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Perspective

The Evolution and Impact of Distilled Spirits Regulation in the United States: Considerations for Policymakers and Academia

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Abstract: This manuscript analyzes the issues presented in Executive Order 14036, which aimed to promote competition in the American economy, including specific directives for the alcohol industry. Specifically, this manuscript focuses on the issues regarding distilled spirits regulation and delves into the implications for the distilled spirits sector. The order addresses anti-competitive practices, encouraging regulatory bodies to review and revise existing policies that may hinder fair market practices. This paper explores these issues and provides a historical context of distilled spirits regulation in the United States, examining how past policies have shaped the current landscape. It analyzes the key provisions of Executive Order 14036, highlighting its potential to foster increased competition, innovation, and consumer choice within the distilled spirits market. Lastly, the article provides a call to action for policymakers, academia, and consumers which will aid distilled spirits producers in gaining parity with beer and wine producers.

Keywords: distilled spirits; craft spirits; alcohol policy; Executive Order 14036; competition

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1. Introduction

The alcohol industry composed broadly of beer, wine, and distilled spirits is highly regulated in the United States, none more so than distilled spirits. The prohibition hangover continues to impact the United States distilled spirits industry, evident in many state and federal regulations that impede the ability to produce and purchase distilled spirits. Distilled spirits have a more robust alcohol by volume (ABV) content, ranging from 40 to 50% compared to beer (3–12% ABV) and wine (12–15% ABV). Alcohol by volume is a measure of the amount of pure ethanol in a beverage and is expressed as a percentage [1]. It is similar to a proof, which is half of the ABV (i.e., 40 proof = 80% ABV). Spirit labels in the United States are required to have both numbers. There are many regulations in place to keep small distilled spirits producers from being able to expand their business or in some cases to even enter the market. These regulations include higher taxes on the production of spirits, limited to no access to direct-to-consumer shipping, tight authority in control states over the sale and distribution of distilled spirits as well as unlawful trade practices that hinder small and independent businesses.

Early research (pre-1990s) suggests that State and Federal regulations reflect the widely held belief that beer and wine are more temperate than distilled spirits. Beer is considered the drink of moderation while distilled spirits are more likely to cause problems [2]. Other research suggests that the incidence of major diseases is associated with ethanol consumption irrespective of alcohol type [3]. Additionally, the incidence of drunk driving is associated with all alcohol types with no physiological differences in intoxication [4]. Overall, the extant research suggests that birth defects, alcoholism, drunk driving, fighting, and rowdy behavior are equally attributed to all types of alcohol [3–5]. Although other research has shown that beer consumption is more closely related to heavy episodic drinking and alcohol-related harm [6], State and Federal regulations continue to cast a deeper stigma on distilled spirits compared to beer or wine.

The regulations and trade practices governing distilled spirits production, distribution, and sale along with those for beer and wine were highlighted in the Treasury Department's report "Competition in the market for beer, wine and spirits". The report was released in response to President Biden's Executive Order 14036 focused on promoting competition in the American economy, in particular "to protect the vibrancy of American markets for beer, wine, and spirits, to improve market access for smaller, independent, and new operations" [7] (p. 1). The report was compiled to identify the conditions of competition, including threats to competition and barriers to new entrants, and assess the current market structure.

In recent years, the beverage alcohol industry has seen two key trends: (a) a significant increase in the number of small, local, and craft alcohol beverage producers and (b) consolidation, particularly in the retailing and distribution of wine, beer, and spirits. These trends are highlighted in the Treasury Department's report along with additional areas of concern, such as current laws and procedures regarding licensing, labeling, bottle size restrictions, taxation, and a lack of opportunities for direct-to-consumer sales [7]. Overall, the report highlights various challenges in the beer, wine, and spirits sectors. Addressing these challenges would enable entrepreneurs, small enterprises, and new players to compete fairly with larger players in the market and protect competition.

Although the presidential directive and subsequent report focused on the three broad alcohol categories, beer, wine, and spirits, this article focuses on the impediments of the distilled spirits industry, particularly those for small or craft producers. For a review of the hindrances for the beer industry, please see Taylor and colleagues [8]. The issues presented in the Treasury report are not a surprise to the distilled spirits industry, which has been fighting for parity in the alcohol industry, especially in taxation. In addition to taxation, the craft spirits industry contends with consolidation among both producers and distributors leading to unfair trade practices that favor the large entities and discourage new entrants to the market.

