



ROBERT P. KOCH
PRESIDENT AND CHIEF EXECUTIVE OFFICER

January 27, 2008

Mr. Francis W. Foote
Director, Regulations and Rulings Division
Tax and Trade Bureau
1310 G Street, N.W., Room 200E
Washington, D.C. 20220

Re: Notice No. 73
Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages

Dear Mr. Foote:

Wine Institute is the trade association of California wineries. Our over one thousand California wineries and affiliated businesses are pleased to submit these comments to Notice No. 73, in response to proposed regulations to mandate serving fact labeling for wines, distilled spirits and malt beverages. We appreciate the additional time that was granted earlier in response to multiple requests for an extension of the comment period.

We acknowledge the careful and responsible administrative actions by TTB that span the several years that the serving facts proposal has developed. From TTB's concerns over carbohydrate labeling, to its consideration of labeling alternatives, to the publication of two white papers in the summer of 2006, to the ANPRM and the current proposal, Wine Institute appreciates TTB's efforts to engage the industry and public in the longstanding debate on serving fact and nutrition labeling for alcoholic beverages. We appreciate TTB's efforts to balance demands by public interest groups for stricter labeling requirements, with certain industry member requests for carbohydrate labeling and the advertising of nutrition values, guided always by the statutory authority granted to TTB by the Federal Alcohol Administration Act.

We concur with TTB's conclusion in Notice No. 73 to discontinue regulatory efforts at defining a "standard drink." We pointed out in our previous comments that alcoholic beverage products are not served or consumed in individual drinks containing exactly .6 fluid oz. of pure alcohol. In practice, a drink is seldom neatly dispensed in such increments. Moreover, we have long held that language in the Dietary Guidelines should not be misused or misconstrued in any regulatory action or rulemaking. Yet during much of the history of the current proposal, there have been many false assertions regarding the Dietary Guidelines for Americans, especially the contention that the Guidelines have, for decades, defined a standard drink as 12 fluid ounces of regular beer, 5 fluid ounces of wine, or 1.5 fluid ounces of 80-proof distilled spirits. Contrary to the assertions being made about the Guidelines, the term "standard drink" has never appeared in any edition of

the U.S. Dietary Guidelines.¹ Consumers should not be led to believe that the serving facts panel reflects anything more than approximate values for the reference serving sizes, and should be made aware that the use of mixers may significantly increase stated caloric and nutrient values.

Likewise, we also agree with TTB's decision to exclude the equivalency graphics from the current rulemaking. As we indicated in our comments to the ANPRM, these label features would tend to cause confusion. We firmly believe that the equivalency graphic that had been part of the ANPRM is an oversimplification of the concept of alcohol exposure. In context, the U.S. Dietary Guidelines' use of serving sizes to define moderation along with their recommendations offers useful information to consumers. It takes two pages for the Dietary Guidelines to explain its recommendation in clear and concise fashion. It is a message that cannot be reduced to a single graphic. The use of the graphic out of the context of qualifying language or balance provides only an ambiguous partial picture that will mislead the consumer.

We acknowledge further TTB's interest in providing the wine consumer with information on alcohol and nutrition intake, and our comments seek to balance TTB's regulatory direction with sensible and reasonable alternatives that will accomplish TTB's goals while lessening costs to the wine industry.

We view Notice No. 73 in light of the successes and failures of the Nutrition Labeling and Education Act of 1990 (NLEA). Since NLEA took effect, consumers have been the recipients of a \$2 Billion revamping of food labels², yet “during the past 20 years there has been a dramatic increase in obesity in the United States.”³ Since 1990, in the shadows of the NLEA, we have witnessed recurring interest from regulators as well as industry members and the public in allowing or requiring alcoholic beverages to express nutrition information as well. Yet the nation cannot explain why obesity continues to rise in the presence of already ubiquitous nutrition label information. Our membership as well as the bulk of public comments from wineries across the nation questions the need for mandatory serving fact information and the assumptions on which the proposal is based. The Center for Disease Control and Prevention has identified 15 activities as national priorities for immediate action to combat the obesity epidemic. None of these activities involves mandatory serving fact information for alcoholic beverages.⁴

¹ The Dietary Guidelines Advisory Committee struggled with the Guidelines' moderation definition:

“The definition of moderation, including the size of one drink, requires emphasis. Some investigators and apparently many individuals interpret “moderate drinking” to cover higher levels of intake than shown in Table E-25. Many mixed drinks actually provide several servings of alcohol per drink.” (DG Advisory Committee, Part D, Section 8, page 3.)

² Siva K. Balasubramanian & Catherine Cole, Consumers' Search and Use of Nutrition Information: The Challenge and Promise of the Nutrition Labeling and Education Act, *Journal of Marketing*, Vol. 66 (July 2002), 112-127.

³ Center for Disease Control and Prevention at <http://www.cdc.gov/nccdphp/dnpa/obesity/trend/maps/>

⁴ See “Overweight and Obesity: A Vision for the Future,” at http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_vision.htm.

We summarize our comments here, and expand on each of our positions within this document:

- 1) Serving fact information should be voluntary, not mandatory. If serving fact information is made mandatory, wine regulations should be fiscally responsible, reasonable, minimally intrusive to winery operations, and should be justified by legitimate public goals that will provide benefit to wine consumers.
- 2) The FAA Act Does Not Authorize Mandatory Alcoholic Content Labeling for wines under 14% ABV.
- 3) Reference Serving Sizes proposed should be modified to be consistent with today's wine varietals and should allow wines up to 16% ABV to use the 5 oz. reference serving size.
- 4) Requiring analyses for nutrition values will create widespread production disruptions and will add significantly to operational costs.
- 5) The use of "typical values" rather than analytical values will provide a very close approximation of actual values, represent huge savings in analytical costs, and logistically would allow winemakers to keep to their current bottling schedules.
- 6) The proposed 3-year lead time does not eliminate costs.
- 7) Carbohydrate testing methods define what a carbohydrate is, but testing methods for beer, wine and spirits are not the same and are inherently discriminatory. Regulations should be flexible to adjust to changes in testing methodology as new tests become available.
- 8) The Linear Presentation option should be allowed for all wine regardless of container size.
- 9) The optional "fluid ounces of alcohol per serving" statement proposed for the serving fact panel should be disallowed because it is confusing to consumers.

I. SERVING FACT INFORMATION SHOULD BE VOLUNTARY, NOT MANDATORY

In Notice No. 73, TTB gave the following reasons for mandating serving fact information on wine labels:

"Based on our review of the comments, TTB believes that the calorie and nutrient content of alcohol beverages may constitute a material factor in a consumer's decision to purchase such beverages, and that under the FAA Act and as supported by its legislative history it is appropriate to require that labels present this data for the consumer's consideration." 72 FR at 41668

Wine Institute does not agree that calorie and nutrient information may constitute a material factor in most consumers' decision to purchase wine. When we asked our members, who interact directly with millions of consumers in tasting rooms, whether consumer inquiries regarding nutrition values for the products they sell was common, we were informed that there are very few inquiries regarding nutrition information for wine.

Several online resources have, for many years, provided general nutrition information for wine, and perhaps that is one of the reasons why so few consumers express an interest for nutrition

information directly from wineries.⁵ From a review of the public comments to date, several people have already commented on the availability of existing nutrition information for wine.⁶ With such information readily available to consumers, and with the lack of consumer interest at winery retail areas, we do not believe that serving fact information is material to wine consumers.

Yet TTB cites an uncommonly high number of public comments in its ANPRM (“Over 18,500 consumers who responded to Notice No. 41 indicated that they would like to see this additional information on alcohol beverage labels.” 72 FR at 41866), but these numbers are an aberration, as many of the comments were generated from one web site, with online forms and scripted content, very little corroboration and questionable sincerity. As with other online forms, we hope that TTB can compare the more realistic number of comments in this notice with the 19,000 comments received in the ANPRM and judge their validity accordingly. With the knowyourdrink.com web site not presently accepting and transmitting form content, the comments to Notice No. 73 reflect a much less biased, less illusory, less contrived and more realistic public collection of serving fact opinions. We questioned the previous ANPRM comments in the past, and continue to assert that TTB should place little weight, if any, on these form-generated comments. Further, we urge TTB to reassess its evaluation that calorie and nutrient content may be a material factor to consumers, especially in light of the absence of the 18,500 consumers that appear to have lost both the web-based mechanism and apparently the conviction, enthusiasm and motivation to participate in this current rulemaking.

Most recently, TTB stated:

“... we do not believe that, in the context of the labeling provisions of the FAA Act, it is an appropriate governmental role to make choices that undermine the commercial interests of particular entities, if such choices can be avoided.” Notice No. 78; 72 FR at 65262; November 20, 2007.

We hope that TTB will also not believe it an appropriate government role to make choices that provide commercial advantages to select entities within an industry. Mandatory label information should be of benefit to a substantial number of wine consumers, not just to a select group of consumers or to a select segment of an industry. We do not believe that consumers will be served by mandatory serving fact information and the advertising that is certain to follow.

