

Alcohol Industry Voluntary Regulation of its Advertising Practices: A Status Report

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I. Introduction

The harm to underage youth from their use of alcohol constitutes a national and international public health crisis. Each year, approximately 4,500 young people die in the United States from alcohol-related causes,¹ and an additional two million are injured. Underage drinking also threatens young people's long term well being, causing potentially irreversible brain damage and increasing the risk of alcohol dependence and other alcohol problems in adulthood. The earlier a young person begins to drink and the heavier the drinking, the greater the likelihood of long term problems.²

Recent research suggests that youth exposure to alcohol advertising³ influences their beliefs, intentions, and behavior regarding drinking.⁴ Although the alcohol industry disputes these research findings, its representatives agree that alcohol advertising should not be placed in youth venues or be unduly attractive to those under the legal drinking age. Producers of all three types of alcoholic beverages – beer, wine and distilled spirits – have voluntary advertising codes through their associations (Beer Institute, Wine Institute, and Distilled Spirits Council of the United States [DISCUS]).⁵ The codes establish guidelines that member companies are expected

¹ Calculated using Alcohol-Related Disease Impact (ARDI) data, Centers for Disease Control and Prevention. "Alcohol-Attributable Deaths Report, US 2001, Low, Medium and High Average Daily Alcohol Consumption, Youth under 21 due to alcohol exposure by cause and gender". Available at <http://apps.nccd.cdc.gov/ardi/Homepage.aspx> (accessed February 8, 2006).

² National Research Council and Institute of Medicine, *Reducing Underage Drinking: A Collective Responsibility*, R.J. Bonnie and M.E. O'Connell, eds. (Washington, DC: National Academies Press, 2004).

³ For purposes here, the term "advertising" refers to the alcohol industry's multiple strategies for promoting its products.

⁴ L.B. Snyder, F.F. Milici, M. Slater, H. Sun, and Y. Strizhakova, "Effects of Alcohol Advertising Exposure on Drinking Among Youth," *Archives of Pediatrics and Adolescent Medicine* 160 (2006): 18-24; R.L. Collins, T. Schell, P.L. Ellickson, and D. McCaffrey, "Predictors of beer advertising awareness among eighth graders," *Addiction* 98 (2003): 1297-1306; J.W. Grube, "Television alcohol portrayals, alcohol advertising and alcohol expectancies among children and adolescents," in *Effects of the Mass Media on the Use and Abuse of Alcohol*, eds. S.E. Martin and P. Mail (Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, 1995), 105-121.

⁵ Beer Institute, *Advertising and Marketing Code*. Beer Institute: Washington, DC, no date. The Beer code was revised effective January 1, 2006. See Appendix A for discussion of those revisions. Available at: <http://www.beerinstitute.org/adcode2.pdf> (accessed February 17, 2006); Distilled Spirits Council of the United States, *Code of Responsible Practices for Beverage Alcohol Advertising and Marketing*. DISCUS: Washington, DC, October 2003. Available at: <http://www.discus.org/industry/code/code.htm> (accessed February 20, 2006). Wine

to follow. Some companies also maintain their own codes that either stand alone or augment the relevant association code. These voluntary standards currently serve as the primary vehicle for reducing youth exposure to and appeal of alcohol advertising.

Three recent governmental reports, two by the Federal Trade Commission (FTC) and a third by the National Research Council/Institute of Medicine (NRC/IOM), have concluded that industry self-regulation should continue to be the primary strategy for protecting young people.⁶ Several factors led to this conclusion: recent U.S. Supreme Court cases that provide greater protection to commercial speech, the difficulty of establishing and enforcing government regulations on advertising practices, and the ethical responsibilities of the alcohol industry. Still, the three government reports analyze current industry practices and make numerous recommendations for reform.