2. Background of the Distilled Spirits Industry in the United States

It is important to understand how the history of prohibition and its subsequent repeal shaped the current alcoholic beverage market, more so for spirits than beer or wine. Distilled spirits were the original target of the temperance movement and carry a greater stigma to this day, facing greater advertisement restrictions and regulation [9]. Pre-prohibition distilled spirits and cocktail culture were reaching a high point, but very few distilleries, unlike breweries and wineries, were able to transform their businesses during prohibition and survive [10].

An immediate outcome of prohibition was the rise of speakeasies stocked with moonshine or illegally produced distilled spirits and the mob who controlled the distribution. Due to the illegal nature and lack of regulations, the focus was less so on quality than on quantity, leading to many tainted batches and additional liquids being used such as rubbing alcohol and embalming fluid that in some cases caused death [11]. Moonshine had high alcohol content, usually 150 proof, which burns and does not taste good, so anything sugary was used to mix with it. But rather than create fanciful cocktails, these concentrated mixers primarily served to cover the bad flavor of the illegal spirits and ease the burn [11].

More significantly, prohibition led to a huge loss of both state and federal state revenue, ultimately leading to its repeal in 1933. On a federal level, tax revenues equating to USD 11 billion were lost [12]. To recoup lost tax revenue and regulate the alcohol industry, the three-tier system was established. The three tiers are producers, distributors, and retailers, and an alcohol business can only operate in one of these tiers to prevent vertical integration [13]. It also allows for the collection of taxes at each tier leading to an increase of as much as 150% or more in price as product changes hands, leading to a disadvantage for smaller producers [13].

Even after prohibition was over, the quality and diverse range of available distilled spirits in the United States did not rebound. It was not until the 1980s–90s that more brands, many noteworthy still today, proliferated in the U.S. market such as Absolut, Grey Goose, and Patron, amongst others [14,15]. The growing cocktail culture also did not survive prohibition. Although cocktail menus have existed since prohibition ended, they lacked the refinement and use of craft ingredients that existed during pre-prohibition days as seen in Jerry Thomas's 1862 book, Bartenders Guide. Additionally, distilled spirits producers were fearful of backlash imposed a ban on radio and television advertisements, a ban broken by Seagrams in 1996 [15]. However, many broadcasters were not amiable to letting distilled spirits advertisements air, despite beer and wine brands being able to do so [15]. For years, distilled spirits advocates argued for parity in advertisements, which was not reached until 2017 [15]. The lack of quality options, harsher taxation, lack of cocktail culture, and overall stigma of distilled spirits continued until the early 2000s.

In the early 2000s when the United States saw an increase in interest in craft beer, there was also an uptick in the demand for craft spirits as the drinking public wanted to experience unique cocktails made with fresh ingredients [16]. This period in the history of distilled spirits is significant not only in the composition of a cocktail but also in the quality and types of distilled spirits needed to deliver a craft cocktail experience [16]. A craft spirit is described as a distilled spirit that is produced in the U.S. by a licensed producer, production of which cannot exceed 750,000 proof gallons, cannot be controlled by a large supplier, must market itself, and must not violate the ACSA code of ethics [17]. However, the laws governing production and distribution, along with the federal excise tax rate on spirits, presented significant obstacles for small craft distilleries attempting to enter the market; see [9].

In 2017, the Craft Beverage Modernization Tax Reform Act (CBMTRA) was introduced and reduced the federal excise tax on distilled spirits from USD 13.50 per proof gallon to USD 2.70 for the first 100,000 proof gallons. The goal was to bring parity to distilled spirits producers who before this paid far larger tax rates (USD 13.50/gallon) than their counterparts producing beer (USD 2.00/gallon) and wine (USD 1.57/gallon). In addition, the federal tax reduction lowered the barriers to entry for small producers. However, due to some loopholes, the CBMTRA also benefitted large producers and importing companies who were able to take advantage of the tax rate cut on the first 100,000 proof gallons produced or imported [18]. The CBMTRA was officially ratified as law in 2020 and closed some of these loopholes, adding language that prevented large producers from exploiting all the tax cuts intended to benefit small producers [19]. Overall, the CBMTRA did enable craft distillers to invest back into their businesses and allowed many craft producers to enter the market [20].

As of August 2016, there were 1315 active distillers, rising in August 2019 to 2046 active distilleries, and despite the hit that many took due to COVID-19, the number increased in 2023 to 2753 [17]. In 2022, craft spirits sales accounted for USD 7.9 billion, a 5.3% increase from 2021. This led the overall distilled spirits market to hit a record high in 2022 accounting for USD 37.6 billion in sales or 42.2% of the market, surpassing both beer (16.1%) and wine (41.8%) for the first time [21]. Craft spirits accounted for 4.9% of the total volume and 7.7% of the total value [17]. However, the distilled spirits market is concentrated in the hands of a few major producers and distributors/wholesalers who in recent years have undergone many mergers and acquisitions, further concentrating the industry and making it more difficult for new entrants to enter the market. The next section will detail the major players and consolidations in recent years.