⁵ See <http://www.thecaloriecounter.com/Foods/1400/14533/Food.aspx>; FitDay.Com’s list at http://www.fitday.com/webfit/calories/calories_93.html; Robin Garr’s “The Wine Lovers’ Page” at <http://www.wineloverspage.com/wines/nutrition.shtml> .. Additionally, the USDA’s reference value web site at <http://www.nal.usda.gov/fnic/foodcomp/search/> provides nutrition values for virtually all foods.

⁶ For example, Comment TTB-2007-0062-0006 from Jay Hyland: “If someone is really interested in the nutritional information of alcohol there are multiple references available already, we do not need to reinvent the wheel, and have the consumer pay for it.”

II.
FAA ACT DOES NOT AUTHORIZE MANDATORY ALCOHOLIC CONTENT LABELING FOR WINES 14% OR LESS ALCOHOL BY VOLUME

Current wine labeling regulations permit wines containing 14% or less of alcohol by volume to substitute the type designation “table” wine in lieu of a specific numerical alcohol by volume value. 27 CFR Section 4.36, in part, states:

Sec. 4.36 Alcoholic content.

(a) Alcoholic content shall be stated in the case of wines containing more than 14 percent of alcohol by volume, and, in the case of wine containing 14 percent or less of alcohol by volume, either the type designation “table” wine (“light” wine) or the alcoholic content shall be stated.

This regulatory provision is based on specific provisions of the Federal Alcohol Administration Act. The Act’s clear language requires the labeling of wine over 14% alcohol by volume only, expressly providing that statements of alcoholic content can only be required for wines containing more than 14% alcohol by volume. 27 USC Section 205(e)(2) states that wines should be bottled, packaged, and labeled:

(2) as will provide the consumer with adequate information as to the identity and quality of the products, the alcoholic content thereof (except that statements of, or statements likely to be considered as statements of, alcoholic content of malt beverages are prohibited unless required by State law and except that, in case of wines, statements of alcoholic content shall be required only for wines containing more than 14 per centum of alcohol by volume). *[emphasis added]*

In its discussion of mandatory alcoholic content statements in Notice No. 73, TTB cites the Rubin vs. Coors Brewing Company (514 US 476) case as authority for overruling the specific congressional intent for malt beverage alcohol statements. However, the Rubin case did nothing to interpret the FAA Act intent for wine labeling.

Wine Institute contends that TTB’s discussion of the IRC provisions and the inconsistent effect that these regulations have on various wine products is not enough to authorize regulations in direct contradiction to the clear language of the FAA Act. While we understand TTB’s expressed intent to require mandatory alcoholic content labeling across the board for all alcoholic beverages, we do not concede that either the inconsistencies of the IRC regulations or the desire of TTB to provide uniform alcoholic content information now authorizes TTB to ignore the clear language of the Federal Alcohol Administration Act. We contend that TTB’s proposal to require table wines to state an alcohol by volume percentage goes beyond the scope of TTB’s authority and violates the FAA Act.

Many wineries rely on the provisions of the FAA Act that permit them to use the designation “Table Wine” in lieu of a specific alcoholic content statement. This allows them to achieve production economies by printing labels well in advance. As the vast majority of wine produced is bottled at under 14% alcohol by volume, TTB’s proposal would have a significant economic impact on the wine industry.

We therefore oppose the proposed requirement that wines under 14% alcohol by volume must be labeled with a numeric alcohol by volume statement. While we understand TTB's expressed intent behind mandatory alcoholic content labeling for wines under 14% alcohol by volume, we do not believe that TTB's reasoning for the proposed requirement includes the authority to ignore the specific and clear language of the Federal Alcohol Administration Act.

**III.
IF SERVING FACTS INFORMATION IS MADE MANDATORY, THE
REFERENCE SERVING SIZE FOR WINE SHOULD BE MODIFIED**

Notice No. 73 prescribes two reference serving sizes for wine that follow the tax classifications: 5 oz. for wines below 14% alcohol by volume, and 2.5 oz. for wines above that amount. TTB indicates in its proposal that it has taken into account the various products and is relying on the FDA definition for what constitutes a serving size:

In this proposed rule, we take 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. We note that the Federal Food, Drug, and Cosmetic Act at 21 U.S.C. 343 (q)(1)(A)(i), defines a serving size as "an amount customarily *consumed* " [emphasis added]. Serving sizes for all food and beverage products regulated by FDA are based on this definition rather than on the amount recommended by any dietary guidance. TTB believes that serving sizes for alcohol beverage products also should be based on customary consumption and not solely on the broad categories outlined in the Dietary Guidelines advice on moderate drinking. Those categories do not explicitly take into account either what is customarily consumed or what the alcohol content variations are within each respective category.

We believe that the 5 oz. reference serving size remains appropriate for wines up to 16% alcohol by volume.

We have seen a gradual but significant change in the kinds of products produced by winemakers. Tax categories that once were descriptive of general product categories for wine no longer distinguish wine styles. Current tax classifications no longer distinguish "table wine" from "dessert wine." Today's wine products target consumer trends and demands, rather than tax classifications

Wines, especially premium varietal wines, have been gradually increasing in alcoholic content. In an article that compared alcohol and sugar levels of California wine based on information from the California Grape Crush Report for District 4, the average alcohol for all varieties in 1971 was 12.5% alcohol by volume. In 2001, the same district reported an average alcohol level of 14.8% alcohol by volume.

Wineries tend to target wine styles that appeal to the public. The Wine Spectator, for example, will rank wines based on sensory criteria. Many winemakers go out of their way to produce wine that will compete with higher scoring wines, targeting a flavor or style. Many of the consumer

“best of” lists will contain wines that are over the 14% alcohol by volume range and tend to include wines between the 14% to 16% ABV range.⁷

Wine Institute believes that consumers now commonly will consume 5 oz. servings of wine from 7% to 16% ABV, and accordingly suggest that the serving facts regulations be amended to reflect this change in the wine reference serving sizes.

IV. REQUIRING ANALYSES FOR NUTRITION VALUES WILL CREATE WIDESPREAD PRODUCTION DISRUPTIONS AND ADD SIGNIFICANTLY TO OPERATIONAL COSTS

Most wine is inherently variable in composition and it is not made to a fixed recipe. Alcohol and residual sugar levels vary significantly among styles and also from year-to-year, region-to-region, and lot to lot. Winemakers adjust wine blends to meet stylistic targets, often right up to the time of bottling. Accordingly, mandatory serving facts labeling such as that proposed by TTB would impose severe financial and logistical burdens on the industry as described in more detail below:

- Wineries would be required to analyze each lot of wine just prior to bottling to ensure the elements of the serving facts label lay within the tolerances specified. Assuming that TTB’s estimate of \$250 per sample represents what industry members would be charged, a medium-sized winery performing 500 pre-bottling analyses per year would incur an additional and ongoing annual cost of \$125,000.
- Where the analyses show that a blend’s serving facts information is outside the tolerances for the information already printed on the label, then the winery will need to delay bottling while the blend is adjusted to conform with the serving facts information on the label. This blend adjustment and the resulting delays would:
 - negatively impact the quality of the product. Winemakers go to great lengths to minimize the number of process steps employed in winemaking, because wine flavors and aromas suffer incrementally as processing increases.
 - result in additional analytical costs to verify the adjusted blend is within tolerances
 - increase overall bottling and cellar costs, due to the need to make unanticipated changes to bottling schedules.
 - create the need for as much as 10% additional cooperage⁸ to store the wine during blend adjustment and repeat analysis. Current cooperage costs are approximately \$4 per gallon of wine.

⁷ See “Top 10 Boutique Wineries” at <http://wine.about.com/od/wineclubs/tp/Boutiquetop10.htm>, for example. Consumers are taken to ten winery web sites, all with offerings for varietal wines over 14% alcohol by volume.

- We anticipate that analytical requirements and the blending considerations already mentioned would significantly decrease the flexibility that wineries currently enjoy to use spot and/or bulk purchases of wine.

Disruptions in the bottling cycle will inevitably lead to similar disruptions in sales cycles, introducing uncertainty to the commonly accepted periods of time that take wine from production and bottling to wholesaler and retailer. Thus, for example, white wines normally released in early Spring following the harvest may not be available until summer.

Wine Institute also notes that TTB's proposed rule allows a tolerance of +5 and -10 calories per serving versus what is shown in the serving facts disclosure. However, TTB's wine labeling rules currently allow a tolerance of $\pm 1.5\%$ alcohol by volume from the alcohol by volume statement on a wine label. This alcohol tolerance range converts to a calorie variance of ± 12.5 calories per serving, significantly exceeding the tolerance for calories stated in the proposed rule, but taking no account of any additional variance in calories contributed by the carbohydrates that are present in the product. Thus, the effect of the proposed rule would be to shrink substantially the alcohol by volume tolerance for wine and thus further reduce winery flexibility with regard to wine blends.

In Notice No. 73, TTB responded to industry comments on the costs and burden of a mandatory serving facts requirement. TTB's response indicated its belief that, after the phase-in period, the only significant burden from the rule would be the cost of analysis. As indicated above, even that cost would be much greater for the wine industry than for beer or spirits, because wine is inherently variable in composition. However, as shown above, there are additional significant costs and burdens that the rule would impose on the wine industry.