Despite the importance of the codes in the current policy debate, there have been no published comparisons of the Beer Institute, Wine Institute, and DISCUS codes or assessments of their compliance with the FTC and NRC/IOM recommendations. This report fills this gap in the literature. Part II summarizes the key provisions of the three associations' codes relating to youth exposure and appeal. Part III summarizes the FTC and NRC/IOM recommendations, and Part IV examines the extent to which the three association codes adhere to them. The analysis focuses on the following advertising practices:

1. Advertising Placement
2. Advertising Content
3. Product Placement
4. Internet Advertising
5. College Marketing
6. Code Compliance

II. The Industry Association Code Provisions

A. Advertising Placement in Measured Media

- 1. Measured media.** All three industry codes maintain a 70 percent adult audience (or 30 percent youth audience) ad placement standard for radio, television, and print media. At least 70 percent of a program's audience or a publication's readership where an advertisement is placed must be 21 years of age or older and no more than 30 percent should be under the legal drinking age. The DISCUS and Beer codes are augmented by guidelines for insuring compliance, requiring both up-to-date audience composition data to determine advertising placement and semi-annual, after-the-fact audits to insure compliance. The Wine code states that media placement should be "determined by using reliable, up-to-date

Institute, *Code of Advertising Standards*. Wine Institute: San Francisco, CA, September 2005. Available at: http://www.wineinstitute.org/communications/statistics/Code_of_Advertising.htm (accessed February 20, 2006).

⁶ Federal Trade Commission, *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers*. FTC: Washington, DC, September 1999. Available at: <http://www.ftc.gov/reports/alcohol/alcoholreport.htm> (accessed January 30, 2006). Federal Trade Commission, *Alcohol Marketing and Advertising: A Report to Congress*. FTC: Washington, DC, September 2003. Available at: <http://www.ftc.gov/os/2003/09/alcohol08report.pdf> (accessed January 30, 2006). NRC/IOM, *infra*, n. 2.

audience composition data,” but it does not provide guidelines for insuring compliance either before or after the media placement is made. DISCUS is adding two additional initiatives in 2006. It will institute a selective binding program in July 2006, so that school library copies of several nationally-circulated magazines will not contain distilled spirits advertising.

Beginning October 2006, the DISCUS code will not permit the placement of advertisements in magazines that are not measured by the standard audience monitoring companies until the magazine provides such data from an independent third party.

2. **Billboards:** Both the Beer and DISCUS codes restrict billboards within 500 feet of elementary or secondary schools and places of worship. The Beer code requires that the schools be “conspicuously identified” and includes public playgrounds. The DISCUS code includes all outdoor advertising and exempts advertising located on a retail establishment. The Wine code does not restrict billboard advertising.
3. **Outdoor events:** The DISCUS code requires companies to use their best efforts to avoid advertising at events unless at least 70 percent of the audience is “reasonably expected” to be 21 years or older. “Fixed” advertising may be placed in venues that are used primarily for events with at least 70 percent adult audience composition. The Beer code only requires that “most” of an outdoor event audience be of age, implying a 50 percent audience composition standard. The Wine code does not address this form of advertising.
4. **Logos and advertising on clothing, toys and other materials:** The Beer and DISCUS codes restrict this form of advertising on any item “intended for use primarily by persons below the legal purchase age.” The Wine code does not address this form of advertising, although its provisions related to underage appeal (see below) would likely apply.
5. **Comic pages:** The DISCUS code prohibits advertising on comic pages of newspapers, magazines, or other publications. The Beer and Wine codes do not address advertising associated with comic pages.

B. Advertising Content

1. **Underage appeal:** The Wine code prohibits advertising that has a particular appeal to minors, even if it also appeals to adults. The Beer and DISCUS codes prohibit advertising that is “primarily appealing” to minors beyond the general attractiveness it has for adults.
2. **Age and appearance of models:** All three codes require models to be at least 25 years of age and reasonably appear to be 21 years old or older. Until its recent revision in September 2005, the Wine code required that models appear to be 25 years or older.
3. **Sports and other celebrities:** The Wine code prohibits the use of any entertainment or sports celebrity “having a particular appeal” to minors and states that selection of celebrities should be substantiated by research demonstrating the basis for selection.⁷ The Beer code states that beer advertisers “should take into account the following elements, among others” in considering whether advertising appeals primarily to minors: entertainers, celebrities, organization, and groups. The DISCUS code does not address this form of advertising content.
4. **Rite of passage:** The Wine and DISCUS codes prohibit advertising that associates their products with the attainment of adulthood or the “rite of passage” to adulthood. The Beer code does not address this type of advertising content.

