

extensive qualifications that would be required under ATF's proposed rule. As examples, they pointed to health claims approved by FDA for diets low in saturated fat and cholesterol and diets low in sodium. They also suggested that the "balance" ATF is ostensibly seeking would automatically be provided by the mandatory health warning statement on alcohol beverage containers.

The CEI and CA comment suggested that the proposed rule would result in regulations that violated the First Amendment; thus, the proposed rule should be withdrawn. At the public hearing, Mr. Ben Lieberman testified on behalf of CEI and stated that CEI believed that the rulemaking should result in a "policy allowing a wide range of accurate summary statements about moderate drinking and health to appear on alcoholic beverage labels and ads." (April 25, 2000; Washington, DC, page 119). Mr. Lieberman also suggested that ATF had not accurately summarized the evidence demonstrating the health benefits associated with moderate alcohol consumption, but instead spent "much of its time identifying and somewhat exaggerating every conceivable category of individual who is not likely to benefit from moderate drinking, such as adults too young to be at risk for heart disease, pregnant women, and recovering alcoholics." (*Id.* at page 120).

In response to a question from the panel, Mr. Lieberman confirmed that it was CEI's belief that a health claim regarding cardiovascular benefits, such as "there is significant evidence that moderate consumption of alcoholic beverages may reduce the risk of cardiovascular disease," could appear on a label with no disclaimer and still not mislead consumers. He stated that "it is well known that people understand the limitations of advertising and labeling and that they would be skeptical. They would also read the government warning, which does at least allude to the other side of this story." (April 25, 2000; Washington, DC, pages 133–134).

3. Other Comments in Favor of Health Claims

Approximately 45 comments supported the use of substantive health claims in the labeling and advertising of alcohol beverages. However, these commenters did not specifically support the type of summary health claim advocated by CEI and CA. Instead, they commented in favor of the general principle that health claims for alcohol beverages are not inherently misleading. In some cases, it was difficult to determine whether these commenters

meant to support directional statements only or whether they specifically supported the use of substantive health claims on labels or in advertisements.

Most of the comments that favored a rule allowing the use of substantive health claims reflected a general perception that consumers were entitled to information about potential health benefits associated with moderate alcohol consumption. For example, one individual suggested that "consumers have the right to know and can be trusted to handle this scientific information." (Comment 300). Another comment supported "the rights of wineries to list the health benefits of their product on the labels." (Comment 277).

Some of the individuals commenting in favor of health claims specifically supported the concept that the claims be balanced, although it was unclear whether they were suggesting that the balance would come from qualifications in the claims or the required Government warning statement. For example, one individual stated that "[i]t is only fair and proper that the labels on the bottle contain the positive health benefits as well as the proper health warnings." (Comment 143). Another commenter expressed his support for "producers of wine to be able to print both the adverse and the positive effects of consuming wine." (Comment 340).

Many of the commenters suggested that consumers need to be made aware of health-related information, including the positive and negative effects of alcohol consumption, in order to make informed decisions regarding its use. For example, one commenter, a psychologist and attorney, stated that it was "necessary to rationally accept that alcohol has benefits as well as dangers * * *. Since Americans can easily and legally drink, and most in fact do so, the need to inform them of the range of drinking consequences and the related drinking limits for each is both prudent and democratic." (Comment 243). A doctor commented as follows:

It makes more sense to put more information on the label in order for the consumer to make a better decision. As a physician, I implore my patients to read labels. There are certainly some potential health benefits to wine as well as potential downsides in individuals. (Comment 145).

Two commenters argued that alcohol producers have a First Amendment right to market the health benefits of alcohol consumption, provided that such information is presented in a non-misleading manner. However, neither of these comments suggested that industry members were entitled to use summary health claims without any qualification

or disclosure of adverse effects. The First Amendment issues raised by these commenters will be addressed separately in section XIX.

Among the medical experts who testified at the hearings in favor of allowing health claims or health-related statements on labels or in advertisements, some specifically noted that consumers should be made aware of both the risks and purported benefits of moderate alcohol consumption. For example, Dr. Ellison suggested that an appropriate message on a label would be "[w]hile light to moderate alcohol consumption can be consistent with a healthy lifestyle for most individuals and has been shown to dramatically reduce the risk of heart disease, certain individuals should not drink at all.' Then, you should go through the list of the people that we are advising not to drink." (April 26, 2000; Washington, DC, page 116).

Finally, Mr. John Hinman testified on behalf of the American Wine Alliance for Research and Education as well as the Coalition for Truth and Balance, a group of California wineries. Mr. Hinman suggested that it was the Government warning statement, rather than the directional statements, which misled consumers about the health consequences of alcohol consumption. (May 23, 2000; San Francisco, CA, page 149). Mr. Hinman was also one of the few individuals responding to ATF's question about whether it was possible to craft a balanced substantive health claim. He noted that he had submitted a 664-word statement to ATF for review in 1993, entitled "Wine and Health—Behind the French Paradox." (*Id.* at page 151). Mr. Hinman stated that "considering that 664 words makes for a very wordy wine label, we seriously doubt whether any wine maker really has an interest in providing such a statement on the bottle. However, the statement can and should be available to hand out to those customers who request more information or are interested in the subject matter." (*Id.* at page 152). Accordingly, Mr. Hinman stated he was resubmitting the statement to ATF for review, and later clarified in response to a question from the panel that he would put the statement on an application for label approval. (*Id.* at pages 152, 165).

In response to a question from the panel, Mr. Hinman stated that neither the American Wine Alliance nor the Coalition for Truth and Balance was "interested, to my knowledge, in necessarily using CEI's proposed label. * * * On the other hand, as a lawyer * * * that's an absolutely accurate statement that CEI is using on that