3. Overview of the Spirits Industry

3.1. Producers

Although there are many distilled spirits producers both large and small, there has been extensive consolidation from the 1980s onwards culminating in many of the leading brands being part of the extensive brand portfolios of large multinational firms. A brand portfolio is a strategic approach by companies to manage a range of brands that cater to diverse consumer tastes and market segments [22]. It provides flexibility, adaptability, and the ability to capitalize on various opportunities within the respective market. A brand portfolio's success comes from the brands it carries selling well. As such, brands can often change hands between the major portfolios. In the spirits market, the major brand portfolios are Diageo, Pernod Ricard, Beam Suntory, Bacardi Limited, and Brown-Forman. These brand portfolios represent some of the most iconic brands. Research by Norris and Colleagues (2021) [15] found that an iconic brand is a global leader in their category, has an established reputation, and offers exceptional flavor and quality. Their research identified Hennessey, Tanqueray, Bacardi, Johnnie Walker, Patron, Grey Goose, and Jack Daniels as brands recognized as iconic amongst participants, all of which are owned by one of these major brand portfolios.

Mergers and acquisitions by brand portfolios are common and show consolidation at the producer/brand level. Diageo itself was formed out of a landmark merger between Guinness and Grand Metropolitan brands [23]. Diageo and Pernod Ricard purchased the Seagram brand in 2000, despite Seagram being a well-established and recognizable brand [24]. Pernod Ricard (itself a 1975 merger of two prominent French bands) purchased Allied Domecq in 2005, bringing Beefeater and Malibu to their portfolio, and in 2008 purchased Vin & Spirit, bringing the Absolut brand into their portfolio [25].

On the other hand, many of the craft producers are not supported by a brand portfolio and rely on on-site sales, at their tasting rooms or through small distribution networks concentrated in the state or surrounding states [17]. The craft spirits data project facilitated by the American Craft Spirits Association [17] shows that the spirits market remains concentrated, with large producers accounting for 2% of all producers, generating 54% of all cases. Medium producers account for 9.2% of all producers, generating 34.2% of all cases, and small producers make up 89% of all producers and generate only 11.3% of all cases.

Some smaller distillers believe that higher echelons can be reached if acquisition by larger portfolio companies occurs, providing access to their resources and market share [26]. The major players in the distilled spirits industry learned from the craft beer boom and saw the value in acquiring craft brands quickly [26]. In 2016–2017 alone, Constellation Brands purchased High West Distillery, Pernod Ricard acquired Smooth Ambler and Monkey 47, Diageo acquired Casamigos, and Remy Cointreau purchased Westland Distillery [25–27]. The acquisitions have continued more recently with Pernod Ricard purchasing several brands since 2020 including Skrewball whiskey in 2023, Brown-Forman acquiring Gin Mare and Diplomatico Rum in 2022, and Diageo acquiring Aviation gin [24,25].

The large producers and the brand portfolios that own them command market power through advertising initiatives, extensive distribution networks, and established relationships. They have economies of scale to keep costs low and they have financial resources that provide stability and support strategic initiatives. Smaller producers are not without strengths as they can stay agile, allowing them to respond faster and innovate quickly based on prevailing trends and seasonal flavors [28]. However, the continued consolidation by brand portfolios threatens the independent producer.

3.2. Distributors/Wholesalers

For distilled spirits producers to relay their products to retailers, they have to enlist the help of a distributor or wholesaler. For brands looking to expand their footprint, partnering with a distributor offers a variety of benefits that can increase efficiency leading to greater success [29]. Distributors handle all the transportation and storage logistics, provide brand visibility and promotion, as well as handle all of the regulatory compliance and absorb some of the risks [29]. However, partnering with a distributor is not always an option for smaller producers due to some regulations, and it might not be as beneficial to their brands that are not as well-known as other brands distributed by that same company.

