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CSPI
Center for
Science in the
Public
Interest
nonprofit Publisher of Nutrition Action Healthletter

October 9, 2003

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

Re: Notice No. 4 - Flavored Malt Beverages and Related Proposals
Dear Mr. Foster:

The Center for Science in the Public Interest (CSPI) respectfully submits this letter in response to the Notice of Proposed Rulemaking regarding a standard for flavored malt beverages and related proposals, 68 Federal Register 14292, March 24, 2003.

CSPI applauds the TTB's efforts to correct consumers' considerable confusion concerning the character and content of this category of "cross-over" drinks, also known as "alcopops" because of their widely acknowledged youth appeal. We support TTB's interest in establishing uniform standards for the flavored malt beverage category. We believe such standards will to facilitate the fair and consistent taxation and regulation of those products.

We are concerned, however, that the scope of the TTB's rulemaking is heavily biased in favor of accommodating commercial interests, with insufficient attention to basic consumer and public interest concerns about "alcopops." Our specific comments on the proposed rulemaking are as follows:

1) CSPI supports the TTB's proposal to tax alcoholic beverages as beer and regulate them as malt beverages only if less than one-half of one percent (0.5%) of the alcohol content by volume is from alcohol added through the addition of distilled spirits. We support the basic premise of taxing and classifying such beverages as spirits if the spirits-based percentage of their alcohol content exceeds this threshold.

Such classification would have a significant beneficial public health impact. CSPI's own research has shown that "alcopops" are extremely popular with underage drinkers.¹ Since most "alcopop" products presently derive greater than 0.5% of their alcohol content from distilled spirits sources, taxing and classifying them as distilled spirits would help reduce youth access to "alcopops" by limiting the range of outlets where they could be sold. Such a change would remove them from the outlets (such as convenience stores) that are most conducive to underage sales, and (conceivably) raise the price of the products, thereby making them less attractive to youth.

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We are troubled, however, by TTB's apparent equivocation about the appropriate standard to use in classifying malternatives. We note that TTB prominently invites comments on "other proposed standards," including one that would allow up to 49% of the alcohol content to be derived from non-malt sources. We fear that such an open-ended, ambiguously defined process will lead to prolonged regulatory inaction and/or a watered-down standard.

We urge TTB to take swift and decisive action to re-classify liquor-based malt beverages based on the 0.5 % alc/vol threshold. TTB's drawn out rule-making process has already delayed state initiatives (such as Tennessee and Oregon) to more tightly regulate spirits-based malternatives, based in part on concern over their strong appeal to underage consumers.

Once the new rule goes into effect, TTB should further move to collect past-due taxes on the malternative products that were improperly classified and taxed as malt beverages. This action would acknowledge the true nature of the products; restore equity among all producers of such products; restore revenues to the Treasury that should have been collected, and; recover funds from alcohol marketers who intentionally mischaracterized their products to maximize distribution and minimize price. This initiative would also be consistent with legislation in other countries (Britain, Switzerland) to impose higher taxes on "alcopop" products to deter their consumption by underage persons.

2) CSPI supports TTB's proposal to require that the alcohol content of flavored malt beverages be included on the brand label. However, we are concerned that requiring such labeling only for certain flavored malt beverages (which derive more than 0.5% of their alcohol content from spirits) perpetuates arbitrary inconsistencies in labeling requirements among alcoholic-beverage categories.

From a consumer perspective, it makes little sense to require that alcohol content be disclosed only for certain flavored malt beverages and not for beer or "alcopops" in general. We urge TTB instead to develop improved industry-wide standards requiring alcohol-content labeling on all malt beverages and "alcopops," whatever the primary source of their alcohol.

In addition to requiring clear, consistent disclosure of alcohol content, there is no reason alcoholic beverages should be exempt from other labeling requirements that would inform consumers about their alcohol consumption. Such labeling would provide essential information, such as serving size, calories, and ingredients. Given the nation's obesity epidemic, requiring disclosure of calorie content would provide a significant benefit to consumers trying to limit their calorie intake. Consumers presently are unlikely to know, for example, that many "alcopop" products contain as much as twice the calories of a regular (not "light") beer. CSPI urges TTB to issue a new rule proposing uniform, updated standards for alcohol content, calorie, ingredient, and serving size labeling for all categories of alcoholic beverages.

3) CSPI is concerned that the proposed rule once again fails to address the actual extent to which consumers are misled by the use of popular, well-known distilled spirits brand names in the advertising and on the labels of supposed malt-beverage products. As with TTB's previous ruling on flavored malt beverages (2002-2), TTB acknowledges the consumer confusion, then proceeds arbitrarily to rule

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(without citing any supporting evidence) that "the use of a brand name of a distilled spirits product as the brand name of a malt beverage is permitted."

CSPI's own consumer research found considerable confusion about the nature and identity of liquor-branded malt beverages. Data collected for CSPI in June, 2002 found that both teens (12- to 18-year-olds) and adults think "alcopop" products with liquor-brand names are more like liquor than beer or wine.

4) Finally, the proposed rule seeks comments on whether Treasury and TTB need additional statutory authority to regulate flavored malt beverages, to "avoid unintended economic consequences" of developing standards for the regulation of flavored malt beverage products. CSPI sees no need for additional TTB statutory authority to "avoid unintended economic consequences." The law and prior rulings by BATE provide sufficient notice to producers of flavored malt beverages of the economic risks related to the development and marketing of those products. Should any changes in law be contemplated, we believe they should focus predominantly on avoiding consumer deception and unintended public health and safety problems related to the consumption of the products. In particular, TTB should explore the development of rules to provide more public health-oriented distribution, marketing, labeling, and advertising of alcopop" products that are so heavily favored by underage consumers.

We applaud TTB's effort to correctly classify the burgeoning category of "alcopop" products and we urge TTB to ensure that the final rule addresses consumer, health, and safety considerations based on sound consumer research.

Thank you for your consideration.
Kiberly Miller George A. Hacker
Manager of Federal Relations Director
Alcohol Policies Project Alcohol Policies Project

A July, 2002 national survey by Penn, Schoen, Berland & Associates found that teens were three times more likely than adults to have seen, heard or read about "alcopops," and that teens were nearly twice as likely than adults to have tried "alcopops." In fact, over half of teens ages 17 to 18 (51%) and over one-third of teens ages 14 to 16 (35%) said they had tried them.