

Complying With Seasonal Product Labeling Requirements

By **Alva Mather and Andrea Conforme** (January 8, 2025)

The recently ended final quarter of the year is the alcohol industry's busiest period, accounting for approximately 70% of annual business. In January as well, many seasonal products remain in the market, and it is important to remember that these products had additional regulatory considerations and hurdles to jump before hitting the shelves.

The federal Alcohol and Tobacco Tax and Trade Bureau, or TTB, publishes a list of allowable revisions to approved labels — that is, the changes that can be made to a product with an existing certificate of label approval, or COLA, without necessitating a new label approval. Notably, however, seasonal products, and those with holiday themes, have special allowances.

Generally, any nonmandatory label information, such as a graphic, would require a new COLA to be added to a label. Yet, in accordance with Allowable Revision No. 28, so long as that graphic is holiday and/or seasonally themed, it can be added, deleted or changed without a new COLA. For example, adding a smiley face to a label would require a new COLA, but adding a candy cane would not.

Even though the candy cane would not require a new COLA, it is important to remember that any additions must not conflict with or qualify the mandatory information required for any alcohol beverage label governed by the TTB. Such additions also must comply with all existing regulations and avoid all prohibited practices.

For example, "Happy Valentine's Day!" can be added to a label, but "Dizzy with love on Valentine's Day" could not be added — with the acquisition of a new COLA or without. This is because "Dizzy" (or other statements that describe how the contents of the bottle may affect someone) would, if added to a distilled spirits label, run afoul of Title 27, Section 5.129(a)(1) of the Code of Federal Regulations, as the term implies a physical or psychological sensation resulting from consuming the distilled spirits.

For wines, a similar qualification can be found in Section 4.39(h); for beers, it can be found in Section 7.129(a)(1).

Whether or not a new COLA is required for a seasonal item, once the new seasonal products are ready to be introduced to the market, there are additional considerations, including:

- Limitations on whether the alcoholic beverage can be packaged together with a food or point-of-sale item. The rules vary by state and by the item that is being packaged alongside the alcoholic beverage.
- Pricing, and whether the market will allow a pricing variance from the original alcoholic beverage when not accompanied by point-of-sale items.

Other considerations include:



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- State brand registrations, listing forms and price postings where required;
- Special price posting designations, such as the limited-availability designation for New York;
- Updates to related import documentation, if a new COLA is required for an imported item; and
- Review of any distributor appointment letters or distribution agreements, if a new COLA is required, to make sure the current descriptions of products include the newly issued seasonal products.

It is important to account for these potential requirements, as label and packaging compliance is an area that is routinely investigated by the TTB and state regulators. Regulators conduct these compliance checks by visiting retail locations and verifying that the labels on the products conform to state and federal labeling requirements. When a label is not in compliance, the industry member may face penalties and will likely need to address the regulators' concerns and correct the label(s) and/or remove the products from the market, both of which can come at a heavy cost both financially and to customer relations.

When the TTB finds a label, either in the marketplace or advertised online, that does not match the COLA issued for the product, it will issue a notice of violation to the industry member responsible for labeling.

The responsible industry member is referred to as the COLA holder. Most frequently, in the case of a domestically made product, the COLA holder or responsible industry member is the producer or bottler of the product. In the case of an imported product, the COLA holder or responsible party is the importer. When this responsible party receives a notice of violation, the notice will set forth the TTB's specific findings and will require some remedial action to be taken by the industry member.

Luckily, the TTB is generally interested in working with the industry member to find a compliant way to market the product that will not mislead consumers or otherwise run afoul of its regulations. For instance, if the government warning is missing the required punctuation or capitalization, or some other small nonconformity, the TTB will typically allow the labels that have already been printed to be depleted by allowing the industry member to obtain what's known as a "use-up" COLA.

If there is a larger nonconformity, such as an error found in the commodity statement that describes the contents of the bottle, the TTB tends to be less lenient. For example, if the product should have been submitted for formula approval and wasn't, or the commodity statement on the label is incorrect, the TTB is less likely to allow the industry member to sell the product.

However, the TTB will still attempt to work with the industry member to, for example, grant approval for the product to be relabeled or require it to be exported for use in another market or to be destroyed.

The specific nonconformities found on a label will be reviewed and addressed with the COLA holder on a case-by-case basis. The TTB is not required to grant a use-up COLA, but these are instead discretionary and generally based on whether not granting one would cause significant financial harm to the industry member while still protecting the consumer from

being misled.

In conclusion, planning to ensure that all regulatory requirements are met is important for any industry member marketing and selling winter holiday-themed products during this lucrative season.

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