Like the producers, consolidation has also occurred on the distributor side, with four major wholesalers/distributors dominating in the United States due to major mergers and acquisitions over the last several years. In 2015, Wirtz Beverage merged with Charmer Sunbelt to form Breakthru Beverage, expanding its presence to operate in 16 states [30]. In 2016, Southern Wine and Spirits merged with Glazer's to become the largest wine and spirits distributor in the country, operating in 44 states [30]. More recently, in 2019, Republic National Distributing and Young's Market Company formed a joint venture to become the second largest distributor operating in 32 states and the District of Columbia. The other major distributor operating nationally is Johnson Brothers in 18 states. Other distributors are concentrated in only one state such as Allied Beverage serving New Jersey or Empire Merchants serving New York [29]. The consolidation of many national distributors along with the strength of larger brands associated with brand portfolios has led to a market that is not tenable for small producers.

The treasury report discusses these various mergers and acquisitions and others that were attempted but denied by the Department of Justice to stop the consolidation of power within a few major companies. Along with the Department of Justice, there are several other federal departments in charge of overseeing alcohol policy that is not regulated by the states, which generally has to do with labeling, advertising, antitrust laws, and fair competition and is discussed below.

4. Federal Departments Overseeing Alcohol Policy

4.1. The Department of Justice (DOJ)

The DOJ's primary role in the alcohol market is to enforce antitrust laws that are grounded in statutes such as the Sherman Antitrust Act and the Clayton Act. These laws are designed to prevent anticompetitive practices, protect consumers, and maintain a competitive marketplace. The Sherman Antitrust Act aims to prevent anti-competitive practices and ensure that economic power is not concentrated in the hands of a few entities to the detriment of consumers and competition. The Sherman Act attempts to prevent agreements that restrain competition (nationally and internationally) and prohibit monopolization of interstate trade. The Clayton Act of 1914 aims to strengthen antitrust laws and address some of the shortcomings and loopholes identified in the Sherman Act. It specifically targets anti-competitive practices and unfair business practices, seeking to promote fair competition and protect consumers, competitors, and small businesses [7]. The investigative arm of the DOJ is the Federal Trade Commission (FTC).

4.2. Federal Trade Commission (FTC)

At the same time as the Clayton Act, the Federal Trade Commission Act establishes the Federal Trade Commission (FTC) as an independent agency with the mission of promoting fair competition and protecting consumers from unfair and deceptive business practices. The FTC Act grants the Federal Trade Commission broad authority to investigate and address anticompetitive conduct and unfair methods of competition [31]. The FTC also has the authority to investigate and take enforcement actions against deceptive advertising, fraud, and other practices that may harm consumers. The FTC Act, along with the Sherman Antitrust Act and the Clayton Antitrust Act, forms the foundation of U.S. antitrust and consumer protection laws. The treasury report points out that the FTC has not brought any cases to the DOJ regarding anti-competitive conduct in the distilled spirits industry for the last several decades [7].

4.3. Food and Drug Administration

The Food and Drug Administration (FDA) plays a role in regulating certain aspects of the beverage industry, particularly for wines under 7% alcohol by volume and products in the beer category that are not made from barley or hops. Alcohol is subject to the Food, Drug, and Cosmetic Act's misbranding and adulteration provisions [7]. Violations of the misbranding and adulteration provisions of the FD and C Act can result in regulatory actions by the FDA, including product recalls, warning letters, and legal enforcement actions. Companies must comply with these provisions to ensure the safety and integrity of their products and to meet regulatory requirements set forth by the FDA.

4.4. Alcohol and Tobacco Tax and Trade Bureau (TTB)

The Federal Alcohol Administration Act (FAA Act) grants the Alcohol and Tobacco Tax and Trade Bureau (TTB) authority to regulate the labeling and advertising of alcohol beverages [32]. As such, the TTB is the principal federal agency responsible for enforcing and administering laws related to the production, distribution, and taxation of alcoholic beverages. This includes distilled spirits, beer, wine, and other alcohol products [33]. The TTB regulations cover a wide range of aspects, including production, labeling, advertising, and taxation. The TTB issues permits, collects federal excise taxes, and regulates the labeling and advertising of alcohol beverages to protect consumers. Since prohibition, labeling has been an issue for distilled spirits producers. It was not until 2020 that the TTB made changes to labeling requirements that allowed greater flexibility to smaller producers who undoubtedly do not have legal teams that can navigate the cumbersome paperwork [34].

The FAA Act also addresses unfair trade practices that may be detrimental to fair competition, aimed at the relationship between producers, wholesalers, and retailers, including exclusive outlet arrangements and tied house restrictions designed to hamper exclusionary practices and vertical integration [7]. The intent is that large producers and wholesalers cannot leverage their resources to encourage retailers to carry their products at the exclusion of others (exclusive outlet), induce purchases through incentives such as ownership or credit (tied house), or bribery with money or gifts (commercial bribery) and they cannot sell products on consignment (only paying for what is sold) [7]. These statutes only apply to the exclusion of a product sold by a competitor but make no stipulations regarding shelf space, pricing, or other tactics used in retailing to induce purchases. This changed following a court case in 1995, with updated rules on what qualified as "exclusion", adding in slotting fees, category management, and tying arrangements.

