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COMMONWEALTH of VIRGINIA  
Department of Alcoholic Beverage Control  
RICHMOND, VIRGINIA 23261

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May 13, 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:

This letter is submitted by the Virginia Department of Alcoholic Beverage Control 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.

The Virginia Department of Alcoholic Beverage Control is the agency of the Commonwealth tasked with the regulation of the manufacture, distribution, and sale of alcoholic beverages in Virginia. Part of that process involves the approval of products and labels, as well as the collection of the appropriate taxes. The flavored malt beverage category causes us considerable consternation. We have generally accepted your agency's classification of products in the past. However, under Virginia law, a product containing alcohol from more than one source is classified according to a hierarchy of alcohol, spirits, wine, and beer. If a product contains a mixture of alcohol from spirits and beer, it is classified as a distilled spirits product, even if the majority of the alcohol is contributed by the beer. Obviously, your recent study indicating the source of alcohol in most flavored malt beverage products has shown us that these products are incorrectly classified in Virginia. We are presently delaying action pending the outcome of your rulemaking.

Mr. William Foster

2

May 13, 2003

This department supports the proposed 0.5% alcohol by volume standard proposed by TTB. Since under both federal and Virginia law that percentage is the threshold for taxation and regulation as an alcoholic beverage, we believe that the addition of flavoring units with such a small alcoholic content should not be considered as changing the character of a beer. Flavored malt beverages produced under such a standard should be able to qualify as beer products in Virginia without statutory change. Any standard allowing a higher percentage of alcohol from a source other than the brewing process would create a potential conflict with current Virginia law.

We further support the remainder of the proposals contained in the notice. They appear to represent positive steps to provide consumer information and prevent confusion. We urge TTB to adopt the proposals as soon as possible and require industry compliance in as short a period as is reasonable.

Sincerely,

V ernon M. Danielsen  
Chairman

