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NORTH CAROLINA GENERAL ASSEMBLY
SENATE CHAMBER
STATE LEGISLATIVE BUILDING
RALEIGH 27601-2808

SENATOR PHILIP E. BERGER COMMITTEES:
26TH DISTRICT JUDICIARY I (VICE CHAIRMAN)
RALEIGH ADDRESS: 1121 LEGISLATIVE BUILDING COMMERCE (RANKING MINORITY MEMBER)
RALEIGH. NC 27601-2808 APPROPRIATIONS/BASE BUDGET
TELEPHONE: (919) 7335708 APPROPRIATIONS DOT
 (919) 754-3246 FAX FINANCE
 PENSIONS & RETIREMENT AND AGING
E-MAIL: PHILBE@NCLEG.NET
 RULES AND OPERATIONS OF THE SENATE
DISTRICT ADDRESS: PO BOX 1309 STATE GOVERNMENT, LOCAL GOVERNMENT
EDEN, NC 27289-1309 AND VETERANS AFFAIRS
TELEPHONE: (336) 623-5210 TRANSPORTATION
 (336) 623-6313 FAX WAYS AND MEANS

Mr. William H. Foster, Chief
Regulations and Procedures Division
Alcohol and Tobacco Tax and Trade Division
P.O. Box 50221
Washington, DC 20091-022 1

RE: Notice No. 4 Proposed Rule Making (200 1-R-136P)
Dear Mr. Foster:

I am writing to express my support my support for the Alcohol and Tobacco Tax and Trade Bureau's proposed rulemaking for flavored malt beverages., The Bureau's action is an important clarification of federal alcohol beverage categories established to maintain an orderly marketplace in the United States.

Furthermore, the proposed standard reinforces North Carolina's three-tier system which is based, in part, on clear distinctions between categories of alcoholic beverages. I concur with the North Carolina ABC Commission's letter endorsing the proposed standard and encourage you to adopt the proposed regulation. (See letter from Ann S. Fulton, Acting Chairman, North Carolina Alcoholic Beverage Control Commission, dated August 19, 2003).

Unless there is a national standard rooted in existing law and regulation, manufacturers, retailers, and wholesalers will face a potential patchwork of individual state laws and regulations where the same product may ultimately be sold as "beer" in one state and as a "distilled spirit" in another. This would not be an appropriate standard for consumers or for regulators.

Rockingham and Guilford Counties

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Thank you for this opportunity to offer my support for the current proposed rulemaking regarding flavored malt beverage. Please feel free to contact me if you have any questions or desire further comment.

Sincerely,

Philip E. Berger

PEB/tb

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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.

Very truly yours,

Ann S. Fulton
Acting Chairman