Slotting fees are a subset of pay-to-play schemes, where a retailer receives money to provide preferential shelf space for specific products and is considered a threat to retailer independence [7]. The most recent violations regarding slotting fees occurred in Las Vegas, where major producers (Diageo North America, Pernod Ricard USA, Moet Hennessey USA, Bacardi USA) supplied approximately USD 2 million in inducements through a third party to obtain preferential shelf space at Harrah's Entertainment properties (now Caesars Corporation) [35]. The prohibition of slotting fees is to ban payments to gatekeepers allowing large producers and distributors to use their resources to edge out competitors.

Along with slotting fees, category management deals with product displays on retail shelves, which producers and distributors seek to influence, ultimately impeding retailer independence. Larger players in the spirits industry have the resources to generate shelf schematics and provide diagrams on how to best optimize their shelves, generally placing their products in prime locations with more shelf space than their competitors. The Treasury report notes that several individuals interviewed say that this is still common and producers/distributors "ply the category managers with trips, event tickets, discounted products, etc., to perpetuate their grip on the in-and-out flow of product" [7] (p. 40). Despite the negative consequences of category management including hampering competition, reducing consumer choices which leads to higher prices, the TTB has not brought any cases in this area in recent years.

Tying arrangements focus on wholesalers/distributors who require a retailer to purchase less desirable brands to gain access to buying their desirable brands. This is especially prominent when a distributor carries sought-after or rare brands, generally from large producers rather than craft producers. As of the time the report was written, no federal entity has brought actions in this area, despite interviews with players in the spirits industry noting that it is a common occurrence [7].

Consignment sales, as noted above, are not allowed under federal regulations. Consignment sales allow a retailer to only pay for the products that it sells. However, this type of sale may aid small producers in putting their products on a shelf by alleviating the risk for the retailer of an unknown product. One comment mentioned "competitively relevant conduct" [7] (p. 41), meaning the TTB should be more concerned with the goings-on of the large industry members rather than those with little to no market power. Similar to the CBMTA, the consignment sale regulations could be based on production volume offering a boon to small craft producers.

Federal requirements for obtaining an alcohol production permit are overly burdensome and require extensive details including equipment serial numbers and proof of funds. Meanwhile, a small startup distillery invests hundreds of thousands of dollars in equipment and a lease for a production facility before it can even apply for a permit with an uncertain wait time until operations can commence. These permit requirements are a barrier to entry which TTB has begun addressing to reduce the impact on new entrants. They are also working to reduce the superfluous paperwork related to tax collections, which one commenter says is time consuming and requires expensive software [7].

5. State Regulations

5.1. Post-and-Hold Regulations

To eliminate price competition, many states imposed post-and-hold regulations that require distributors to post their prices and hold them for a specified time, preventing distributors from changing prices. Since the prices are widely available, they are met but not beat. Provisions were implemented to prevent undercutting; however, these regulations allow one distributor to set minimum prices for competitors [7]. Research has indicated that post-and-hold laws facilitate collusion between distributors and reduce the incentive to cut prices, both to the detriment of the consumer [36]. Additionally, these regulations were enacted following prohibition to limit alcohol consumption by raising prices; however, there is no evidence to suggest that post-and-hold laws affect the rate of consumption of distilled spirits [37]. These regulations are effective in the transferring of wealth from consumers to distributors and producers as the price of a bottle of spirits could increase from USD 2.03 to USD 6.87, an average increase of 21% (compared to 12% for wine), meaning consumers would spend millions more to procure the same amount of product they would have without post-and-hold regulations [7,37].

5.2. Direct-to-Consumer (DTC) Sales

Products shipped directly from the producer to the consumer are known as direct-to-consumer sales. For alcohol products, this is a highly regulated space as it usurps the three-tier system that controls alcohol distribution and taxation. According to the treasury report, "direct-to-consumer sales offers a distinct distribution opportunity for small producers, opportunities for innovation, and the possibility of serving small niches" [7] (p. 17). However, only nine states and the District of Columbia permit direct shipping of distilled spirits compared to 47 states that allow wine sales DTC. The main concerns noted are tainted products entering the market, tax collection, age verification, and that spirits are more sought after by younger consumers than wine. However, the treasury report only validates one issue, citing an FTC report that found no issues with sales to minors in states that allow DTC shipments [7].

