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HARPOON BREWERY

October 3, 2003

Chief Regulations and Procedures Division  
Tax and Trade Bureau  
PO Box 50221  
Washington, DC 2003 1-0221

Re: TTB Notice #4, Flavored Malt Beverages and Related Proposals (200 1R-136P)

Dear Sir or Madame:

Mass. Bay Brewing Company, Inc. (dba, The Harpoon Brewery) supports the proposed regulations for products marketed as flavored malt beverages ("FMBs") as set forth by the Tax and Trade Bureau ("TTB") in TTB Notice No. 4 of March 2003.

It is appropriate that the amount of alcohol in a "beer" derived from distilled spirits be limited to 0.5% alcohol by volume. The 0.5% alcohol by volume limit is the standard for determining the tax status of beer, wine, and fruit flavor concentrates, as well as juices and sodas that contain small amounts of alcohol. The 0.5% standard is fair across-the-board for all beverages and should apply to FMBs with added flavors as well.

The perception of the general public is that beer is a beverage with malt flavor and hop bitterness, flavor and aroma. Many small brewers currently produce FMBs that have these characteristics. The products currently classified as FMBs and recently analyzed by TTB display none of these characteristics and should not be considered or taxed as beer. The manner of FMB production described in Notice 4 avoids many of the costs associated with the volume demands of beer production and storage and enjoys an unfair competitive advantage over traditional and craft brewers - based on regulations. I commend the TTB for recognizing the imbalance and the need to propose regulations.

The TTB proposal asks for comment on alternative standards such as whether the standard should be less than 50% of the final alcohol derived from spirits addition. This alternative limit would create a huge disruption to state governments who currently have regulations mirroring the federal standards. TTB has correctly analyzed state laws and regulations and the 0.5% standard appears to eliminate the need for changes in a majority of states.

The beer industry has undergone a major revitalization in the past twenty-five years with smaller brewers and brewpubs found in every state, every major metropolitan area, and many small towns. These small businesses employ tens of thousands of people. This is a sector of the alcohol beverage industry that the federal government should foster and support. The proposed regulations return fairness to the alcohol industry that has been compromised by the recent development of the FMB category.

In summary, our company supports the proposed "0.5% standard for FMBs for reasons of fairness and to protect the image of what the general public considers beer.

Sincerely,

Daniel C. Kenary  
President & Chief Operating Officer

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