

Trends in the Alcohol Industry and How They Are Regulated

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The alcohol industry is adapting to changing consumption patterns, and the increased desire among consumers for more information about what they are drinking. This article will discuss a couple of trends, and how those trends are regulated.

Traditional “Food” Type Claims with Alcohol

Alcohol is regulated under the Canadian *Food and Drugs Act* (FDA) and *Food and Drug Regulations* (FDR). Among other things, the FDR prescribe the information that must appear on the label for an alcoholic beverage including common name, percentage of alcohol by volume, and ingredients. Generally, alcohol labels are exempt from displaying a nutrition facts table but that exempt status is lost in certain circumstances, including if any claim is made about the energy (calories) or nutrient contents that are present.

A nutrient content claim is a claim about the presence or absence of an ingredient in a “food,” which includes alcohol. The FDR list the nutrient content claims that are permitted to be made, including acceptable wording (and alternative wording) for the claim, and the compositional standards required to make them. For example, “low fat” is a permitted claim. To make the claim, the food must contain 3g or less of fat per reference amount and serving of stated size and, if the reference amount is 30g or 30mL or less, per 50g.

Increasingly, alcohol companies are making nutrient content claims on their labels, as consumers seek more information about what they are ingesting. In the past couple of years, hard seltzers have become extraordinarily popular. According to one source, in 2021, the category accounted for US\$8.9 billion in global sales.¹ No doubt one of the compelling features of many hard seltzers, including the brands that have dominated the category, is the calorie content per serving size (usually around 100 calories per serving size), which is often displayed out on the front label, thereby triggering an obligation to include the nutrition facts table.

Allowable claims are limited to those listed in the FDR. For example, carbohydrate and calorie claims are limited. If the nutrient content claim that you wish to make is not on the list in the FDR, then it cannot be made. For example, the available carbohydrate and sugar claims are restricted. There are numerous other “food” type claims that are now found on alcohol labels that are also regulated including “organic,” “gluten free,” “no preservatives,” and “unsweetened” and any company seeking to make these type of claims

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should be mindful of the restrictions on presentation and composition.

No and Low Alcohol Alternatives

The alcohol industry has also responded to the increasing desire among consumers for no and low alcohol alternatives. Global sales of no and low alcohol drinks are surging and the total volume is forecasted to grow by 31% by 2024.² One of the most interesting recent market entrants in this burgeoning category from a regulatory perspective is Corona Canada's CORONA SUNBREW with 0.0% alcohol and 30% of the daily value of vitamin D per 330mL. Introduced in the middle of winter in February 2022, the tagline for the promotion of the new product is SUNSHINE. ANYTIME. and is described as a nod to the fact that Canadians experience about 8 months of winter.

In Canada, the FDR regulates the fortification of foods with vitamins, minerals, and amino acids, including which foods are required and permitted to be fortified. For example, "partly skimmed milk" (or "partially skimmed milk") is a standardized food, which requires fortification with vitamins A and D in certain amounts. Examples of foods that are permitted to be fortified include: breakfast cereals (thiamine, niacin, vitamin B6, folic acid, pantothenic acid, magnesium, iron, zinc); fruit nectars and vegetable drinks (vitamin C) and certain fruit flavoured drinks (vitamin C, mandatory and folic acid, thiamine, iron, potassium, voluntary). If a food is not included among on the list of food permitted to be fortified, it is not permitted to be sold.

However, under the FDR, it is possible to obtain either Temporary Market Authorization (TMA) or Interim Market Authorization (IMA) to sell food that does not comply with the FDR. TMA is available in circumstances where non-compliant food is permitted to be sold so that Health Canada can gather information to determine whether an amendment to the FDR should be made. IMA allows the sale of a non-compliant food while an amendment to the FDR is being processed.

On its website, Health Canada maintains a list of food that have received TMA letters including "beverages, beverage mixes and concentrates." According to the list, on May 25, 2021, Labatt Brewing Company Limited obtained two TMA Letters from Health Canada in connection with the addition of 6µg and 1µg, respectively, of Vitamin D in 330mL of the beverage. The letters expire December 31, 2022. According to the press release announcing CORONA SUNBREW, the product was two years in development.

Given the projected market growth, novel offerings of no and low alcohol beverages by brands will only likely continue and add to what we have already seen with non-alcoholic alternative to spirits, wine, and beer.

¹ <https://www.grandviewresearch.com/industry-analysis/hard-seltzer-market>

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² https://www.theiwsr.com/wp-content/uploads/IWSR_No-and-Low-Alcohol-Gains-Share-Within-Total-Beverage-Alcohol-2021.pdf

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