Wine Institute submits that the burden of the proposed mandatory serving facts disclosure would be substantially mitigated if TTB allows a "Typical Values" approach as described in the following Section V.

V. TYPICAL VALUES – HOW IT WORKS

The EU has long recognized the concept of "average values," an approach very similar to our typical values. In its Council Directive of September 24, 1990, on Nutrition Labelling for Foodstuffs, the term "average value" is defined as follows:

'average value' means the value which best represents the amount of the nutrient which a given food contains, and reflects allowances for seasonal variability, patterns of consumption and other factors which may cause the actual value to vary.

⁸ This is consistent with the conclusions reached in a July, 2007 confidential report by Richard Harding, Ltd., when considering factors for ingredient labeling of wine in the EU. See "Ingredient Listing for Wines, Implications for the wine industry". We would be pleased to share this report with TTB.

The directive goes on to permit nutritional declarations based on average values.

Most recently in the United States, the King County (Washington) Board of Health, in implementing its food nutrition labeling requirements for chain restaurants, adopted a “typical values” approach to nutrition declarations based on values for wine found in the the USDA National Nutrient Database for Standard Reference⁹ On July 19, 2007 the King County Board of Health adopted nutrition menu labeling and artificial trans fat regulations.¹⁰ This requires chain food establishments with 10 or more national locations to display calorie, carbohydrate, trans fat, saturated fat, and sodium information on menus. Menu boards will be required to display calories in a size and typeface similar to other information about each menu item. Information for the other four nutrients must be available in a clear and visible format at the point of ordering. For alcoholic beverages, analysis is not required. As stated in its “Guidance for Nutritional Analysis of Standard Menu Items,”¹¹ the King County Board of Health states as follows:

“Providing alcoholic beverage nutrition information: Nutrition information for each individual beverage on the menu will not be required. To be in compliance with the rule, food establishments must list in a single location on the menu the following average nutrition values:

- red/white wine - 5 ounces :
122 calories; 4 grams carbohydrate; 7 milligrams of sodium
- regular beer – 12 ounces:
153 calories; 13 grams carbohydrate; 14 milligrams of sodium
- light beer – 12 ounces:
103 calories; 6 grams carbohydrate; 14 milligrams of sodium
- distilled spirits (80 proof gin, rum, vodka, or whiskey) – 1.5 ounces:
96 calories

Include this disclaimer statement: Signature drinks or liqueurs with added ingredients may increase calorie content.

Nutritional values may be reported as actual value or rounded.”

For standard wine, there are two major pieces of information that a winemaker would generally need for serving facts labeling – the alcohol and carbohydrate contents of the wine and the calories contributed by each. Using the method of analysis for carbohydrate specified by TTB, the carbohydrate content of a standard wine generally falls within a fairly predictable range.

⁹ U.S. Department of Agriculture, Agricultural Research Service. 2007. USDA National Nutrient Database for Standard Reference, Release 20. Nutrient Data Laboratory Home Page, <http://www.ars.usda.gov/ba/bhnrc/ndl>

¹⁰ See <http://www.metrokc.gov/health/healthyeating/menu/> for further information on King County, Washington’s menu labeling regulation.

¹¹ The “Guidance for Nutritional Analysis of Standard Menu Items” can be found at <http://www.metrokc.gov/health/healthyeating/documents/Guidance-NutritionalAnalysis.pdf>.

We set out to devise a system where wineries would not have to bear the costs of multiple, ongoing analytical tests and the logistical burdens inherent in the proposal and outlined above, yet would be able to closely approximate the actual tested calorie and carbohydrate amounts for wines. Such a system would not only deliver accurate nutrient information but would also represent huge savings in analytical costs, and logistically would allow winemakers to keep to their current bottling schedules.

Wine Institute has developed Typical Values Conversion Tables to supply the values that winemakers would use in serving facts labeling for calories and carbohydrates.

The 7-16% ABV range of standard wine was divided into 3 equal bands as follows:

- 7-10% ABV;
- 10-13% ABV; and
- 13-16% ABV.

The 16-24% ABV range of standard wine was divided into two equal bands as follows:

- 16-20% ABV
- 20-24% ABV

For each of these bands, a typical value was specified for the calories contributed by the alcohol in an appropriately-sized serving of a product in that band.

Carbohydrates were divided into 4 equal bands, based on % content in the product, as follows:

- 0-5%;
- 5-10%;
- 10-15%
- 15-20%.

For each of these bands, typical values were specified for the grams of carbohydrate and the calories contributed by those carbohydrates in an appropriately-sized serving of a product in that band.

A product's typical carbohydrate content per serving is simply the typical value specified for each carbohydrate band shown above. The typical calorie content for the product is obtained by summing the typical alcohol calories and typical carbohydrate calories specified for the product, depending upon the bands within which it falls.

For standard wines, which typically contain very little fat or protein, if any, Wine Institute proposes typical values of 0 grams per serving for those elements of the serving facts presentation.

The following tables show the typical values specified per serving for carbohydrates and calories for combinations of alcohol and carbohydrate bands.

Conversion Table giving Serving Facts per 5oz Serving

Alcohol by volume (%) / Carbs (%)	7-10%	10-13%	13-16%
0-5%	4.0g Carbs 86 Calories	4.0g Carbs 110 Calories	4.0g Carbs 134 Calories
5-10%	11.4g Carbs 116 Calories	11.4g Carbs 140 Calories	11.4g Carbs 164 Calories
10-15%	18.8g Carbs 145 calories	18.8g Carbs 169 Calories	18.8g Carbs 193 Calories
15-20%	26.2g Carbs 175 Calories	26.2g Carbs 199 Calories	26.2g Carbs 223 Calories

Conversion Table giving Serving Facts per 2.5oz Serving

Alcohol by volume (%) / Carbs (%)	16-20%	20-24%
0-5%	2.0g Carbs 82 Calories	2.0g Carbs 98 Calories
5-10%	5.7g Carbs 97 Calories	5.7g Carbs 113 Calories
10-15%	9.4g Carbs 112 calories	9.4g Carbs 128 Calories
15-20%	13.1g Carbs 126 Calories	13.1g Carbs 142 Calories

Wine Institute validated the conversion tables by comparing the real calorie values (USDA National Nutrient Database values) with the appropriate typical values for all wine samples in the USDA database as well as with about 50 commercial products. The following charts indicate the results of calorie and carbohydrate comparisons between actual and “typical” values, and illustrate the very close approximation that the conversion tables deliver when compared with analyzed values for commercial products, across a wide range of product types and styles.

