

medical professionals (including physicians, nurses, and local health departments), public health organizations, industry members, and others.

As previously noted, in Notice No. 884 ATF sought comments on whether the serious health risks associated with alcohol consumption meant that any health claim, even a balanced and qualified one, was inherently misleading to consumers. In response, approximately 45 commenters supported the use of substantive health claims or health-related statements in the labeling and advertising of alcohol beverages. On the other side, approximately 120 commenters opposed the use of either substantive health claims or health-related directional statements in the labeling or advertising of alcohol beverages. Many of these commenters suggested that health statements were inherently misleading when used to market alcohol beverages.

ATF specifically sought comments on whether health-related directional labeling statements such as the ones approved in February 1999 tended to mislead consumers about the health consequences of alcohol consumption. The vast majority of the commenters focused exclusively on this issue. Approximately 355 comments supported the use of health-related directional statements on alcohol beverage labels. The major issues raised by the commenters, as well as the individuals who testified at the public hearings, are summarized below.

XII. Is There a Need To Engage in Rulemaking on This Issue?

A. Issue

Four comments either opposed ATF's decision to engage in rulemaking on this issue or suggested that the notice of proposed rulemaking be withdrawn. These were comments submitted by the Beer Institute, a trade association for domestic and international brewers; the National Association of Beverage Importers (NABI), a trade association representing importers of beer, wine, and distilled spirits; the Distilled Spirits Council of the United States (DISCUS), a national trade association representing producers and marketers of distilled spirits and importers of wine; and a comment submitted jointly by CEI and Consumer Alert (CA).

DISCUS, the Beer Institute, and NABI all questioned the necessity for engaging in rulemaking on the issue of health claims and health-related statements in the labeling and advertising of alcohol beverages. (Comments 530, 396, and 522). These comments suggested that

the authorization of any directional statement on a label would be in violation of the ABLA. TTB does not agree with this legal analysis. This issue will be discussed further in section XIII.

DISCUS and Beer Institute also objected to the proposed advertising regulations. DISCUS suggested that ATF's proposal was "insurmountably vague and ambiguous. It only would serve to interfere with the rights of advertisers to engage in truthful, non-misleading speech about their products that are consumed responsibly by over a hundred million Americans." DISCUS suggested that "[a]n advertiser could run afoul of the provisions of BATF's proposed rule without making any type of curative or therapeutic claim," giving as an example an advertisement depicting attractive individuals relaxing in an enjoyable setting. The Beer Institute similarly suggested that the requirements for labeling and advertising should be separate, and that the proposed regulation complicated the existing advertising standard. The Beer Institute suggested that the current standard is readily understood and straightforward, and that instead of issuing new regulations, ATF should adopt a more formal review process of health statements on a case-by-case basis.

These commenters also suggested that large portions of the alcohol beverage industry had no interest in using health claims in the labeling or advertising of their products. For example, the Beer Institute comment suggested that there was no need to amend the malt beverage regulations, since to its knowledge, none of its constituents had ever used such claims in the past, and none had any intention to do so in the future. NABI raised similar concerns, and stated that it did not support the proposed amendment to the regulations "because any such support might imply the industry intends to make health-related statements on its labels and in its advertising." The comment from DISCUS stressed that "America's distillers do not recommend that consumers drink beverage alcohol for health reasons." (Comment 530).

CEI, a pro-market public interest group dedicated to advancing the principles of free markets and limited government, and CA, a free-market consumer advocacy group, suggested that the proposed rule should be withdrawn because the issuance of a regulation based on the proposal would restrict commercial speech in a way that violates the First Amendment. (Comment 326). These issues will be discussed further in section XIX.

B. Decision

After carefully considering the record, TTB has determined that it is important to issue a final rule on specific health claims and other health-related statements in the labeling and advertising of alcohol beverages. The rulemaking record confirms that alcohol abuse is an important public health issue. The use of health claims and health-related statements in the labeling and advertising of alcohol beverages requires a balance between a producer's First Amendment right to label and advertise its products in a truthful and non-misleading fashion and the public's right to be informed of the significant health risks associated with alcohol consumption. Specific regulations on the use of health claims and other health-related statements in the labeling and advertising of alcohol beverages will ensure that both the industry and the public are aware of the restrictions on the use of labeling and advertising statements that might tend to mislead the consumer about the serious health risks associated with alcohol consumption.

TTB recognizes that based on the administrative record, it does not appear that distillers and brewers are interested in using health claims or health-related statements in the labeling or advertising of alcohol beverages. However, as noted later in this preamble, both the Wine Institute and the American Vintners Association (AVA), two industry associations representing hundreds of wineries, supported ATF's proposed rule regarding substantive health claims. At least one individual testifying at the hearing, Mr. John Hinman, indicated that there were wineries interested in using a 664-word substantive health claim in advertising materials. The Wine Institute and AVA, as well as many individual wineries, commented in favor of allowing directional statements in the labeling of alcohol beverages. Thus, the record reflects that there may be some wineries interested in using substantive health claims in the advertising of alcohol beverages, and that many wineries are interested in using directional statements on labels. For this reason, TTB believes it is important to issue regulations that set forth the standards that must be met in the event that a specific health claim or other health-related statement is used in the labeling or advertising of alcohol beverages. As set forth later in section XVII, the same standards should apply to wines, distilled spirits, and malt beverages, even if there is no evidence that any members of the malt beverage or distilled spirits industries are