The success of the DTC program for wine should stand as a testament to the first two concerns noted, as there have been no reported issues with tax collection or tainted products. The lack of access to DTC for craft spirits brands limits their ability to reach wider markets, both in state and out of state, and restricts consumers from accessing sought-after products [38]. The craft spirits data project reports that 93.1% of business for small craft producers occurs in their home state [17]. For craft producers, this would open a larger market and allow them to sell outside their state and gain some traction in the market; however, incumbents favor regulations they can exploit over deregulation that fosters competition. A change to the DTC policy does not favor large producers whose products are readily available in liquor stores across the country. Therefore, lobbying for this change would not benefit them in any way.

In addition to the large multinational firms with nothing to gain from DTC sales, the other opponents of DTC sales are wholesalers and distributors. These companies have many more resources available to fight potential legislation that could change this policy than small producers [38]. However, these craft spirits brands would not be a good fit with the portfolios of the larger wholesalers/distributors as they produce less than 1000 proof gallons per year and primarily only make sales from their tasting rooms (where allowed) [38]. In this regard, some smaller producers may have heritage and authenticity (i.e., Coppersea Distilling, New Paltz, NY, USA) they can leverage as a competitive advantage against large multinational firms and further differentiate themselves in an otherwise saturated market [15]. However, this generally requires a long aging process where the product is sitting in a warehouse unable to be sold until it matures. DTC sales would allow a distillery the advantage of selling clear spirits that do not require aging to earn revenue in the interim and build a customer base. Overall, DTC sales could be the key to unlocking control over distribution that thwarts new entry. DTC sales for distilled spirits would strengthen the industry by reducing barriers to entry and boosting both local and state economies as wine DTC sales were estimated at around USD 4.2 billion in 2022 [39].

5.3. State-Franchise Laws

State-franchise laws aim to protect the distributors and wholesalers from large producers by limiting the producers' ability to switch from one wholesaler to another. These laws restrict competition among distributors who would otherwise try to woo producers by competing on price and services offered [7]. They also restrict a producer's ability to end a contract without "good cause" which requires a lot of time and money, burdening smaller producers to a larger extent than those with considerably more resources [7]. In many states, breweries and some wineries can self-distribute their products, which is advantageous for a smaller producer to grow brand awareness and increase sales; however, this is not an option for distilled spirits producers [40]. This places a burden on smaller producers who have to sign on with a distributor to reach a wider market, even though they may not be fairly represented by that distributor who also represents much larger well-known brands that can incentivize sales [40]. Changes in state-franchise laws would allow smaller producers to enter the market and distribute their own products until they reach a critical mass that would allow them to have parity with more well-known brands.

5.4. On-Site Sales

Some states make it more difficult for craft spirits producers to make sales on site like a brewery or vineyard typically does. While most states allow distilleries to have an on-site tasting room, most are not allowed to expand operations and have satellite tasting rooms. Seventeen states allow distilleries to offer free tastings to visitors; in all other states, a tasting fee must be paid, and some stipulate the size and amount allowed per person per day. Further, the sale of products on site is limited. While most states allow for off-premise sale of bottles, there are generally many stipulations regarding amount and frequency; for example, Texas allows two bottles per person per 30 days. Hawaii only allows bottle sales if it is made entirely from Hawaiian agricultural products, and in North Carolina, they have to buy their bottles at the state-run liquor store and then re-sell them on site [41]. American Distilling Institute provides a full breakdown of state-by-state regulations [41].

For on-premise sales, twenty-one states do not allow cocktails or full pours of spirits to be sold; the remaining states do but again with limitations in place. Lastly, thirty-seven states do not allow distilleries to self-distribute their products, meaning they must partner with a distributor to gain sales of their products beyond their on-site tasting room [41]. Comparatively, these regulations are much stricter than those for breweries, where most states have relaxed the traditional three-tier system to allow for the producer to also be the retailer of the product.

5.5. Retail Hours of Sale

The repeal of prohibition established control or license states. In a control state, the state government effectively has a monopoly on the distribution and sale of distilled spirits and to a lesser extent beer and wine which varies by state. In eighteen states, you can only buy beer and wine at the grocery store, while distilled spirits must be purchased at a specialty shop, generally referred to as a liquor store or bottle shop. In three states, no alcohol is sold in grocery stores, and in seven states only beer is sold in grocery stores [42]. These retail alcohol stores generally are closed on holidays and have limited hours of operation compared to grocery stores, limiting sales potential for distilled spirits. Control states also control the price of distilled spirits that are sold in their stores, and the price is higher than in a license state [43].