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Chart 1

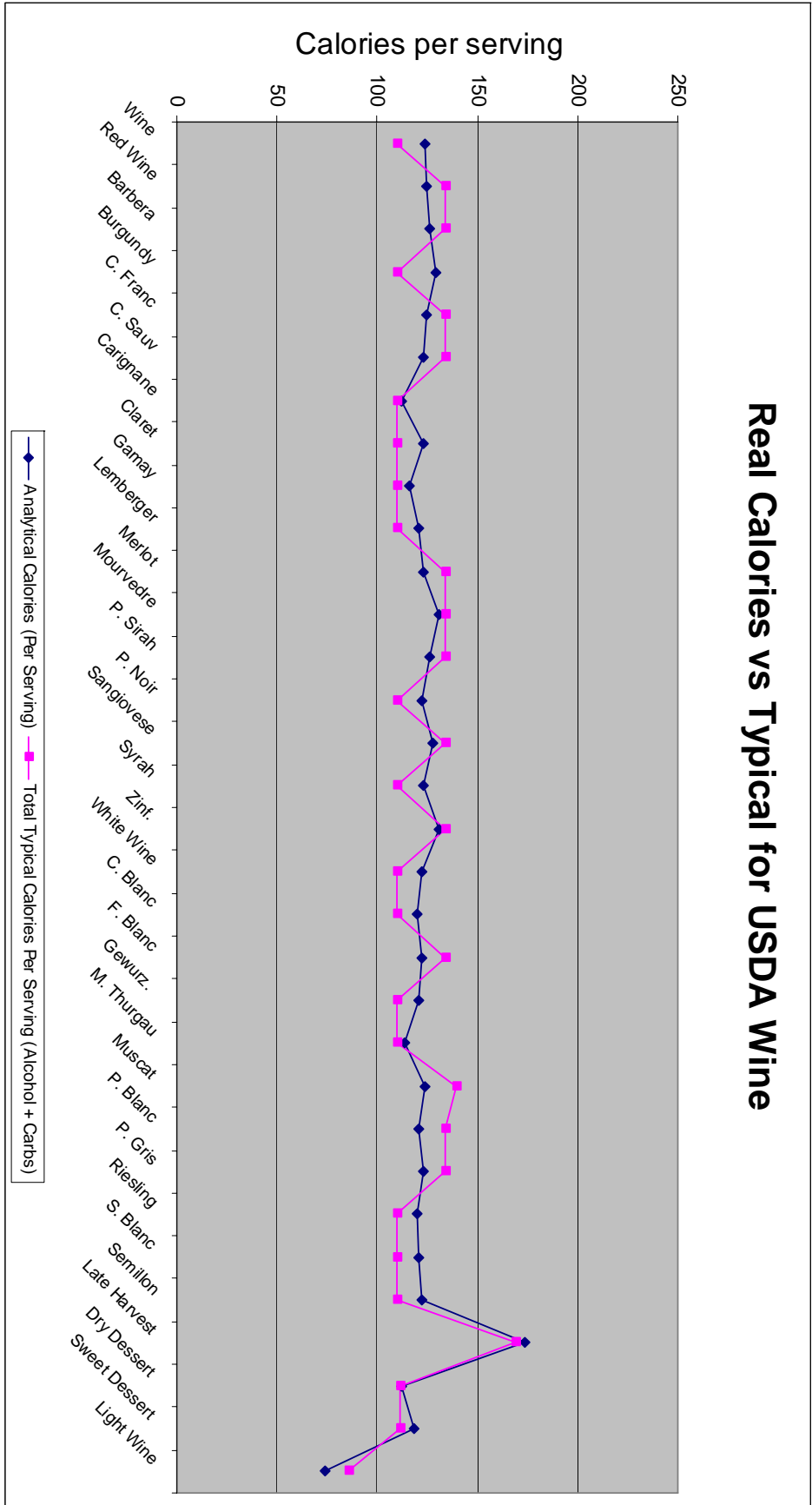


Chart 2

Analytical Carbs vs Typical for USDA Wine

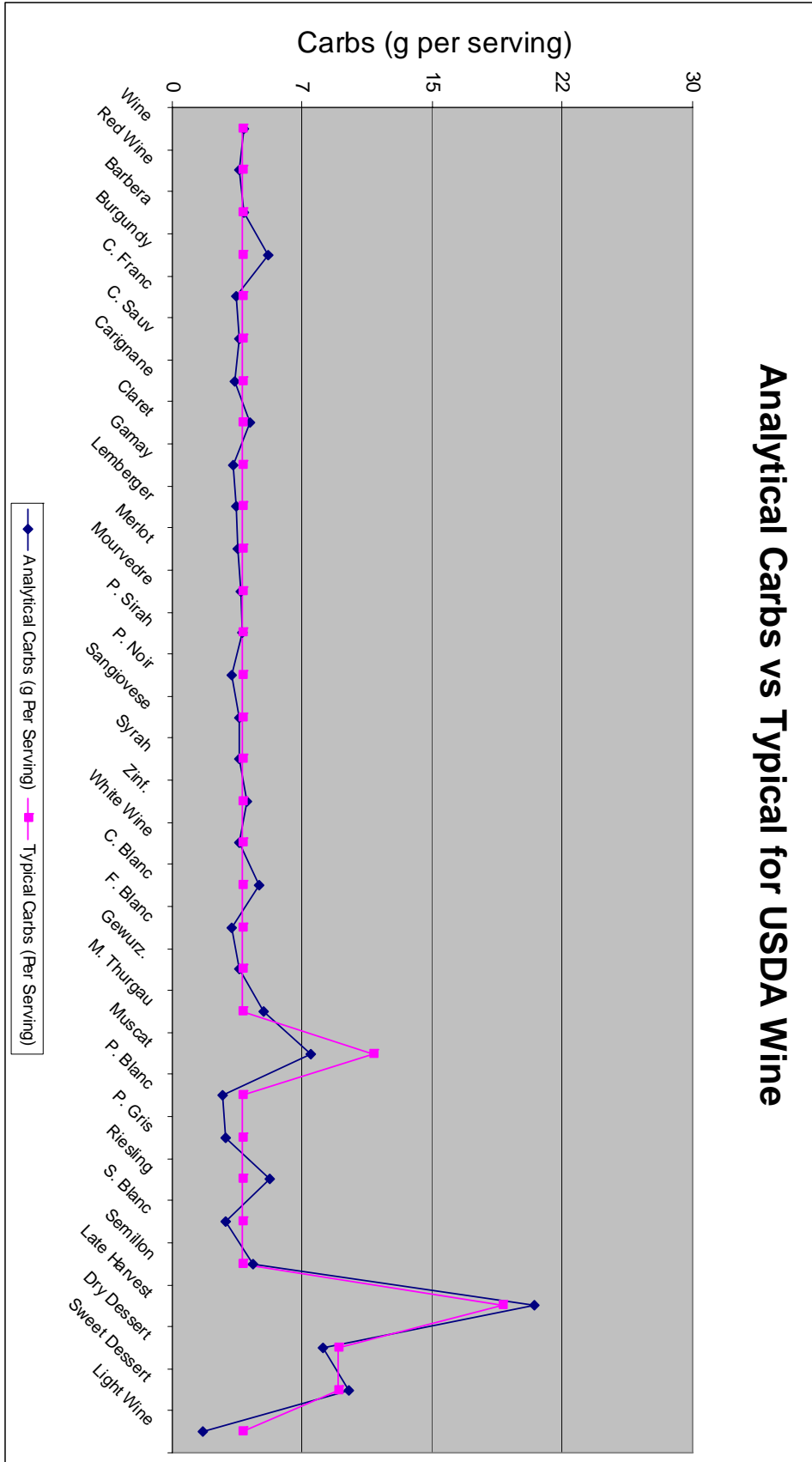


Chart 3

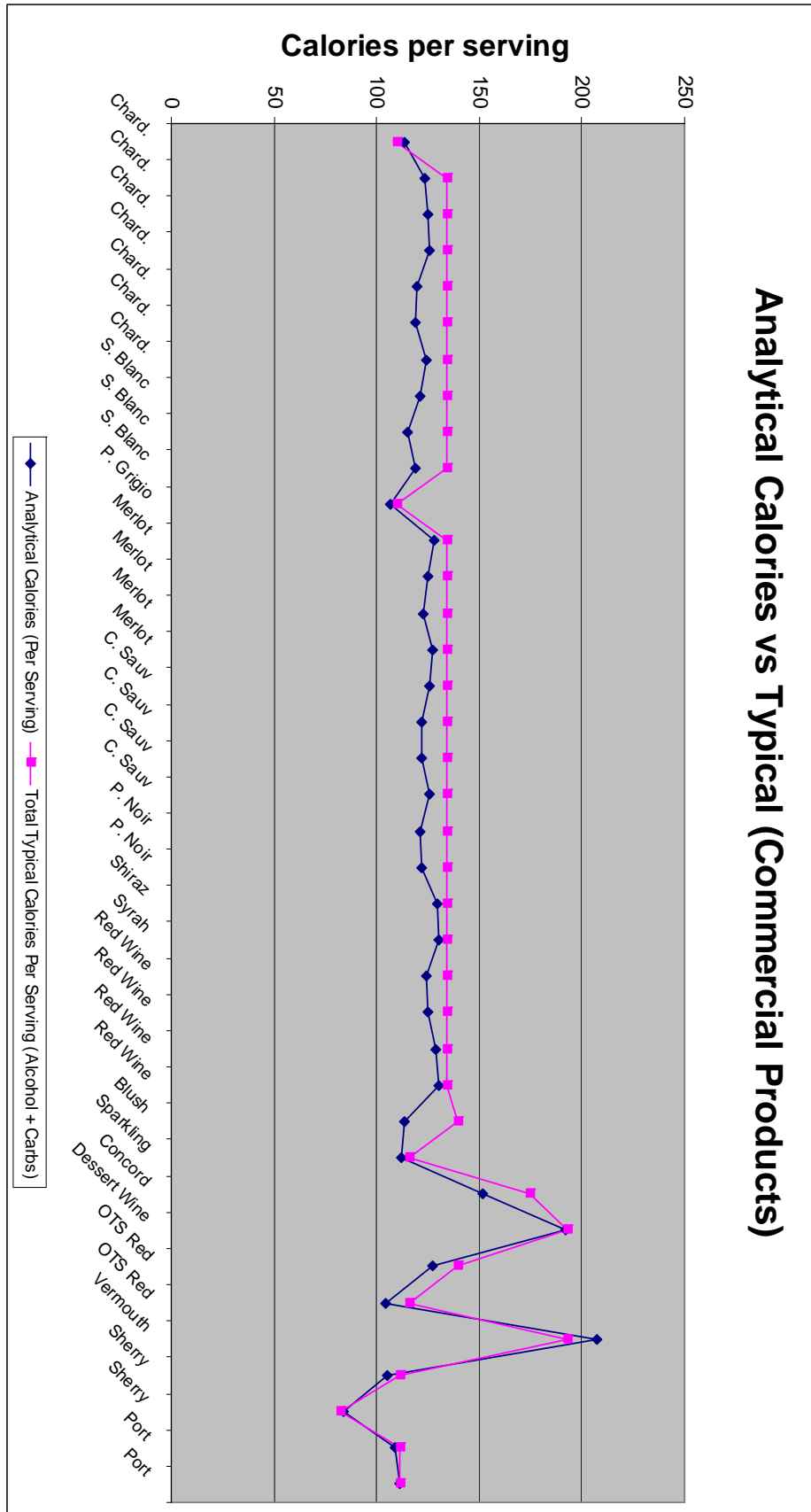
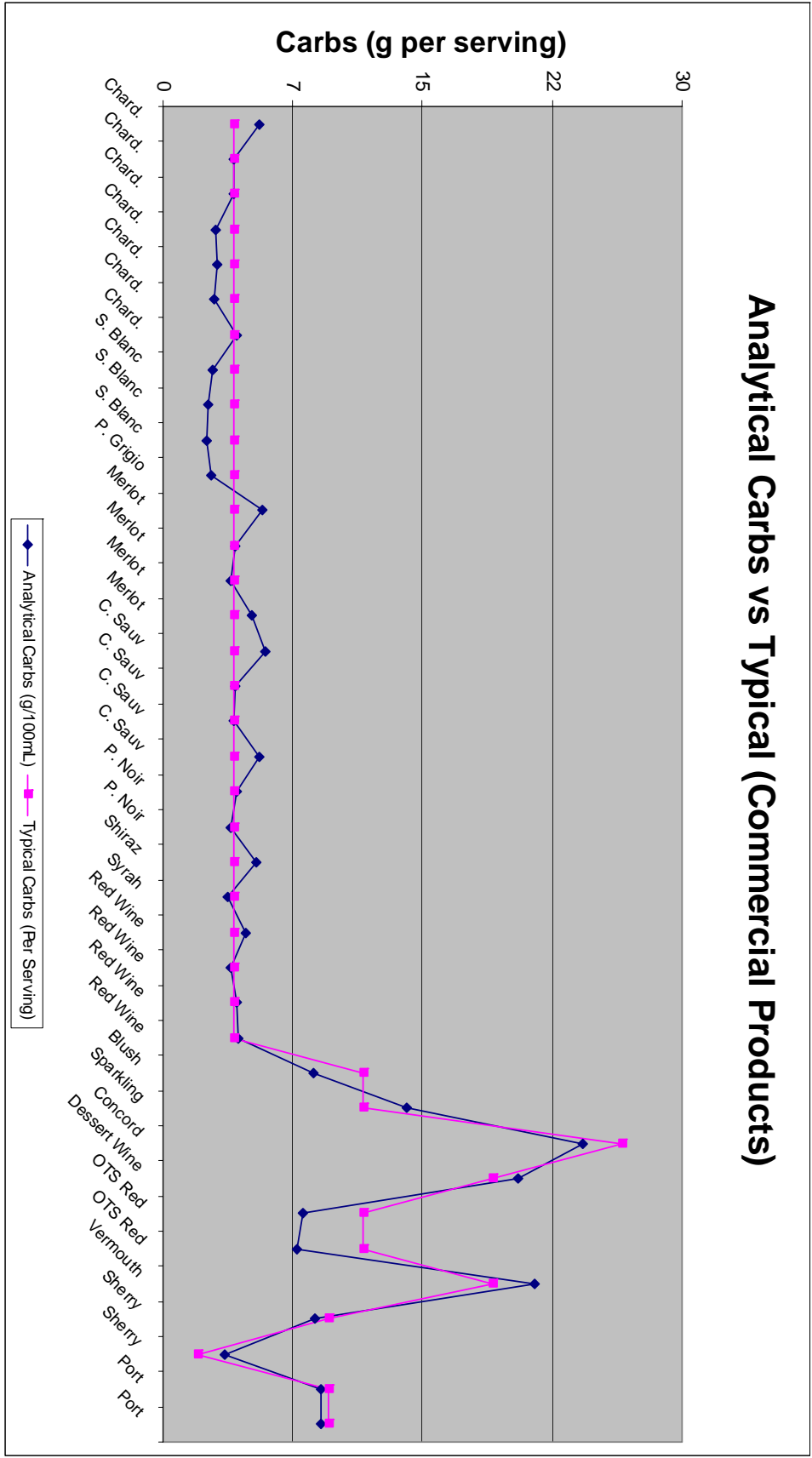


Chart 4



We urge TTB to incorporate the “typical values” concept into the regulations, and make the conversion tables available on its web site. By referencing the availability of these tables in the final regulations, yet not making the tables part of the actual regulatory text, it would allow for greater flexibility and would permit immediate modifications to declared typical values should changes in testing methodologies occur. We believe that the use of “typical values” would provide wineries with a simple, largely analysis-free method of expressing nutritional information. While the adoption of such an approach would not eliminate costs, it would relieve wineries of many operational obstacles to mandatory serving fact labeling and provide wineries with an easy-to-use method of determining calorie and carbohydrate values.

VI. 3-YEAR LEAD TIME DOES NOT ELIMINATE COSTS

In its response to comments on the cost of implementing the new serving facts labels, TTB expresses the view that the provision of a 3 year lead time for the implementation effectively eliminates costs to business of the required label changes:

TTB believes that by delaying the implementation date for the new labeling requirements, costs associated with label redesign and new label stocks would be significantly reduced. A three-year implementation period would allow affected industry members to use up existing label stocks and coordinate the redesign of their labels with an already planned label redesign. We believe this option will minimize costs or burdens associated with the proposed new label information. Again, this is consistent with FDA’s conclusion, in its proposed rule involving the labeling of health claims involving soluble fiber from certain foods, that if companies can add new labeling statements at the same time that they would normally update their labels, “the cost of adding the new information on the package approaches zero.” (72 Fed. Reg. 41873)

This is not the case for Wine Institute members for the following reasons:

- In its current form, TTB’s proposal probably will force industry members to increase the size of their labels and – in some instances – to change the shape of their bottles in order to include the Serving Facts panel. In situations where a single style/size of label and bottle is used for several different wines that are all packaged on a single bottling line, the change to a larger label will require all of the wines packaged on that line to be changed at the same time. It would not be feasible to change the operation of the line backwards and forwards between smaller size and larger sizes of label until the smaller labels were used up. In practice, therefore, label stocks for wines packaged on the line whose labels are used more slowly will have to be discarded, incurring significant obsolescence costs.
- Larger labels that will be required by the Serving Facts regulations cost in the range of 0.5 to 1.0 cents more per label. Assuming the California wine industry produced 300 million cases of wine, requiring 3.8 billion labels, the ongoing cost to the California wine industry alone would be at least \$ 20 million per year.