⁷ Prior to its amendment in September 2006, the Wine code banned the use of any amateur or professional sports celebrities or other current or traditional heroes of the young.

5. **Sexual images and activities:** The Wine code states that advertising “shall not exploit the human form or feature sexually provocative poses.” The DISCUS code prohibits portrayals of graphic or gratuitous nudity, overt sexual activity, promiscuity, sexually lewd or indecent images or language, but allows “amorous gestures.” The Beer code does not allow portrayals of “sexually explicit activity” as a result of consuming beer and should not contain “graphic nudity.” It permits “romantic or flirtatious interactions.”⁸
6. **Advertising degrading to the image, form, or status of women, men or any other group:** The Wine and DISCUS codes prohibit such advertising content; the Beer code does not.
7. **Violence:** The Wine and Spirits codes state that advertising should not be associated with abusive or violent relationships or situations. The Wine code states that advertising should not reinforce or trivialize the problem of violence in society. The Beer code does not address this type of advertising content.
8. **Excessive drinking:** The three codes prohibit advertising that depicts excessive consumption. The Wine and DISCUS codes prohibit advertising that promotes the intoxicating effects of their products. The Wine code also prohibits (to the extent feasible) placement of advertising directly adjacent to television or radio programs or print media that dramatizes over-consumption or inappropriate use of alcoholic beverages and advertising that depicts wine in quantities inappropriate to the situation or inappropriate for moderate and responsible use. The Beer code prohibits depictions of “situations where beer is being consumed rapidly, excessively, involuntarily, as part of a drinking game, or as a result of a dare” and portrayals of persons lacking control over their behavior, movement, or speech as a result of consuming beer or in any way suggest that such conduct is acceptable.
9. **Risky or illegal behaviors:** The three codes prohibit advertising that portrays alcohol consumption in association with illegal activities or before or during activities requiring unusual skill, a high degree of alertness, or coordination. The Beer code makes an exception for any portrayal of an illegal activity that is “a basic element or feature of a parody or spoof and is readily identifiable as such,” and limits its prohibition on portrayals of risky activities to those that pose potential risks to the actor’s safety. The Beer and Spirits codes state that advertising should not portray, encourage or condone driving motor vehicles while intoxicated. The Wine code specifies that advertising should not associate alcohol with driving motor vehicles (without reference to intoxication).
10. **Application of standards in overall context of specific advertisements; exceptions for parody:** The Beer code states that creative elements should be considered in the overall context of the specific advertisement. Humor, parody, and satire are specifically permitted if they are readily identifiable as such by reasonable adults. The DISCUS and Wine codes do not include any similar provision.

C. Product Placement

Product placement involves placing alcohol company products in movies and television programs. Only the Beer code has a product placement provision. It prohibits company approvals of placements if the portrayal: has a main character who is underage, has themes that are particularly appealing to minors (beyond the general attractiveness the themes have to

⁸ Prior to its January 1, 2006, amendment, the Beer code stated that advertising “should not portray sexual passion, promiscuity, or any other amorous activity as a result of consuming beer.”

adults), includes a purchase or consumption by underage individuals, or portrays or has depictions of irresponsible drinking (unless consistent with a responsible use message).

D. Internet Advertising

1. **Age verification:** The Beer code requires disclosure of a viewer's date of birth at the entry to beer company websites. The DISCUS code requires the use of unspecified age verification mechanisms. Both codes require reminders regarding the legal drinking age. The Wine code "encourages" advertisers to employ age affirmation mechanisms both on their home pages and when accessed through linkages to other websites.
2. **Parental control software:** The Beer code states that the Beer Institute will provide the addresses of all member company websites to companies that manufacture parental control software. The DISCUS code states that member-controlled website addresses will be provided to both parents and parent control software companies upon request.

E. College Marketing

The Wine and DISCUS codes prohibit any advertising on college campuses or in college newspapers with an exception for advertising activities in campus retail outlets. The Wine code permits advertisers to participate in programs organized by or for graduate or professional schools or alumni organizations.⁹ The Beer code permits college marketing provided that it complies with other provisions of the code and the marketer has obtained the approval of the college or university. Beer promotional items (such as clothing or mugs) must be distributed in licensed premises, and sales representatives must be at least 21 years of age.

