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State of North Carolina  
ALCOHOLIC BEVERAGE CONTROL COMMISSION  
ANN SCOTT FULTON 4307 MAIL SERVICE CENTER COMMISSION MEMBERS:  
ACTING CHAIR RALEIGH, NC 27699-4307 RICKY WRIGHT  
WAKE FOREST  
MICHAEL C. HERRING '919' 779-0700 MIKE A. JOYNER  
ADMINISTRATOR  
CHARLOTTE  
FAX (919) 662-3583  
August 19,2003

Mr. William H. Foster, Chief  
Regulations and Procedures Division  
Alcohol and Tobacco Tax and Trade Bureau  
P. O. Box 50221  
Washington, DC 20091-0221

(Attn: Notice No. 4)

Dear Mr. Foster:

As Acting Chairman of the North Carolina Alcoholic Beverage Control Commission and as a member of the NABCA Board of Directors, I commend TTB on its prompt response to the states' concerns over the content, labeling, and marketing of Flavored Malt Beverages (FMBs), and write to indicate my support for TTB's proposed changes to its rules governing FMB standards, and their labeling and advertising. I am also appreciative of your excellent presentation explaining the history of the development and approval process of these products at last October's Administrators Conference in Philadelphia.

Bearing in mind the controversy over this issue, and the confusion of ABC regulators and retailers of malt beverages as to the proper classification of FMBs (as well as consumers), I am writing to indicate my support of TTB's proposed rule changes in new section 7.11 whereby the finished flavored malt beverages must contain less than 0.5% alcohol by volume from alcohol flavoring materials and other ingredients containing alcohol. I agree with TTB's belief that a malt beverage that contains 0.5% or more alcohol by volume that is derived from distilled spirits or from distilled spirits in the form of flavors should, in fact, be classified, taxed and distributed as a distilled spirit. I further believe that malt beverage manufacturers' recent use of flavors containing distilled spirits (to the extent that the alcoholic content of the finished product is

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I also support TTB's proposal to require a mandatory statement of alcoholic content on the brand label for FMBs containing alcohol from sources other than from fermentation at a brewery [proposed new rule sec. 7.22(a)(5)]. It has been our experience at the Commission that a statement of alcoholic content is beneficial to consumers, based on the inquiries and comments we have received over the years. I believe it is essential in the case of FMBs that alcohol content be stated because a significant number of the FMB ` s brand labels are, at first glance, virtually identical to distilled spirits product labels or resemble popular non-alcoholic juices, sodas, bottled waters and energy drinks.

Further, I am in favor of the codification of ATF Ruling 2002-2 that would prohibit a manufacturer or brand owner from using descriptive language or terms referring to the intoxicating effects of the product, or claiming that the flavor of the FMB is like a particular distilled spirit product, either by type or brand. I do not believe statements such as these should appear on either the brand label or any other label, carton or advertisement for the product. These statements are, in my opinion, misleading, in that many products' labels have carried statements in such a way that the consumer is left with an impression that the product contains distilled spirits.

Finally, I support the additional proposed changes for Part 25 that revise the definition of "beer", and that govern the filing of formulas with TTB.

The changes proposed by the TTB will provide a national standard for manufacturers, wholesalers, and retailers of malt beverages, will provide for consistency in the historical and traditional categorization of products, taxation, and distribution by the federal government as well as the states, and will provide for consistency in consumer expectations.

Lastly, I am informed that despite concerns expressed previously by some manufacturers as to their ability to produce existing FMBs in accordance with the new proposals, the manufacturers have already demonstrated their expertise and ability to brew FMBs under the new proposed federal standard, so that the reformulated FMB products will look and taste the same, and have no discernable taste differences for consumers.

Thank you for the opportunity for comment on the proposed rule changes, and please feel free to contact us if you have any questions.

Ann S. Fulton  
Acting Chairman