- Some wineries produce brands that use non-rectangular front labels with no back label. For these, inclusion of serving facts information in panel format would probably require changes in bottling and labeling equipment. The shape of the front label is an integral part of brand recognition. An irregularly shaped label would probably have to be changed to incorporate a serving facts panel and such changes are proven to be detrimental to brand recognition, resulting in loss of sales and brand loyalty. The alternative to changing the front label would be to apply a back label but this would probably entail a change in bottle design and require new bottling equipment. One winery estimated the possible costs for these changes at \$2.8 million.

The costs associated with mandatory serving fact labeling will not be mitigated by a three-year transition period.

VII. CARBOHYDRATE TESTING METHOD

The Typical Values conversion tables presented above are based on the current TTB-recognized methods of testing for alcohol and carbohydrate. Wine Institute notes that the approved AOAC carbohydrate testing method works on the basis of “proximate analysis”, counting certain wine components as carbohydrates that might not normally be considered to fall in that category (e.g. organic acids such as tartaric acid). For wines, this means that the carbohydrate results will be discriminatorily and artificially inflated compared with values from alcohol beverages that do not contain such high levels of these other components.

Wine Institute believes that FDA has not currently defined those classes of food substances that should be grouped under the heading, “carbohydrates”. Consequently, the method of analysis effectively provides that definition and any change in the recommended TTB method may render the conversion tables and the typical values they contain outdated. Since the analytical methods, by default, define what is meant by “carbohydrates,” and since the methods differ among product classes,¹² any change in testing methodology will have serious consequences for carbohydrate declarations and will render the conversion tables for typical values inaccurate. While we do not object to TTB’s adoption of specific testing methods, we suggest that TTB seek input from and work in cooperation with the industry before the methods or the tables are changed. We are also proposing that, should TTB adopt typical values conversion tables, that the conversion tables be published on TTB’s web site along with TTB’s commitment to maintaining information regarding the current analytical methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements. Finally, as with varietal names that have been approved by TTB (27 CFR Section 4.93), we are proposing that the serving facts typical values

¹² TTB’s Procedure 2004-1, dated July 12, 2004, entitled “Testing of calorie, fat, carbohydrate and protein content of alcohol beverages; Acceptable tolerance levels” provides a matrix of testing methodologies, with different methods prescribed for standard malt beverages; flavored malt beverages; standard wines, ciders and sake; flavored wines; low solids distilled spirits; and high solids distilled spirits.

conversion tables be periodically published in the Federal Register and no less than once every five years.

Because of the inaccuracies of the current carbohydrate method recognized by TTB, and the different testing methodologies for the different classes of alcoholic beverages, Wine Institute is considering asking AOAC to validate an improved procedure but this would require some flexibility on the part of TTB in amending the typical values conversion tables accordingly.

