

wrong message to the public, especially the alcohol abuser or alcoholic. He expressed concern that such a message “would only encourage the alcoholic to drink more to ‘help his heart’” and feared that “many current alcoholics who are in total recovery and abstinence may use this as a justification to begin drinking alcohol again, thinking they can control it.” (Comment 381). Another doctor made a similar point, (Comment 385) as follows:

The American public has become accustomed to warning labels on harmful products * * *. A label touting health benefits of use of alcoholic beverages in controlled and low amounts, is likely to be misinterpreted by problem drinkers, especially by alcoholics, whose belief systems about their drinking distort reality with respect to the relative benefits and risks of consumption. * * * I do not deny the scientific validity of reports of health benefits of consumption of one glass of wine per day for females or two glasses of wine per day for males. However, the risk of misinterpretation by the drinking public is far greater than any public health or public information benefit that may be alleged to accrue from adding labels to products that promote health benefits from drinking.

The National Association for Children of Alcoholics (Comment 29) also suggested that health claims can lead to confusion among children of alcoholics about the role of alcohol, and can reinforce and perpetuate the denial process of the alcohol-addicted person.

6. The Use of the Term “Moderate” in a Specific Health Claim Would Be Misleading Unless the Term Is Defined

Many public health organizations commented that the use of the term “moderate” in a health claim could mislead consumers who did not understand the definition of the term. The United Communities Against Drug & Alcohol Abuse noted that “moderate” drinking was poorly defined. It noted that the Substance Abuse and Mental Health Services Administration (SAMSHA) study showed that “virtually all drinkers define their personal level of consumption as ‘moderate,’ whether they consume one drink per week or five per day.” (Comment 31). CSPI also noted that consumers had varying definitions of the term “moderate.” (Comment 400). Rather than recommending moderate consumption, CSPI suggested that any health claims should provide specific quantities of alcohol that constitute moderate consumption, including a recommendation that consumers drink no more than one drink per day.

Nancy Piotrowski, PhD, testified that she had been conducting research on alcohol consumption for the past 16

years, and is in the middle of ongoing research on the perceptions of drinkers regarding moderate alcohol consumption. She noted that previous studies had shown that perceptions of moderate drinking were clearly related to drinkers’ current drinking patterns and their history of problems relating to drinking. (May 23, 2000; San Francisco, page 37).

B. Comments in Favor of Health Claims

A few commenters specifically supported ATF’s proposal to allow qualified, detailed and balanced health claims in the labeling and advertising of alcohol beverages. One comment, from CEI and CA, specifically supported the use of summary health claim statements without qualification or disclosure of the adverse effects on health caused by alcohol consumption. Finally, approximately 45 commenters supported the general use of health claims with respect to alcohol beverages.

1. Comments in Favor of Allowing Balanced Health Claims, as Set Forth in the Proposed Rule

The comments in favor of the substantive health claim provisions of the proposed rule generally stated that ATF had struck an appropriate balance in dealing with a difficult issue. For example, the National Consumers League (NCL), a national nonprofit consumer advocacy organization that was founded in 1899 to represent consumers in the marketplace and workplace, recognized the difficult nature of the issue as follows:

NCL believes that the proposed rule raises a serious public policy question for which there is no easy answer. NCL understands ATF’s concern as to whether health claims should be permitted on alcoholic beverages at all. While there is a body of research showing that moderate consumption of alcohol reduces the risk of coronary heart disease (CHD), there is also evidence that moderate drinking may increase the risk of certain cancers. Moreover, as ATF notes, moderate drinking is risky for certain individuals who are prone to alcoholism, some of whom may not realize that they are. Excessive alcohol consumption is unquestionably harmful. Whether a properly qualified health claim should be permitted on alcoholic beverage labels is a serious policy question that has been debated by public health experts for years.

NCL concluded that while it “has reservations about authorizing any health claim for alcoholic beverages, we believe a properly qualified and balanced claim would be of value to many consumers. * * * A healthclaim that includes the elements specified in the proposed rule would provide these

consumers with useful information.” (Comment 388).

Two major associations representing the wine industry also commented in support of the substantive health claims provisions of the proposed rule. The Wine Institute commented “that the public should receive the whole story regarding the responsible consumption of wine and applaud[ed] ATF’s efforts, as reflected in the additional proposed regulation language, to refine and focus the conditions which must be met before any substantive claim regarding health benefits can be made on wine labels or in advertisements.” (Comment 401).

The AVA also stated it had no objection to the proposed amendment to the regulations to reflect current ATF policy, noting that “[a]s our members have been required to conform to these policies for some years, converting them to regulation would pose no further hardship.” (Comment 417).

A comment from the Washington Legal Foundation (WLF) focused primarily on legal issues, noting that if the rule was properly implemented, it would pass muster under the First Amendment. (Comment 390). This comment will be discussed further under section XIX.

2. Comment Supporting Summary Health Claims Without Qualification or Disclosure of Adverse Effects

Only CEI and CA specifically argued in favor of allowing summary health claims without qualification or disclosure of adverse effects in the labeling and advertising of alcohol beverages. CEI and CA opposed ATF’s notice on the grounds that it would serve to suppress truthful and non-misleading speech. (Comment 326). CEI and CA argued that the cardiovascular and overall health benefits associated with moderate alcohol consumption are amply supported by the medical evidence, and summary statements of these benefits are protected by the First Amendment.

CEI and CA suggested that those individuals who would not benefit from moderate drinking “know who they are and are unlikely to be misled.” CEI and CA also suggested that the CSAP survey supports a conclusion that consumers would not be misled by directional statements, that such statements would not change the drinking patterns of consumers, and that the population studied understands the risks of drinking, particularly that drinking is counter-indicated during pregnancy.

CEI and CA claimed that other Federal agencies have approved summary health statements without the