Additionally, state Blue Laws, which have widely been repealed, continue to have an impact that unfavorably places a burden on spirits sales compared to beer and wine. In four states, liquor stores are closed on Sundays and most federal holidays; however, beer and wine can be sold [42]. In terms of availability, this means that distilled spirits are harder to procure for the average individual than beer or wine.

5.6. Home Distilling

Although not mentioned in the treasury report, it is important to discuss home distilling. While brewers and winemakers can hone their craft at home, distillers are not afforded that same opportunity. On the federal level, individuals can own a still if it is used to make non-alcohol products such as essential oils, fuel, and perfume [44]. On a state level, home distilling is allowed in nine states, as long as it is not for commercial use or sale. In the remaining forty states, it is still illegal to produce distilled spirits at home for any use. On the other hand, it is legal to home-brew beer and make wine in all states for personal consumption and it can be sold with proper licensing [45]. Home brewers were the impetus for the craft beer movement, having spent years honing their craft and creating recipes [46]. Thus, the inability to home distill is a barrier to entry for small producers, one that has been pointed out in news media several times [47,48].

5.7. Licensing

Each state regulates the licensure of businesses that produce alcohol. In most states, craft spirits producers are charged a much higher price for the license to produce distilled spirits compared to beer or wine. As an example, in the state of Oklahoma, a distiller’s license costs USD 3125 annually, while a small brewery or winery with a self-distribution license only costs USD 750 annually [49]. In addition, construction must be completed, and equipment purchased and installed before permits or licenses can be issued, leading to high upfront costs for craft distillers looking to enter the market.

6. Conclusions

The policies governing distilled spirits in the United States are deeply rooted in historical contexts that may no longer align with contemporary societal needs and scientific understandings. As scholars and experts in academia, it is imperative to lead the charge in revising these policies to reflect current realities and promote economic equity for distilled spirits producers. By leveraging research, engaging in public discourse, and collaborating with diverse stakeholders, academia can play a pivotal role in creating policies that are fair, effective, and reflective of contemporary society. Academia offers a wealth of interdisciplinary expertise, including public health, economics, sociology, and law, providing a comprehensive perspective on the impacts of distilled spirits policies and proposed changes to those policies.

Executive Order 14036 represents a significant step towards promoting competition and economic fairness within the distilled spirits industry. By addressing anti-competitive practices and seeking to dismantle barriers that hinder small and independent producers, this policy initiative aligns with broader goals of economic equity and consumer protection. As discussed, the order's emphasis on reducing monopolistic control and fostering a more dynamic marketplace has the potential to enhance innovation, improve market access, and offer consumers greater choice.

Ultimately, the reforms envisioned by Executive Order 14036 hold promise for transforming the distilled spirits industry into a more equitable and competitive landscape. However, at the time that many of these regulations were developed, the United States was still reeling from the outcome of prohibition. This is noted throughout the report that Congress and Senate members were fearful of large producers and distributors' concentrated power but also other "social evils, including the activity of bootleggers and other black-market sellers, and overconsumption caused by larger producers aggressive marketing techniques" [7] (p. 35). However, continued collaboration between policymakers, industry stakeholders and academia can ensure that policies are updated to reflect the current situation of the United States distilled spirits industry that has significantly changed since the years following prohibition. The outdated policies have allowed big businesses to monopolize the marketplace and place an undue burden on consumers as well as small producers. The following sections outline the call to action for policymakers and academia.

6.1. Call to Action for Policymakers

The historical stigma from the prohibition era continues to affect distilled spirits producers more than beer and wine producers in that there is a legacy that results in more stringent advertising restrictions and regulatory scrutiny while maintaining barriers to market entry and growth for smaller producers. This paper calls for officials to address regulatory disparities that create a competitive disadvantage for distilled spirits producers compared to beer and wine producers. Policymakers should promote more fair competition and reduce barriers for small producers. Reforms such as easing licensing requirements and expanding direct-to-consumer sales are needed.

Policymakers should aim to simplify and expedite the process of obtaining licenses to produce and sell distilled spirits. Complex and lengthy licensing procedures can deter entrepreneurs from entering the market. Streamlining these processes can lower the barrier to entry. Additionally, policymakers should review and revise regulations to minimize unnecessary bureaucratic hurdles without compromising public safety or product quality. Excessive regulations, such as overly strict labeling requirements, pricing schemes, or production standards, can stifle innovation and limit the ability of small distilleries to compete with larger established brands.