VIII. THE LINEAR SERVING FACTS LABEL FORMAT SHOULD BE PERMITTED FOR ALL WINE

Wine Institute urges TTB to permit the linear label format for serving facts information on all wine containers, not just on wine containers 50 ml or smaller. The linear format for serving facts is already in widespread use, would give the wine industry flexibility in designing labels and presenting label information and would minimize the costs associated with requiring serving facts disclosure:

1- Linear format labels are already in use

Currently the linear label format for Serving Facts information is in use on a large number of food and beverage products in the US and Canada where nutrition labeling is mandatory and has been used on “light” beer containers since 1976.

2- Linear format labels increase design flexibility

There are already many elements present on wine labels, either because they are required by regulation (e.g. company and brand name, AVA, varietal, estate bottling, general health and sulfite warnings) or desired for business purposes (e.g. winery history, winemaking notes, tasting notes, food pairing recommendations and contact details).

Allowing the presentation of Serving Facts information in linear format would provide more flexibility for the trade in designing meaningful and relevant labels for different size containers, in the midst of the other information that appears on the label. It also adapts better to use on irregularly shaped labels.

3- Linear format labels minimize cost increases

The increased design flexibility noted above would substantially mitigate the large incremental production costs itemized in Section VI (\$20 million for the California wine industry annually for increased size of labels, and a one-time cost for implementation in the case of irregularly shaped labels, which a single winery estimated to be \$2.8 million).

IX.
**“OPTIONAL” ALC BY FL OZ PER SERVING STATEMENT IS CONFUSING
AND SHOULD BE PROHIBITED**

TTB’s Notice No. 73 addresses only one component of a triad of components that make up nutritional labeling. In addition to serving fact panel information, TTB’s notice fails to address issues regarding nutritional claims and advertising, both critical elements that play a part in consumer understanding.

Ideally, label changes should benefit a large group of individuals. After 27 years of nutritional labeling for FDA-regulated food products, research is showing that the attention of consumers is easily diverted from the nutrition panel by other informational elements that appear either on the label or in the consumer’s subconscious.

The impact of a nutrition claim plays a major part in consumer understanding and appreciation of label data.

“In this era of increasing obesity and increasing threats of legislation and regulation of food marketing practices, regulatory agencies have pointedly asked how “low-fat” nutrition claims may influence food consumption. The authors develop and test a framework that contends that low-fat nutrition labels increase food intake by (1) increasing perceptions of the appropriate serving size and (2) decreasing consumption guilt. Three studies show that low-fat labels lead all consumers—particularly those who are overweight—to overeat snack foods. Furthermore, salient objective serving-size information (e.g., “Contains 2 Servings”) reduces overeating among guilt-prone, normal-weight consumers but not among overweight consumers.” BRIAN WANSINK and PIERRE CHANDON, “Can Low-fat Nutrition labels lead to Obesity?” *Journal of Marketing Research*, Vol. XLIII (November 2006), 605–617.

During the peak of the carbohydrates-driven diets in 2004, we witnessed several examples of nutrition value claims for alcoholic beverages. Claims such as “zero carbs, zero sugar” were seen on billboards, newspapers, product brochures and web sites:

Fancy Marketing Tricks: Are they making you fat?

Consider the following ad for Bacardi White Rum:

Bacardi White: Zero sugar, Zero carbs, 66 calories.

Sounds great, doesn't it? It practically sounds like a diet drink. But how on earth can this be true? Alcoholic spirits such as rum do not contain fat or protein. If the ad is true then, then this would mean that Bacardi White Rum does not contain fat, protein, nor carbs! So, let me ask you this - what makes up the 66 calories?

The answer is alcohol. Huh? Let's think for a minute.

Alcohol is nothing more than carbs (sugar) that have been fermented. So in fact, Bacardi DOES contain carbs and sugar; it's just we have a different word for it now; it's called alcohol. Even worse, fermented carbs (alcohol) have even more calories than regular carbs! The ad is brilliant - it takes advantage of semantics and confuses people into

thinking that they're making a healthier choice. It's smart advertising but will it help you lose weight, no!!

<http://www.thehershbergdiet.com/principles/index.php>

We are concerned that the advertising of nutritional claims that will certainly come with the publication of a final serving facts rule will diminish the value of nutrition panel information by introducing non-uniformity and inconsistency. Allowing an “optional” statement within the serving facts panel or linear presentation simply adds an additional label element that consumers will have to process, and will vary depending on whether a producer exercises its option to state fluid ounces of alcohol per serving.

But optional statements that tend to confuse consumers should be prohibited. If TTB’s goal is that serving fact “information should be presented to consumers in a uniform, standardized format that is prominent on the label, so that consumers may easily avail themselves of this important information”¹³, adding inconsistency by way of an optional statement will interfere with this goal.

We agree with TTB that consumers are more accustomed to understanding alcohol information as an expression of alcohol by volume. We believe that allowing an optional statement within the serving facts panel of redundant information will only serve to confuse consumers and will complicate a consumer’s comprehension of serving fact values.

Research scrutinizing the NLEA has shown that consumers process information using simplifying heuristics.¹⁴ Consumers rely on easy-to-digest health claims and descriptive nutrient-content claims rather than on the more comprehensive and complex Nutrition Facts panel.¹⁵ The optional statement is a redundancy best left unsaid. It’s not harmless because it’s “just math” – it is because it simply IS math that makes the optional statement unnecessary and a potential source of confusion. Consumers unfamiliar with conversion factors may be misled into believing that the optional statement is making a separate nutritional statement, which may lead to advertising patterns that compel competitors to make similar label statements. These statements do nothing but confuse consumers, raising the level of consumer knowledge required to interpret the messages. The optional statement should be prohibited and the serving fact information should be uniform for all products.

In 1998, TTB’s predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), proposed to amend the wine labeling regulations to provide that the net contents statement for wine in containers of less than 1 liter may be expressed on the label in centiliters (cl) as an

¹³ 72 FR at 41869

¹⁴ Companies such as Pepsico have acknowledged this tendency and have developed a simple green symbol called Smart Spot, which now appears on the packages of more than 100 of the company’s products. Smart Spot is intended to remove the consumer’s need to study the more detailed nutrient information on the label.

¹⁵ Balasubramanian, Siva K. and Catherine Cole (2002), “Consumers’ Search and Use of Nutrition Information: the Challenge and Promise of the Nutrition Labeling and Education Act,” *Journal of Marketing*, 66 (July), 112-27.

alternative to milliliters (ml). ATF believed at that time “that the proposed regulations provide industry members with greater flexibility in labeling their wines, while ensuring the consumer is adequately informed as to the net contents of the product.” 63 FR 27017, May 15, 1998, Notice No. 861.

In Notice No. 876, ATF withdrew its proposal.

“It is clear from the comments received in response to Notice No. 861 that American consumers are not yet completely familiar with all units in the metric system. Based on the information contained in the comments, we believe that the proposed regulations, if adopted, would not be of any value to consumers and would result in confusion.” 64 FR 33448, June 23, 1999.

For the serving fact information to be helpful, it should be uniform and consistent from package to package. Allowing an optional statement within the panel introduces variability that will only lead to confusion. Should serving fact labels be mandatory, TTB should strive to make the information as uniform as possible. Wine Institute believes that consumers will have to rely on the consistency of the serving fact panel as an objective measure against the nutrition claims that will be forthcoming. Allowing the optional fluid oz. statement within the panel does not help consumers, but rather gives marketing and advertising opportunities to those companies that choose to leverage such campaigns.

* * *

The rulemaking history that precedes Notice No. 73 conceals the great political and commercial efforts expended to bring us to this point in the regulatory process. We are in complete agreement with TTB's conclusions regarding the misleading equivalency graphics and standard drink definitions, and are pleased that these issues are no longer part of the serving fact labeling proposal.

Wine Institute does not believe that mandatory serving fact labeling is warranted or justified, and we urge TTB to review the rulemaking record carefully so that if final regulations are promulgated, they are reasonable and motivated by identifiable public policy goals that will benefit wine consumers. In doing so, we also urge TTB to consider the significant financial and operational burdens for wineries that would result from requiring wineries to modify their labels to include serving fact information, and would be pleased to submit additional data upon request.

We include two appendices to these comments. In the first, Appendix A, we have made suggested changes to the wine regulations proposed in Notice No. 73 that reflect the positions discussed in these comments and also assuming that the serving fact information is made mandatory. We emphasize here that our position is that serving fact information should be voluntary, not mandatory. In Appendix B, we include additional cost information for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Koch', with a large, sweeping flourish at the end.

Robert Koch
President, Wine Institute

cc: John Manfreda

APPENDIX A
Comments of Wine Institute

SUGGESTED CHANGES TO PROPOSED REGULATIONS

For the reasons discussed in our comments, we submit our changes to the wine regulations proposed in Notice No. 73 as follows:

PART 4--LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. In § 4.32, remove and reserve paragraph (a)(3) and add new paragraphs (b)(3) and (b)(4) to read as follows:

§ 4.32 Mandatory label information.

