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United States Senate  
Washing, DC 20510

October 15, 2003

Mr. William Foster  
Chief, Regulations and Procedures Division  
Alcohol & Tobacco Tax & Trade Bureau  
Department of the Treasury  
ATTN: Notice Number 4  
P.O. Box 50221  
Washington, DC 2009 1-0221

Re: TTB Notice 4. Flavored Malt Beverages and Related Proposals  
Dear Mr. Foster:

I am writing to comment on TTB Notice 4, Flavored Malt Beverages (FMBs) and Related Proposals. I am concerned that the proposed FMB standards, which would require 90 percent of the alcohol in FMBs to come from a malt base, would be overly costly, harmful to the product, and - most importantly - produce little public benefit.

First, the 90/10 formulation standard may affect the flavor and appearance of these beverages, which have already attained considerable consumer loyalty. Retrofitting the FMB manufacturing process to derive 90 percent of the alcohol in an FMB from a malt base would be tremendously costly, and could jeopardize the profitability of this growing market sector. If the new formulation standards increase the costs of producing FMBs, and alter their taste such that consumers are reluctant to purchase them, the FMB market will decline. This decline in profitability will most surely drive some FMB manufacturers out of the market, and reduce competition in the marketplace. Consequently, you should anticipate loss of jobs in factories that produce FMBs, and increase costs to consumers.

Second, the TTB has offered no compelling public policy rationale for why the formulation of these products needs to be altered in this drastic way. With or without the proposed changes, FMBs will contain no more alcohol than beer; and the alcohol content in FMBs and beer will have identical effects upon those who consume the beverages. Additionally, it is not clear how this rule would reduce underage drinking, since the Federal Trade Commission has recently found that FMB producers do not market to youth.

Third, this proposed rule would penalize those who have relied on longstanding TTB (ATF) policies. The decades-old law that regulates beer, wine and distilled spirits was most recently re-examined in 1996. At that time, set a standard for flavor content in FMBs that contained more than 6% alcohol by volume in the finished product. Although this ruling contemplated a

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rulemaking on the use of flavors in FMBs with alcohol by volume of less than 6%, no such proposal appeared until this year. In the intervening 7-year time period, manufacturers have relied on the existing law and TTB action. TTB has approved dozens of Statements of Process (SOP's) for FMBs. In reliance, manufacturers have invested millions of dollars in the formulation and marketing of new products. These investments have created hundreds of jobs and a fast-growing U.S. market sector in which tens of millions of cases of FMBs have already been sold. Without a reasonable public health or safety rationale, it does not seem prudent or fair to revise these rules dramatically at this stage of the game.

Given the costs that the 90/10 standard would impose on the FMB industry, and the minimal benefits it would provide to consumers and the public, I urge TTB to re-examine this issue and to adopt a different majority standard for the formulation of FMBs.

Best personal regards,

Jim Bunning

United States Senator