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From: Kelley, William (ABC) [William.Kelley@state.ma.us]
Sent: Friday, October 17, 2003 10:11 AM
To: nprm@ttb.gov
Cc: Jenkins, Eddie J (ABC); Cronin, Robert (ABC); Iannella, Suzanne (ABC); Moriarty, Ellen (ABC)
Subject: Notice No 4 - Flavored Malt Beverages and Related Proposal

Importance: High

Enclosed herewith please find the comments from the Massachusetts Alcoholic Beverages Control Commission in support of the promulgation of the proposed amendments in Notice No 4. - Flavored Malt Beverages and Related Proposal.

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE STATE TREASURER
ALCOHOLIC BEVERAGES CONTROL COMMISSION
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Robert Cronin, Commissioner
Suzanne Iannella, Commissioner
Ellen M. Moriarty, Executive Director

VIA E-MAIL NPRM@TTB.GOV and
FIRST-CLASS MAIL

October 17, 2003

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

RE: Notice No. 4
Flavored Malt Beverage and Related Proposal

Dear Mr. Foster: On behalf of the Alcoholic Beverages Control Commission of the Commonwealth of Massachusetts ("the Commission"), I am writing to express the support of the Commission for the promulgation by the Alcohol and Tobacco Tax and Trade Bureau ("TTB") of the changes to the regulations regarding so-called "flavored malt beverages" ("FMB"). The Commission supports the proposal to establish the standard for the identity, content, and labeling of FMB, including the requirement that, in order to be identified truly as FMB, not more than 0.5% alcohol by volume of the finished products be derived from ingredients and/or processes other than fermentation at the brewery. The Commission believes that the proposed rulemaking set forth in the above-referenced Notice No. 4 strikes the appropriate balance between the control needed to protect the common good, that includes both truth in labeling and advertising as well as the avoidance of consumer confusion in the marketplace, while fostering a state of competitiveness in the industry in which new products can be developed to meet a public need identified by legitimate entrepreneurs.

The Commission is the general supervisor of the alcoholic beverages industry in Massachusetts and is vested with the responsibility for the "general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages as defined in section one of chapter one hundred and

thirty-eight and also of the quality, purity and alcoholic content thereof." M.G.L. c. 10, 71, as amended by Acts 2003, Chapter 26, 408. In fulfilling this responsibility, the Commission holds the authority to "make regulations not inconsistent with the provisions of this chapter for clarifying, carrying out,

enforcing and preventing violation of, all and any of its provisions for inspection of the premises and method of carrying on the business of any licensee, for insuring the purity, and penalizing the adulteration, or in any way changing the quality or content, of any alcoholic beverage, for the proper and orderly conduct of the licensed business, ... and regulating all advertising of alcoholic beverages." M.G.L. c. 138, 24. The Commission has exercised this authority in many ways, including but not limited to the promulgation of a regulation that requires labeling "in the manner prescribed by the Federal Government." 204 CMR 2.06.

The Commission in the past has substantially deferred to federal standards concerning the identity of a specific product, but the information that has come to light recently during the review and discussion of FMB is troubling to the Commission. The emerged facts regarding the quantity and source of alcohol by which the alcoholic content of FMB is increased is a matter of concern; however, the Commission has deferred taking any action until the completion of the pending rulemaking process by the TTB. The Commission submits that the proposed amendment stated in Notice No. 4, Flavored Malt Beverage and Related Proposal promotes fair competition among legitimate businesses by clarifying the identity of any specific product both for the purpose of taxation and for the purpose of identifying who is a legitimate seller and who is a legitimate buyer of any specific product that exists or can be developed. I

thank you for your attention and urge your action as soon as possible.

Very truly yours,

Robert Cronin
Commissioner

cc: Suzanne Iannella, Commissioner, Alcoholic Beverages Control Commission
Ellen Moriarty, Executive Director Alcoholic Beverages Control Commission