* * * * *

(b) * * *

(3) Alcohol content, in accordance with § 4.36.

(4) A Serving Facts panel, in accordance with subpart L of this part.

* * * * *

3. Revise § 4.36 to read as follows:

§ 4.36 Alcohol content.

(a) *Mandatory statement.* The alcohol content for wines must be stated on wines as a percentage of alcohol by volume. For example, "Alcohol-% by volume," or similar appropriate phrase, or in accordance with the requirements set forth in § 4.111(c) of subpart L of this part; *Provided*, that if the word "alcohol" and/or "volume" are abbreviated, they shall be shown as "alc." (alc) and/or "vol." (vol), respectively.

(b) *Tolerances.* The following tolerances shall be allowed either above or below the stated percentage:

(1) A tolerance of 1.5 percent for wines containing 14 percent or less of alcohol by volume.

(2) A tolerance of 1 percent for wines containing more than 14 percent of alcohol by volume.

(c) Regardless of the tolerances normally permitted in statements of alcohol content, such statements must definitely and correctly indicate the class, type and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcohol content statement that indicates that the alcohol content of the

wine is within the prescribed limitations on the alcohol content of any class, type, or taxable grade of wine when in fact it is not.

4. Amend § 4.62 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 4.62 Mandatory statements.

* * * * *

(c) *Calorie and carbohydrate claims.* If the advertisement makes an explicit or implicit calorie or carbohydrate claim, it must include a Serving Facts panel in accordance with subpart L of this part and an alcohol content statement disclosing the percentage of alcohol by volume. *An advertisement that makes an explicit or implicit calorie, carbohydrate, fat or protein claim cannot state typical values as authorized by Section 4.111(i). Advertised calorie, carbohydrate, fat or protein values must be based on analytical testing results.*

* * * * *

5. Add a new Subpart L to read as follows:

Subpart L--Nutrient Information

Sec.

4.111 Serving Facts panels.

4.112 Format for Serving Facts panels.

4.113 Placement of Serving Facts panels.

4.114 Tolerance Levels.

Subpart L--Nutrient Information

§ 4.111 Serving Facts panels.

(a) *General.* A Serving Facts panel required under § 4.32(b)(4) must include the following information: The single serving size; the number of servings per container; the number of calories per serving; ~~and~~ the number, in grams per serving, of carbohydrates, fat, and protein. Alcohol content statements, as provided in paragraphs (c) and (d) of this section, may appear on the Serving Facts panel.

(b) *Single serving size and servings per container --(1) Definition.* The term "single serving" or "serving size" means an amount of the wine customarily consumed as a single serving, expressed in U.S. fluid ounces, and in parentheses, in milliliters to the nearest whole number. This amount is not a recommended amount, but rather is only a reference amount to help the consumer determine his or her nutrient and calorie intake. The single serving or serving size reference amounts for wines are:

For products containing:	a single serving or serving size is:
At least 7% and not more than 4 16 % alc/vol	5 fluid ounces (148 milliliters).
Over 4 16 % and not more than 24% alc/vol	2.5 fluid ounces (74 milliliters).

(2) *Single and multi-serving containers.* Products packaged and sold in containers with a volume of less than or equal to a single serving reference amount described in this section must be labeled as a single serving. Products packaged and sold in containers with a volume of more than a single serving reference amount described in this section will be treated as multi-serving containers and the number of servings per container must be labeled to the nearest 1/4 serving.

(c) *Percentage of alcohol by volume.* The Serving Facts panel may include a statement of alcohol content as a percentage of alcohol by volume, to which the tolerance ranges in § 4.36 apply. A statement of alcohol content in the Serving Facts panel will satisfy the requirement for listing alcohol content in § 4.32(b)(3).

(d) *Alcohol expressed in fluid ounces.* A Serving Facts panel may ***not contain any additional information. Statements that*** declare the number of U.S. fluid ounces of pure alcohol (ethyl alcohol) per serving ***are prohibited on any label or advertising***, ~~expressed to the nearest tenth of an ounce, only if the panel also includes a statement of alcohol content expressed as a percentage of alcohol by volume, presented in accordance with § 4.112(g).~~

(e) *Calories.* A Serving Facts panel must express the calorie content per serving to the nearest 5-calorie increment up to and including 50 calories, and to the nearest 10-calorie increment above 50 calories. An amount less than 5 calories may be expressed as zero.

(f) *Carbohydrates.* A Serving Facts panel must express carbohydrate content to the nearest gram per serving, except that the carbohydrate content may be expressed as zero if a serving contains less than 0.5 gram.

(g) *Fat.* A Serving Facts panel must express fat content in grams per serving to the nearest 0.5 gram below 5 grams and to the nearest gram above 5 grams. If the serving contains less than 0.5 gram, the fat content may be expressed as zero.

(h) *Protein.* A Serving Facts panel must express protein content in grams per serving to the nearest gram. If the serving contains less than 0.5 gram, the protein content may be expressed as zero.

(i) Typical Values. In lieu of the requirements of subsection (e) through (h), a Serving Facts panel may express calorie, carbohydrate, fat and protein values based on conversion tables and other information published on the TTB web site. Typical nutrition value information shall be based on analytical methods that may change periodically. TTB shall publish typical value conversion tables and other information in the Federal Register when there is a change, and no less than once every five years.

When typical values are used, the statement “Typical Values” or similar statement must appear in the serving facts panel to indicate that typical values are used to declare calorie, carbohydrate, fat or protein values.

§ 4.112 Format for Serving Facts panels.

The wine label or advertisement must present the Serving Facts panel in, or in a manner that closely follows, the specifications set forth in this section. While TTB encourages presentation of the Serving Facts information in a panel format as specified in paragraph (a) through (l) of this section, TTB will also permit the listing of Serving Facts information in a linear fashion ~~for containers 50 milliliters or smaller~~. See paragraph (m) of this section for an illustration of an appropriate linear display.

(a) The Serving Facts panel information must be set off within a box by use of hairlines with all black or one color type, printed on a white or other ~~neutral~~ contrasting background where the information is legible.

(b) The Serving Facts panel may be presented in either a horizontal or vertical orientation.

(c) All information within the Serving Facts panel must:

- (1) Appear in a single easy-to-read type style;
- (2) Appear in upper and lower case letters;
- (3) Have at least one point leading (that is, space between lines of text); and
- (4) Not include letters that touch other letters, numbers, or lines.

(d) The Serving Facts information specified in § 4.111 must appear in the panel in the following order:

- (1) Serving size;
- (2) Servings per container;
- (3) Percentage of alcohol by volume (if included in the Serving Facts panel);
- ~~(4) Alcohol in U.S. fluid ounces (if included in the Serving Facts panel);~~
- ~~(5)~~ 4 Calories;
- ~~(6)~~ 5 Carbohydrates;
- ~~(7)~~ 6 Fat; and
- ~~(8)~~ 7 Protein.

(e) The following information must not appear in bold and must be in type or printing not smaller than 1 millimeter for containers of 237 milliliters (8 U.S. fluid ounces) or less or not smaller than 2 millimeters for containers of more than 237 milliliters:

(1) "Serving Size", including the numeric figure denoting the size in U.S. fluid ounces and, in parentheses, in milliliters.

(2) "Servings Per Container", including the numeric figure denoting **[*41878]** the correct number (rounded to the nearest 1/4 serving); and

(3) Numeric figures denoting alcohol content, calories, and carbohydrate, fat, and protein content.

(f) The following headings must be highlighted by bold or extra bold type or printing that prominently distinguishes them from other information, and they must appear in type or printing size no smaller than that specified below:

(1) "Serving Facts" (type or printing size no smaller than 2 millimeters for containers of 237 milliliters or less and no smaller than 4 millimeters for containers of more than 237 milliliters);

(2) "Amount Per Serving" and "Amount Per Bottle" (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters); and

(3) "Alcohol by volume", "Calories", "Carbohydrate", "Fat", and "Protein" (type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters).

~~(g) If included on the Serving Facts panel, the heading "fl oz of alcohol" must be preceded by and indented underneath the heading "Alcohol by volume" and not bolded and must appear in type or printing no smaller than 1 millimeter for containers of 237 milliliters or less and no smaller than 2 millimeters for containers of more than 237 milliliters.~~

~~(h)~~ A 3-point bar must separate the serving size and servings per container information from the amount per serving information, a 1.5-point bar must appear under the "Amount Per Serving" heading, and the other inner lines and outside line of the box must be 0.5-point thickness.

~~(i)~~ The following abbreviations or shortened expressions may be used:

(1) For percentage of alcohol by volume, "Alcohol by volume", "Alc/vol" or "Alc by vol";

(2) For U.S. fluid ounces, "fl oz";

(3) For grams, "g";

(4) For Carbohydrate, "Carb"

(5) For serving, "Serv.";

(6) For milliliter, "ml"; and

(7) For amount, "Amt."

~~(j)~~ The expression of decimal amounts less than 1 must include a zero prior to the decimal point (for example, 0.5 fl oz).

