

October 16, 2003

Chief, Regulations and Procedures Division Alcohol and Tobacco Tax and Trade Bureau U.S. Department of Treasury P.O. Box 50221 Washington, D.C. 20091-0221

Re: Flavored Malt Beverages and Related Proposals Notice of Proposed Rulemaking

Via Email: nprm@ttb.gov

Dear TTB Officials:

On behalf of the Flavor and Extract Manufacturers Association of the U.S. (FEMA), I am pleased to submit comments regarding the proposal to change the beer and malt beverage regulations related to alcohol beverages marketed as flavored malt beverages, 68 Fed. Reg. 14292 (March 24, 2003). FEMA is the national trade association of companies that create and manufacture flavors for use in a wide variety of products including flavored malt beverages. Because we represent those that create and manufacture the flavors, but not the finished products, our comments focus on the technical aspects of creating flavors for these beverages.

FEMA encourages TTB to reconsider the proposed regulations change. The proposed changes, by significantly restricting the amount of alcohol contributed to the finished product from flavors, would make it technically impossible for flavor chemists to satisfy the consumer desire for distinctive, fresh, fruity malt beverages being sold legally under existing regulations.

Why do flavors contain ethyl alcohol? Most flavors contain ethyl alcohol because it is a safe, economical, and effective extraction medium for fruits, nuts, and botanicals (cocoa, coffee, vanilla, etc), as well as a diluent for polar and non-polar flavor chemicals. Fruit essences and distillates, which are used extensively in the creation of natural fruit flavors, contain an appreciable amount (up to 20-25%) of naturally occurring ethyl alcohol. Ethyl alcohol is also used to prepare washes of citrus oils, which eliminate waxes, isolate terpenes, and create a clearer beverage. Ethyl alcohol is also the preferred solvent because it doesn't form off-tasting acetals and other derivatives that are associated with other solvents. The use of other non-alcoholic

FEMA Comments - FMB Page 2 of 3 solvents such as propylene glycol in place of ethyl alcohol is limited due to their contribution to off-taste and flavor. Various regulations limit the amount of ethyl alcohol in non-alcoholic beverage food products to less than 0.5%, so it would appear that the 0.5% limit would be a convenient, logical limitation. This is not the case. By their composition, alcoholic beverages require higher flavor loads to deliver pleasing

characterizing flavors. Many non-alcoholic beverages use emulsions to deliver flavor systems, but this is not possible in alcoholic beverages because the destabilizing effect of the ethyl alcohol will produce precipitation and oil separation in the final beverage. Therefore, the higher flavor level and the dependence on ethyl alcohol as the only reliable solvent makes it necessary to exceed the 0.5% limitation to manufacture acceptable and stable products. Unique problems associated with the flavoring of malt based beverages.

In the notice of proposed rulemaking, TTB references an internal study of 114 products marketed as flavored malt beverages. This study documented that the majority of producers of flavored malt beverages have formulated their products in accordance with ATF Quarterly Bulletin 1996-1 (96-1). The result has been the evolution of beverages that deliver to the consumer a clean, pleasant flavor, and that have a reasonable shelf life.

As the TTB study demonstrates, producers have used various treatments to reduce the inherent bitterness and off-flavor characters that are associated with fermented malt beverages. The combination of flavors formulated under TTB 96-1 and the treatment of the malt base has allowed beverages to be formulated and produced with large consumer appeal. If by regulation change TTB were to limit the contribution of alcohol from flavors to less than 0.5%, it would negatively impact the taste of flavored malt beverages and limit the shelf life of these products.

Malt based beverages require a higher percentage of flavor addition than other alcoholic beverages due to the more pronounced organoleptic properties of malt base itself. Malt based products have an aftertaste that is difficult to overcome. The aftertaste and malty off-characters tend to accentuate with increased exposure to heat. Generally, a higher flavor usage level is required to compensate for the more prominent malty taste and negative flavor characters that develop.

Limiting the amount of alcohol derived from flavor severely limits the opportunity to use vanilla, cocoa, coffee and other botanical extracts that often require usage levels of three percent or higher in the finished products. Many fruit flavors use essences and distillates, which contain a significant amount of water. The water creates solubility issues with other flavor ingredients, necessitating increased ethyl alcohol content in the flavor and increased flavor usage. Conclusion Ethyl alcohol is used in flavors as a solvent and as a carrier for the flavor ingredients; not an intended source of alcohol. The alcohol loses its identity as alcohol when it is used as a carrier even though there is some alcohol by volume (ABV) contribution. Since the

FEMA Comments - FMB Page 3 of 3 ABV contribution by flavor to the total ABV of the beverage is incidental (meaning not the intended purpose), it is inappropriate to use flavor alcohol contribution to define a category. Limiting the contribution of alcohol from flavors to less than 0.5% would change the overall taste profile of these products by limiting the amount of flavor added, and the consumer will ultimately receive a different tasting, less acceptable beverage. The change in flavor will be caused by a combination of increased malt base percentages and off-flavor contributed by the malt.

In light of the arguments made above, we strongly encourage TTB to withdraw this proposal. Limiting either the ingredients that may be used in flavors or

the alcohol contributions from flavors would make it impossible for manufacturers to continue producing many of the malt beverages being sold today and would severely limit the flavor industrys opportunity for new product development. We appreciate the opportunity to comment on this proposal and we are available to discuss these comments if that would be helpful to the agency.

Sincerely,  
Glenn Roberts Executive Director