the issues raised above to our members and the retailers of their products prior to enforcement of the menu labeling requirements. The BI and its members stand ready to cooperate and assist in these important efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McGreevy". The signature is written in a cursive style with a horizontal line at the end.

Jim McGreevy  
President & CEO  
The Beer Institute