

July 6, 2023

Amy Greenberg
Director, Regulations and Rulings Division
Alcohol and Tobacco Tax and Trade Bureau
1310 G Street NW, Box 12
Washington, D.C. 20005

RE: Docket No. TTB-2022-00011; Notice No. 216 - Consideration of Updates to Trade Practice Regulations

Dear Director Greenberg,

We appreciate the opportunity to submit comments for the *Consideration of Updates to Trade Practice Regulations* to the Alcohol and Tobacco Tax and Trade Bureau (TTB). The restaurant industry is the second-largest private sector employer in the U.S., fueling the economy and adding to the local tax base. The National Restaurant Association (“the Association”) is the leading business association for the industry, and together with 52 state associations, we serve every restaurant through advocacy, education, and food safety programs. We forecast that the foodservice industry will add 500,000 jobs this year – bringing total industry employment to 15.5 million by the end of 2023.

The sale of wine, beer, and spirits presents restaurant operators with a creative and high-margin opportunity to innovate and set themselves apart from the competition. Among full-service restaurants that offer beverage alcohol, it represents an average of 21% of total sales. In the limited-service segment, alcohol beverages make up an average of 6% of sales for establishments that offer it. Restaurant operators are increasingly investing in staff training and dynamic alcohol choices, as 82% of customers say they trust the staff at local restaurants to make good recommendations.

As the TTB considers updating trade practice regulations, the Association urges the TTB to:

- 1) Forestall any regulatory overhaul which could increase instability and costs.**
- 2) Prevent new rules from changing a restaurant’s menu choices, tap lines, well/rail placement, or other burdens that may entangle restaurant operators.**
- 3) Limit federal regulations on Third Party Delivery platforms who provide alcohol-to-go.**

Main Street restaurant operators are managing inflationary costs across a wide variety of categories. **Simply put, the industry cannot stomach a significant disruption to the alcohol market which may increase costs.** 9 in 10 restaurants are considered small businesses and all restaurant operators keep a sharp focus on the bottom line. With razor-thin profit margins averaging 4 – 6%, operators have absorbed increased labor costs, skyrocketing credit card processing fees – in addition to stubbornly high food costs. Additionally, about 1 in 2 restaurant operators took on a small business Economic Injury Disaster Loan (EIDL) in 2020-2021 to withstand the darkest days of the pandemic. Payments on EIDL are beginning for many restaurants and bars just as TTB is considering major changes for this unique product category. The Association urges the TTB to carefully consider how any updates to trade practice regulations would impact the supply chain and costs for restaurants and bars.

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Secondly, restaurant operations must not be subject to expanded “slotting” definitions (*Question #3*) which could launch new federal scrutiny of beer taps and bar shelf placement. Current TTB regulations do not expand slotting allowance restrictions directly onto routine operations of restaurants and bars including;

- Display space (e.g. high-visibility areas behind the bar, tap lines, well/rail placement, prominent placement on menus, or in featured drinks), and;
- Virtual display space (e.g. storefronts and associated digital ad campaigns).

There was no direct mention of the expansion of slotting allowance restrictions to restaurants and bars with the TTB report “Competition in the Markets for Beer, Wine, and Spirits” issued in February 2022. Any expansion of slotting regulations would require Congress to update the Federal Alcohol Administration (FAA) Act since it may expand tied house rules to each restaurant and bar. These restrictions would impair a restaurant operator’s ability to manage their own property and menu offerings at a competitive time when hospitality leaders are meeting a customer’s rapidly changing interests. When reviewing the TTB’s questions for comment on new slotting definitions, one Texas restaurant operator explained how bottles and taps at the bar are moved and changed out throughout a daily shift – displaying products reflects customer interests, availability, seasonality, and value. **Any potential interference from TTB would present major obstacles for restaurant operators.**

Lastly, the Association urges TTB to allow states and localities to manage third party delivery/fulfillment services (*Question #5*) rather than burdening restaurant operations with new federal regulations. During the darkest days of the pandemic, restaurant operators partnered with state and local governments on effective, safe rules for alcohol to-go sales for customers. This was a major win for lawmakers, customers, and small businesses who remained essential to their communities. Since then, 21 states and the District of Columbia have made emergency pandemic regulations allowing alcohol to-go permanent, with another 12 states allowing it on a long-term, but temporary basis. **This is the most significant change to state alcohol laws since the end of Prohibition in 1933, and it is working well for all parties involved.**

Rather than extend new federal regulations to third party delivery, we ask TTB to recognize these positive developments in the states by limiting any further federal rules that may hinder customer access.

The Association appreciates the efforts of TTB to help address competitive challenges in the marketplace. Restaurant operators work diligently to train staff, develop in creative programs, and recommend new products to enhance customer loyalty. In a low-margin industry primarily comprised of small businesses, restaurant operators must keep a close eye on pricing changes and evolving customer preferences. We urge TTB to exercise caution when evaluating changes to alcohol industry trade practices, as restaurant operators are concerned about future cost increases, regulatory burdens, or disruptions to customer access.

Thank you for your consideration and we look forward to working with the agency.

Sincerely,



Aaron Frazier
Vice President of Public Policy