~~(k)~~ The following sample label illustrates an acceptable display for a 375 milliliter bottle of 14 percent alcohol by volume wine without a statement of alcohol content expressed as a percentage of alcohol by volume. This is permissible only if such a statement appears elsewhere on the beverage label. The industry member may not include the optional display of alcohol in fluid ounces in a serving facts label without a statement of alcohol content expressed as a percentage of alcohol by volume.

See Illustration in Original Document.

~~(l)~~ The following sample label illustrates an acceptable display for a 750 milliliter bottle of wine containing 14 percent alcohol by volume. This sample label also includes the display of a statement of alcohol content expressed as a percentage of alcohol by volume as well as the optional display of alcohol in fluid ounces.

See Illustration in Original Document.

(1) The following sample label illustrates the linear display for a 50 milliliter bottle of wine containing 14 percent alcohol by volume. When Serving Facts information is given in a linear fashion, bolding is required only on the title "Serving Facts" and is optional for the headings "Calories," "Alcohol by volume," "Carbohydrate," "Fat," and "Protein." The formatting specifications in paragraphs (i) and (j) of this section apply. Type or printing must be no smaller than 1 millimeter.

See Illustration in Original Document.

(2) Inclusion of the statement of alcohol content expressed as a percentage of alcohol by volume in a linear display is optional; however, such a statement must appear somewhere on the beverage label. When the optional statement of alcohol content in fluid ounces is included in the linear format, the alcohol content expressed as a percentage of alcohol by volume must also be included in the linear format.

§ 4.113 Placement of Serving Facts panels.

The Serving Facts panel may appear anywhere on the alcohol beverage container or in the advertisement as long as it is visible to the consumer.

§ 4.114 Tolerance levels.

(a) *General.* The following tolerance levels apply to label and advertisement statements of calorie, fat, carbohydrate, protein, and alcohol content for wines when analytical values are used or required and typical values are not used:

(1) *Calorie content.* A statement of calorie content on a label or in an advertisement will be acceptable as long as the calorie content, as determined by TTB analysis, is within the tolerance of ~~±5~~ +20 or ~~±10~~ -15 calories of the labeled or advertised calorie content. For example, a label or advertisement showing 96 calories is acceptable if TTB analysis of the product shows a calorie content between ~~86~~ 81 and ~~101~~ 116 calories.

(2) *Carbohydrate and fat content.* Statements of carbohydrate and fat content on labels or in advertisements will be considered acceptable as long as the carbohydrate and fat content, as determined by TTB analysis, are each within a reasonable range below the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent above the labeled or advertised amount. For example, a label or advertisement showing 4.0 grams of carbohydrates is acceptable if TTB analysis of the wine shows a carbohydrate content of not more than 4.8 grams.

(3) *Protein content.* A statement of protein content on a label or in an advertisement will be acceptable as long as the protein content, as determined by TTB analysis, is within a reasonable range above the labeled or advertised amount (that is, within good manufacturing practice limitations) and not more than 20 percent below the labeled or advertised amount. For example, a label showing 1.0 gram of protein will be acceptable if TTB analysis of the product shows a protein content of not less than 0.8 gram.

(4) *Alcohol content.* If the Serving Facts panel includes an alcohol content statement, the tolerance ranges in § 4.36 apply.

(b) *Publication of analytical methods.* TTB will maintain on its Web site information regarding the current methods used by the Bureau to validate calorie, fat, carbohydrate, and protein content statements.

APPENDIX B Comments of Wine Institute

ADDITIONAL COST CONSIDERATIONS FOR LABEL CHANGES LINEAR VS PANEL PRESENTATION

Label redesign is an important cost factor for our members. Notice No. 73 mandates a panel presentation for wine except for containers that are 50 ml. or smaller. The added information of the serving facts panel onto an existing label can increase the size of a label so dramatically that a winery will more than likely be forced to use both a front and back label, which will add significantly to a winery's costs. Generally, a panel presentation will increase a label by about 40%, whereas a linear presentation would increase label size by 25%. Adding on a second label also invokes expenses for bottling line and labeling equipment. .

From the WineAmerica 2005 survey:

Question #3 - How much do you think it will cost to redesign each label style in order to accommodate nutritional or ingredient labeling?

- *The range of costs mentioned for label redesign is from \$150-500 per label.*
- *One time cost is estimated at \$800 per new label for die and approximately \$1,000 – 1500 total for design and die.*
- *Adding back label would double costs for small wineries. Estimate of \$1,000 per style. (One time cost for two spool labeler is \$20,000 to 40,000)*

#5 If you have to modify nutrition labels for each particular wine annually, will this increase the number of label print jobs you run. If yes, please estimate the approximate cost to print new labels annually for each wine you offer.

- *Most respondents said that the new labeling requirements would double costs annually (one said three-fold increase) and the average estimate was \$1,000 additional per wine per year. Some other examples of estimates at different production levels (variation may be due to price breaks on volume):*

10 wines = \$5,000/year total additional cost (all wines)
11 wines = \$9,000
14 wines = \$14,000
19 wines = \$13,500
22 wines = \$10,000
38 wines = \$23,000

(Note: These costs are estimates and are in 2005 dollars)

Wineries will not be able to rely on “table wine” designation, and will have to order more labels and will not be able to take advantage of discounts and off-schedule printing

We include the following two responses from our winery membership that typify the common cost considerations facing our members should serving fact labeling become mandatory.

RESPONSE 1

Inclusion of serving facts information would affect pricing through the lack of a volume discount. If orders are placed by the blend, wineries would have to place numerous small orders that would not allow them to take advantage of efficiencies of placing large single orders. If a label house is making labels, they would normally run all the flavors at once and this would make the labels 90 percent complete. If they have to change the final plate for the specifics of each varietal, it becomes a unique label. Generally these labels cost a little over 4 cents a label, but the cost would increase substantially to 12 cents per label or higher if wineries have to run smaller batches.

I believe that the key factor will be addressing the lead time on getting labels here, the first wine's labels come from Canada, the second example labels are from Australia, and we have them on the shop floor one Month in advance of the scheduled bottling

RESPONSE 2

The following is from another member that produces premium wines:

- *Our current design & label costs*

This varies dramatically by label design and by volume (see sample numbers below). WINERY B back label costs would increase dramatically if this ruling passed because we currently use generic back labels for our Estate Grown and Non Estate Grown Wines. We would have to start producing separate back labels for each wine we bottle and for each vintage. Costs would also increase for the back labels for all brands because we would have increase the size to accommodate the additional information.

- *Our current lead time for ordering labels for each product, case, or SKU*

Lead time to get a label printed is usually 1 to 2 months. New label designs take longer than existing designs that are simply new vintages. We can usually submit a label to the TTB and the printer simultaneously, but we never go to print without an approved COLA. The TTB website says that label approval can take 30 to 45 days during busy times. Obviously if everyone had to submit a new COLA for every wine they bottle every year it would be busy all the time.

- *Does volume or number of SKUs affect the above factors*

The higher the volume per label, the lower the cost, so volume is actually a good thing. Volume does not affect lead times. Additional SKU's increase costs, particularly if each additional SKU were to require a different back label.

- *Does vintage affect the above factors*

Yes. Vintage variations would affect the information on the Serving Facts label so we would have to run analysis and apply for COLA's for every bottling in every vintage. [Note: M=per thousand].

Brand 1: 750ml/1.5L backs \$73.24/M

Brand 1 3.0-9.0L backs \$230.21/M

Brand:1 750ml/1.5L fronts \$111.24/M

Brand 1 :375ml fronts \$202.86/M

Brand 1: 3.0-9.0L fronts \$5,955/M

Brand 2: 750ml fronts \$119.49/M

Brand 2: 750ml backs \$91.85/M

Brand 3: 750ml fronts square \$59.50/M

Brand 3: 375ml fronts square \$114.15/M

Brand 3: 750ml fronts tapered \$87.30/M

Brand 3: 750ml fronts Estate \$98.55/M

Brand 3: (estate labels) 750ml back labels \$82.50/M

Brand 3: (non-Estate labels) 750ml back labels \$16.60/M

EXAMPLES OF LABEL COSTS THAT SHOW BULK DISCOUNTS

LABEL COSTS – PRINTING PER CASE

Color	100 Case Order	200 Case Order	500 Case Order	750 Case Order	1000 Case Order
One Color Label	5.25	5.00	4.10	4.00	3.90
Two Color Label	5.85	5.10	4.40	4.30	4.10
Three Color Label	6.25	5.80	4.90	4.80	4.40
Four Color Label	7.00	6.10	5.40	5.10	4.80

LABEL COSTS – PRINTING & FOILING PER CASE

Color	100 Case Order	200 Case Order	500 Case Order	750 Case Order	1000 Case Order
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One Color & Foil	5.10	4.70	4.20	4.05	3.85
Two Color & Foil	5.90	5.70	5.15	4.65	4.55
Three Color & Foil	7.85	6.10	6.05	5.55	4.90
Four Color & Foil	9.05	7.05	5.85	5.65	5.25

Source: <http://www.riverroadvineyards.com/chart1.html>