

Testimony Regarding Powdered Alcohol

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Introduction

Good Afternoon. My name is Michele Tuchner and I am the Director of the Alcohol and Gambling Enforcement Division within the Department of Public Safety. I am before you here today to provide testimony about whether current laws could be adequately enforced regarding the manufacture, importation, distribution, and sale of powdered alcohol.

Background

Powdered Alcohol is formed by mixing alcohol with a thickening agent, cyclodextrin, which coats or encapsulates the alcohol.

The origins of powdered alcohol can be traced back to 1877 when William Clotwoethy was issued a patent for mixing extracts with dextrin, powdered sugar, or other dry powders creating 'flavoring powder' to enhance the flavor of foods. The product was primarily used in food production until 1976 when General Foods was granted a patent for 'alcohol containing dextrin powder.' This product was designed to "provide a high ethanol-containing powder which can be used as a base for alcoholic beverages." Despite receiving this patent the product was never used. Two years later, in 1978, California was the first state to craft statutory language defining powdered distilled spirits.

In March 2015 the U.S. Department of Treasury, Alcohol, Tobacco, Tax and Trade Bureau (TTB) gave approval of the labels for "Palcohol" (powdered alcohol) thereby allowing the product to be distributed and legally sold in the United States, unless otherwise prohibited. According to available data, five states have defined the product for regulation under their existing statutes and 27 states have banned powdered alcohol.

Palcohol is expected to be packaged in single serving pouches in dimensions of 4 x 6 inches with a 2-inch gusset on the bottom. According to the approved labeling the product is 55% alcohol by weight and 10% alcohol by volume when added to 6 ounces of water or mix. The powder itself weighs 29 grams.

Applying Minnesota's Alcohol Statutes to Palcohol

The TTB classified powdered alcohol as an alcoholic beverage in a 'certificate of label approval' (COLA) for Palcohol. These products are classified as specialty distilled spirits because they are liquid beverage grade alcohol droplets encapsulated inside a dry coating giving the appearance of being a powder.

Through the issuance of this COLA, the TTB has classified this product as an alcoholic beverage and as such these products are subject to the provisions of Minnesota Statutes Chapter 340A and Minnesota Rules Chapter 7515. As a result, powdered alcohol may only be manufactured (340A.301), imported (340A.302), distributed (340A.305) and sold or served through properly licensed businesses in Minnesota.

Minnesota is unique from many other states in that we only allow the off-sale of alcoholic beverage products (over 3.2 percent alcohol by weight) to be sold in exclusive liquor stores. Unlike some states where off-sale of alcoholic beverages may be intermingled with clothing, sporting goods, or food products, in Minnesota sales through exclusive liquor stores ensures that the product will be closely monitored.

For example, the Lipsmark Alcohol website states that retailers such as Gander Mountain can sell the packets to their customers. This would not be true in Minnesota. Stores like Gander Mountain, Target, Walmart, Costco etc., can obtain alcoholic beverage licenses, but they cannot intermingle alcoholic beverage products into their general retail merchandise store inventory. They must establish a separate and distinct exclusive liquor store that sells only products allowed to be sold in the liquor store (340A.412 subdivision 14).

Recommendations

The Department believes that Minnesota's existing statutes would require that powdered alcohol only be sold and served in properly licensed venues by responsible persons only to customers who may legally possess, purchase and consume the product. Minnesota State Statute 340A.101 subdivision 2 currently defines an alcoholic beverage as:

“any beverage containing more than one-half of one percent alcohol by volume”.

While powdered alcohol contains more than one-half of one percent alcohol by volume, some may argue that its powdered formulation is not a beverage. To minimize any confusion and to ensure that the product remains within the guidelines of a regulated product under the provisions of Minnesota Statutes and Rules, the Department recommends that this subdivision be updated to include powdered alcohol.

As an example the following is the State of California's definition:

"Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of 1 percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances."

Please note, the definition on an alcoholic beverage in Minnesota Revenue 297G.01 Subd 2 is identical to Minnesota Statute 340A.101 Subd. 2, so that statute may need to be updated as well.

We are available to answer any questions that you may have. Thank you for your consideration.