F. Monitoring/Compliance/Enforcement

The DISCUS code encourages companies to establish internal procedures for monitoring their adherence to the code and insuring compliance. All three codes have either established, or are in the process of establishing, code compliance review boards. The DISCUS Code Review Board has been in existence since at least 1999, and it has made its findings available to the public since January 2004. It receives complaints, issues findings, contacts companies found to be in violation to encourage compliance, and issues reports on the board's proceedings, which are posted on the DISCUS website. The Board consists of five members, who are appointed by the DISCUS Board of Directors. DISCUS has also formed an Outside Advisory Board that has two functions: (1) offer DISCUS companies a non-binding review of advertising materials prior to publication regarding their conformity to the DISCUS code; and (2) serve as a tiebreaker when the Code Review Board cannot reach a majority opinion regarding a potential violation of the code.

The Beer Institute Code Compliance Review Board has been established effective January 1, 2006. The board hears complaints and determines if a violation of the Beer code has occurred after the company responsible for the advertisement has had the opportunity to address the problem. The board reviews complaints "from the perspective of the reasonable

⁹ The Wine code's two exceptions to the college marketing prohibition were adopted by the Wine Institute in September 2005.

adult consumer.” Board members are independent of the brewing industry. Findings will be posted on the Beer Institute website.

The Wine Institute approved a third party review process in September 2005, although the Institute has not formally announced its existence to the public as of the date of this review. An internal review committee will determine if a violation has occurred. If so, the advertiser or the internal board will have the option to refer the complaint to an independent third party reviewer. Findings of the review process will be published as they are released and posted on the Wine Institute website.¹⁰

III. The FTC and NRC/IOM Reports

The United States Congress has, on three occasions in the past seven years, requested studies of alcohol advertising’s impact on underage drinking and the effectiveness of the industry’s voluntary codes. In 1998 and again in 2003, Congress included language in an appropriations committee report asking the Federal Trade Commission (FTC) to conduct investigations regarding industry self-regulation, alcohol advertising, and youth.¹¹ The FTC issued its first report in 1999. In 2003, it reviewed its 1999 report and announced the industry’s decision to adopt the 30 percent youth audience advertising placement standard. In 2002, Congress requested that the National Research Council/Institute of Medicine (NRC/IOM) conduct a comprehensive review of the underage drinking issue and develop a national strategy for reducing and preventing youth alcohol problems.¹² The NRC/IOM report includes a chapter devoted specifically to alcohol advertising and the role of industry self-regulation.

All three reports recommend voluntary self-regulation as the primary strategy for protecting young people from the adverse effect of alcohol advertising. The reports focus on the three voluntary advertising codes reviewed in Part II.

The 1999 FTC report included a detailed analysis of then current industry advertising practices and the three voluntary codes. It found that, although most industry members adhered to the codes’ provisions, the codes themselves had numerous weaknesses that the industry should address. Its recommendations were based on the “best practices” among the eight industry members studied by the FTC. The 2003 NRC/IOM Report conducted its own review of industry practices and self-regulatory codes and concluded (at p. 137) that the FTC recommendations were “too weak in some respects,” but urged the industry to adopt them “...forthwith, as an expression of good faith and as a signal of their willingness to become active partners in the nation’s campaign to reduce underage drinking.” The 2003 FTC report reviewed progress made by the industry in complying with the 1999 report, but made no new recommendations regarding amendments to the codes.

The 1999 FTC report and NRC/IOM report made 15 major recommendations or suggestions that can be divided into the same six major categories used above to analyze the industry voluntary

¹⁰ Wine Institute, *Code of Advertising Standards Third Party Review Process*, San Francisco, CA: Wine Institute. Approved September 13, 2005.

¹¹ FTC Reports, *infra*, n. 6.

