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October 10, 2003

Mr. William Foster
Chief, Regulations & Procedures Division
Alcohol & Tobacco Tax & Trade Bureau
P.O. BOX 50221
Washington, DC 20091

RE: Notice No. 4

Dear Mr. Foster:

I write in support of the 5 1/49 "majority" standard for flavored malt beverages (FMBs), Notice No. 4. I support the 5 1/49 "majority" standard because it will promote fairness; ensure the continued availability of today's most popular FMB products; and allow brewers to continue to satisfy their consumers.

The federal government for two decades, allowed the use of flavors containing alcohol in beers and FMBs under 6% alcohol by volume without limitation. An entire category of malt beverages with varying taste and flavor types has been developed in reliance on that and should not be harmed now by new federal regulations. Virtually all FMBs derive most of their alcohol from added flavoring ingredients. As you probably know, flavors traditionally use distilled alcohol as an extraction agent and neutral carrier for extracts and essences.

The extensive use of flavors in FMBs allows them to achieve the clean, refreshing and flavor-driven taste that many consumers embrace as an alternative to the malted barley, gram and hop flavors associated with conventional beer. FMBs like Smirnoff Ice, Mike's Hard Lemonade, and Seagram's Coolers belong on retail shelves in the beer section. Establishing the dire 90-10 (0.5%) standard would force FMB brewers to make costly changes to their production process that some companies may not be able to accomplish. Also, a 90-10 rule would force FMB brewers to substantially increase the amount of malted barley and other traditional ingredients used in an FMB, resulting in a very different tasting product. Just six years ago TTB, closed a rulemaking on FMI3s bearing the names of well-known cock-tails (e.g., margarita, pina colada), concluding:

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"Evidence introduced indicates that flavored malt beverages are viewed by consumers as coolers or low alcohol refreshers, and not as a distilled spirits products. Evidence introduced also indicates that the presence of distilled spirits or any smiilarlv of these products to a distilled spirits drink is not a criteria in their selection by consumers.

In closing, I urge you to adopt the 5 1/49 "majority" standard, as it will ensure marketplace certainty; satisly consumer expectations by protecting the taste of existing products like Smirnoff Ice, Mikets hard lemonade and Seagram's Coolers; preserve retailer profit margins for these products by minimizing the financial impact of costly reformulation changes; and, maintain a level playing field by making sure that small companies can continue to develop and produce FMBs that taste like existing products.

Respectfully,
Billy Mitchell
State Representative