Policymakers should strive to create equity in advertising laws that would benefit all alcohol products fairly. Likewise, while craft brewers can perfect their products through home brewing, the same cannot be said for distillers. In many states, home distillation is illegal and even owning a still is illegal. A policy change on this front would allow distillers to determine whether the large investment to start an actual distillery including licensing, building, and equipment is worth the time and money required.

The mandated separation of producers, distributors, and retailers under the three-tier system increases costs and complicates market access for new entrants, limiting their ability to compete with larger, established companies, which results in the market being dominated by a few large conglomerates that own a multitude of brands. In recent years, breweries have been allowed to operate under a two-tier system, consolidating the producer and retailer tiers to offer onsite tap rooms. Similar arrangements could be considered for smaller distiller spirits producers. Further, restrictions on direct-to-consumer sales and on-site sales of spirits compared to beer and wine limit revenue opportunities for small producers. Expanding these sales channels could significantly boost sales and provide consumers with greater choice.

Trends in consolidation have also occurred in the distribution tier, with a few enormous companies controlling most of the market. This consolidation impedes smaller producers' access to distribution channels, further cementing the market with larger companies. Other marketing practices such as slotting fees, category management, and tying arrangements offer large producers and distributors an unfair advantage, squeezing out smaller competitors and limiting consumer choice. Policymakers should address these concerns by allowing distilleries to self-distribute products and placing more stringent regulations on retailers to eliminate unfair purchasing schemes and shelf access.

6.2. Call to Action for Consumers

Consumers can significantly influence policy changes that allow distilled spirits producers to gain parity in the market by advocating for equitable regulations and challenging outdated policies that disproportionately disadvantage these producers compared to beer and wine producers. One approach is for consumers to engage in public discourse and legislative advocacy that promotes fair taxation across all types of alcoholic beverages, arguing that distilled spirits should not be subject to higher tax rates simply due to historical precedents. Additionally, consumers can support initiatives that seek to modernize advertising and distribution regulations, enabling distilled spirits to compete more effectively with beer and wine, which often benefit from more lenient rules. By participating in public petitions for policy change, attending legislative hearings, and directly communicating with policymakers, consumers can help dismantle regulatory barriers that hinder market access and growth for distilled spirits producers. Furthermore, consumer support for local craft distilleries and campaigns that highlight the economic contributions of the spirits industry can strengthen the case for policy reform. Through these efforts, consumers can contribute to creating a more level playing field where distilled spirits producers have the same opportunities to thrive.

6.3. Call to Action for Academia—Future Directions for Research

Some specific areas of concerns that researchers can address are the effect of post-and-hold laws on smaller producers and how these anticompetitive pricing schemes only benefit the large producers. As each state has vastly different alcohol policies, it can be beneficial to form a coalition of researchers by state to thoroughly analyze the following issues: those regarding distribution laws, licensing and inspection requirements, on-premise sales at the distillery, similar to what breweries can do, and direct-to-consumer sales that many wineries take advantage of but fewer breweries and even fewer distilleries have access to. A coalition of researchers can analyze which regulations work best to aid (impede) small distilleries and how best to implement (change) similar regulations in other states.

On a national level, research regarding the impact of mergers and acquisitions by the large corporate distillers and the impact on local economies should be conducted. As Norris and Colleagues note, craft distilleries are valuable contributors to tourism redevelopment in areas with large amounts of corporate conglomeration [9]. As was seen with the craft beer industry, large, distilled spirits producers and brand portfolios can buy up these smaller producers with the intent of shuttering them to eliminate the competition or move production to their larger facilities [50]. This has immediate impacts on the communities that rely on the jobs at the distillery and all the tourist traffic it may bring to the area. However, the sales of the small distillery may be due to the difficulty they experience in entering the market and gaining ground with sales due to the restrictions for on-site tasting and sales, advertising regulations, and inability to self-distribute and sell directly to consumers, all policies that this work points to as areas of concern and topics for future research.

The distilled spirits industry faces significant regulatory and market challenges that excessively affect the smaller producers. This paper highlights the need for continued alignment between industry and academic research to support the future of the industry. The lingering stigma against distilled spirits influences consumer behavior and regulatory approaches. Changing these perceptions through educational programs focused on beverage education not only for students but also through outreach to community members could improve the acceptance of craft spirits and further support policy changes. Additionally, non-alcohol spirits are trending, and courses can be adapted or created to educate students on this new segment and how it can be operationalized on cocktail menus.

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