¹² NRC/IOM Report, *infra*, n. 2.

codes. The NRC/IOM Report made four formal recommendations regarding industry self-regulation reform. The report augmented these broad recommendations with more specific suggestions for concrete action that would support the recommendations. For purposes here, the NRC/IOM suggestions for implementation are combined with the more formal recommendations.

A. Advertising Placement on Measured Media

1. **Measured media.** The FTC recommended the 30 percent youth audience standard adopted by the industry codes. The NRC/IOM recommended that the industry immediately decrease youth audience composition in measured media to 25 percent (cited as a “best practice” in the 1999 FTC report), phasing in a 15 percent standard over time.
2. **Audits of audience composition.** The FTC recommended that companies conduct regular after-the-fact audits of a sample of past placements to verify that past ad placements were in compliance with industry codes.
3. **No-buy list.** Both the FTC and the NRC/IOM recommended that the industry develop “no buy” lists of programs and magazines that are popular with underage audiences.

B. Advertising Content

4. **Content with youth appeal.** The FTC recommended that the industry refrain from using advertising content (including images, characters, music, language, product designs, and any other promotional technique) with substantial appeal to underage consumers, even if they also appealed to adults.
5. **Content effective in promoting youth products.** The NRC/IOM recommended that the industry avoid advertising content that would be effective in promoting a product that is explicitly meant to be used by children or young teens
6. **Target consumers 25 years and older.** Both reports recommended that the industry limit “spillover” appeal to younger audience by setting as a target audience individuals who are at least 25 years of age. (The FTC recommended this as an alternative to the recommendation regarding content with substantial youth appeal. It appeared to retreat from this recommendation in its 2003 report.)

C. Product Placement

7. **R and NC-17 movies.** Both the FTC and the NRC/IOM recommended that product placements be restricted to movies rated “R” or “NC-17” (or, if un-rated, those with similarly mature themes).
8. **Youth as Primary Character, College Life Portrayals.** Both reports recommended that the industry prohibit placements in films and programs that deal strictly with college life in which an underage person is a primary character.

9. **Apply audience composition standard.** Both reports recommended applying the youth audience composition standard to product placement.
10. **Disclose product placement.** The NRC/IOM Report recommended that the industry explicitly disclose all product placements.

D. Internet Advertising

11. **Restrict underage access.** The reports recommended that the industry take best efforts using “evolving technology” (NRC/IOM) or “available mechanisms” (FTC) to restrict underage access to internet sites. This should include requiring online visitors to enter their age and denying access to those who enter an age under 21, requiring websites to ask for age information at various places on its site, and denying access to anyone who does not enter the same age each time.
12. **Content attractive to minors.** Both reports recommended that the industry exercise its best efforts to avoid content attractive to minors, including games and cartoons. Industry members should drop bulletin boards and/or chat rooms after inappropriate messages are posted.

E. College Marketing

13. **Campus advertising and promotions.** Both reports recommended that the industry prohibit marketing activities on-campus except at bars/licensed establishments.
14. **Spring break activities.** The FTC recommended that the industry stop sponsoring special spring break activities (such as beach promotions and outdoor concerts).

E. Monitoring/Compliance/Enforcement

15. Both reports recommended that the industry establish independent external review boards as a means of promoting monitoring, compliance and enforcement. The NRC/IOM Report recommended that the government fund an independent agency to monitor industry compliance on a proactive basis.

IV. Industry Code Adherence to the FTC and NRC/IOM Recommendations

Table 1 provides an assessment of how well the industry codes meet these 15 recommendations. For each recommendation the Beer, Wine, and DISCUS codes are rated as substantially meeting it (S), partially meeting it (P), or not meeting it (N). Not meeting a recommendation may result from not having a provision related to the recommendation or having a provision that contradicts or violates the recommendation. In cases where the FTC and the NRC/IOM have differing recommendations, the assessment is based on the weaker of the two standards.

