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MINERAL RESOURCES

October 21, 2003

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 20091-0221

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

I write to comment on TTB Notice 4, Flavored Malt Beverages and Related Proposals, and to urge TTB to adopt a "majority" flavored malt beverage ("FMB") formulation standard instead of the extreme 0.5% alcohol by volume limit proposed in Notice 4. My constituents at City Brewing in La Crosse, Wisconsin have a considerable stake in the outcome of this rulemaking. I urge TTB to minimize any new regulations' impact on businesses and workers in the brewing industry, and to help preserve healthy competition in the flavored malt beverage market.

City Brewing has been a profitable business since resuming operation in 2000. It now employs 350 people with an annual payroll of \$10 million. In a rural, Midwestern town that has lost hundreds of jobs in the last two years, City Brewing Company has actually added employment positions to the local economy.

City Brewing Company produces and packages a variety of alcoholic and non-alcoholic products, including flavored malt beverages. If re-classified as a distilled spirit under the proposed rule, City Brewing Company would no longer be permitted under Federal and state liquor control laws to produce these flavored malt beverages. Loss of this important business would have a significant negative economic impact at City Brewing Company.

Most FMBs on the market today were developed in reliance on longstanding policies of TTB and its predecessor, the Bureau of Alcohol, Tobacco & Firearms. Those policies placed no limit on the amount of alcohol that flavors could contribute to products containing 6% alcohol by volume or less. The Bureau in 1996 suggested that rulemaking "in the near future" might limit

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<< 0044528A >>

October 21, 2003
Page 2

the use of flavors in such products, but it abandoned that rulemaking project and did not even mention it in the agency's semi-annual Regulatory Agenda. Now Notice 4 again seeks to change the rules, conceding that by imposing limits for the first time on the amount of alcohol that flavors can contribute to an FMB containing 6% alcohol by volume or less, it will make a "significant change" to existing policies

As you know, the larger a change in rules, the greater the costs and uncertainty imposed by that change. Notice 4 admits that the law supports a formulation standard requiring that a majority (more than 50%) of the alcohol in an FMB derive from its fermented beer base a standard closer to the existing status quo than the 0.5% standard. Why, then, does Notice 4 propose a more rigid standard requiring even greater changes, all at the expense of companies that relied in good faith on the federal policy Notice 4 now seeks to change?

Given these facts, I urge TTB to carefully consider the competitive aspects of a 0.5% standard on the U.S. beer market. Notice 4 admits that the law would support a majority standard yet TTB inexplicably proposes to promulgate a far more stringent standard without submitting to a cost/benefit analysis. A majority standard would address the consumer and state issues cited in the Notice as TTB's reason for acting.

I urge you to issue final regulations adopting a majority standard that all current FMB producers can accept.

Sincerely,

Ron Kind
Member of Congress