Table 1
Industry Voluntary Code Adherence to FTC and NRC/IOM Recommendations

S=Substantial Meet; P=Partially Meet; N= Not Meeting

<u>Best Practice Recommendations</u>	<u>Beer</u>	<u>Wine</u>	<u>Spirits</u>	<u>Comments</u>
Advertising Placement				The three codes adhere to a 30 percent standard as proposed by the FTC. (The codes do not adhere to the NRC/IOM's 25 percent/15 percent proposed standard.)
<u>Audience Composition</u>	S	S	S	
<u>Audits of Audience Composition</u>	S	S	S	The DISCUS and Beer codes provide detailed auditing guidelines.
<u>No-Buy List</u>	N	N	N	The industry codes do not address this recommendation, although some individual companies state they maintain such lists.
Advertising Content				The Beer and DISCUS codes only apply if material has special appeal to young people beyond the general appeal to adults.
<u>Content with Substantial Youth Appeal</u>	P	S	P	
<u>Content Effective in Promoting Youth Products</u>	N	N	N	The industry codes do not address this recommendation
<u>Target Consumers 25 Years and Older</u>	N	N	N	The industry codes do not address this recommendation
Product Placement				
<u>R and NC-17 Movies</u>	N	N	N	The industry codes do not address this recommendation
<u>Youth as Primary Character, College Life Portrayals</u>	S	N	N	The Beer code provides that product placements should not occur where the primary character(s) are under the legal purchase age or where the primary theme(s) are particularly attractive to children. The Wine and Spirits codes do not address this recommendation.

<u>Apply Audience Composition to TV Programming</u>	N	N	N	The industry codes do not address this recommendation
<u>Disclose Product Placement</u>	N	N	N	The industry codes do not address this recommendation
Internet				
<u>Restrict Underage Access</u>	P	N	P	The Beer and DISCUS codes require that users provide their birth dates prior to entering a website, but they do not require additional birth date entries in other locations on the websites. The Wine code “encourages,” but does not require, advertisers to employ age affirmation mechanisms. None of the three codes refer to “evolving technology” or “available mechanisms” that might further deter underage access to websites.
<u>Content Attractive to Minors</u>	P	S	P	The Wine code states that content standards for advertising apply to website content. This standard complies with FTC and NRC/IOM recommendations. The Beer and DISCUS codes imply that content standards apply to website content. See above for basis of ratings for content.
College Campuses				
<u>Campus Advertising/Promotions</u>	N	S	S	The Beer code permits advertising and promotions on college campuses; the Wine and DISCUS codes do not.
<u>Spring Break Activities</u>	N	N	N	The industry codes do not address this recommendation
Monitoring/Enforcement				
<u>Independent Review Boards</u>	P	P	P	The DISCUS code provides for reviews of complaints regarding violations by a Code Review Board, with members appointed by the DISCUS Board of Directors. It does not provide for review by an independent body. The Beer code provision (which is in the process of being implemented) has, as a first step, sending complaints to the company involved. The complainant has to make a second request for review by the Beer Institute board. The Wine Institute is establishing a third party review process (not yet implemented), which involves an initial, internal review by Wine Institute staff and optional referral to an independent reviewer. All three codes require that findings of the review boards be posted on the associations’ website.

Appendix A: Beer Institute Advertising and Marketing Code: January 1, 2006 Revisions

The Beer Institute issued a new version of its Advertising and Marketing Code dated January 2006, which makes numerous changes in the substance and wording of its provisions. This Appendix describes the major revisions made at that time.

1. Flavored Malt Beverages

- The new code explicitly includes Flavored Malt Beverages (introduction).

2. Underage Drinking Content Provisions

- The new code removes the “intent” requirement for determining whether an advertisement has primary appeal to minors.
- The new code revises the previous prohibitions against the use of symbols, language, music, gesture, cartoon characters, entertainers that have primary appeal to minors. It now states in the preamble to the relevant section of the code that advertising should “avoid elements” that have a primary appeal to minors. The code then states that the specific, listed elements should be taken “into account” in determining whether an advertisement has a primary appeal to minors. “Celebrity” and “group or organization” were added to the list of elements to be considered (paragraph 3a).

3. 70 Percent Adult Audience Advertising Placement Standard

The new code:

- Requires periodic post-placement audits of “substantially all” advertisements (instead of a “random portion” of placements) (paragraph 3c);
- Specifies the following (non-inclusive) steps that may be taken to investigate why a particular placement violated the 70% standard (paragraph 3c):
 - cancel placements on programs with unacceptable audience composition;
 - reallocate purchases to a different and acceptable time slot;
 - contact the media outlet/station with regard to placement errors or possible reporting errors;
 - reemphasize audience composition requirements with media buyers and media outlets;
 - continue monitoring a program or time slot to determine whether buys should be canceled or reallocated.

4. Flexibility in Applying Standards

The new code adds provisions that appear to give more flexibility to advertisers in applying code standards, particularly regarding the use of humor and parody (new language in italics):

- Brewers should adhere to contemporary standards of good taste applicable to all commercial advertising *and consistent with the medium or context in which the advertising appears* (introduction).
- *In applying these guidelines, creative elements are to be considered in the overall context of the advertisement or marketing materials. Humor, parody, satire, and all other advertising themes and devices should be readily identifiable as such by reasonable adults of legal drinking age* (paragraph 1).
- Beer advertising and marketing materials should not portray or imply illegal activity of any kind by an individual prior to, during, or after the individual consumes, purchases, or is served beer, *unless the portrayal or implication of illegal activity is a basic element or feature of a parody or spoof and is readily identifiable as such* (paragraph 2d).
- Beer advertising and marketing materials should not portray beer drinking before or during activities, which *for safety reasons*, require a high degree of alertness or coordination (paragraph 2e).
- Beer advertising and marketing materials may portray beer as a part of personal and social interactions and experiences, *and a brand may be portrayed in appropriate surroundings, as a superior choice to compliment a particular occasion or activity* (paragraph 4c).

5. **Sexually-Oriented Advertising Materials**

The new code allows more sexually-oriented materials in beer advertising.

- The old code stated that beer advertising “should not portray sexual passion, promiscuity, or any other amorous activity as a result of consuming beer.” The new code does not allow portrayals of “sexually explicit activity” as a result of consuming beer and should not contain “graphic nudity.” It permits “romantic or flirtatious interactions” (paragraphs 5a, 5b)

6. **Comparisons with Competitors**

The new code changes the standard for drawing comparisons with competitors.

- The old code required that comparisons be “truthful and of value to consumers.” The new code requires that comparisons only be “factual” (paragraph 8a).

7. **Portrayals of Recycling Efforts**

The new code states that beer advertising and marketing materials should not disparage anti-littering and recycling efforts (paragraph 9).

8. **Acts of Drinking**

The new code removes the prohibition on depictions of the act of drinking (paragraph 2b).

9. Excessive Drinking Provisions

The new code establishes a new standard for restrictions on excessive drinking, removing all references to “intoxication.”

The old code prohibited:

- References “to any intoxicating effect that the product may produce”
- Portrayals of persons “in a state of intoxication or in any way suggest that intoxication is acceptable conduct”
- Depictions of “situations where beer is being consumed excessively” or “in an irresponsible way.”

The new code prohibits:

- Depictions of “situations where beer is being consumed rapidly, excessively, involuntarily, as part of a drinking game, or as a result of a dare” (paragraph 2b).
- Portrayals of persons lacking control over their behavior, movement, or speech as a result of consuming beer or in any way suggest that such conduct is acceptable (paragraph 2c).

10. Product Placement

The new code changes the standard for determining whether a product placement should be restricted because of youthful themes.

- The old code prohibited placements involving primary themes that, because of their content or presentation, are “particularly attractive to children.” The new code prohibits placements where the primary themes are “specially attractive to persons below the legal drinking age beyond the general attractiveness such themes have for persons above the legal drinking age” (paragraph 12d).

11. Compliance Review Board

The new code creates a Compliance Review Board. The Board “is composed of individuals with a variety of experience who are independent of the brewing industry” (see final section of new code). The procedure for handling complaints regarding possible violations of the code is described as follows:

- The Institute will continue to send complaints to the company involved.
- If the person registering the complaint is dissatisfied with the company’s response, he/she may request a review by the new board.
- The board “will review complaints from the perspective of the reasonable adult consumer of legal drinking age and decide whether or not such complaints identify advertisement(s) or marketing material(s) that are inconsistent with one or more of the guidelines in the Code.”
- Board decisions will be posted on the Beer Institute web site.