0048183
From: Free State Brewing Co., Inc. [fsb@freestatebrewing.com]
Sent: Monday, October 20, 2003 1:19 PM
To: nprm@ttb.gov
Subject: Support of TTB Notice #4

10/20/03 Chief, Regulations and Procedures Division
Tax and Trade Bureau
PO Box 50221 Washington, D.C. 20031-0221

RE: TTB Notice #4 Dear Sir or Madam: Free State Brewing Company supports the proposed standard of composition for
Flavored Malt Beverages ("FMB's"), as set forth by the Tax and Trade Bureau ("TTB") in TTB Notice No. 4 of March 2003. This proposal is essential to the beer industry as it clearly delineates the difference between beer and other alcohol beverages, requiring that the alcohol content in FMB's derived from distilled alcohol not exceed 0.5% in order to be classified as "beer."

The Free State Brewery is a small brewery-restaurant in Lawrence, KS. We have been in operation since 1989 and have been proud to be a part of the renaissance in the Craft Brewing industry that has occurred over the past 20 years. Our products, while unique and flavorful, fall clearly within the bounds of the traditional definition of beer. Our position in the market and the lively hood of our 120+ employees relies on a clear definition of our product. Many, if not most, of the FMBs, which are the subject of this proposed standard, do not meet the traditional definition of beer or ale and thus are a source of confusion in the marketplace. They make clever use of the loophole that allows them to hide behind the protections justifiably ascribed to the brewing industry as producers of a known product with known properties. This blurring of the line between what are essentially spirits based beverages and traditional beers and ales is not beneficial to brewers, wholesalers, retailers or , most importantly, consumers. It benefits only those few large companies who utilize this loophole to avoid the appropriate taxation and classification of their product.

Continued success in the small brewing industry requires maintenance of an even playing field for all industry members claiming to produce beer or other malt beverages. Our company regards this proposed rule as a critical step towards consistent classification of alcoholic beverages. An orderly marketplace and consistency of laws and regulations establishing alcohol beverage categories are primary concerns of the brewing industry.

Federal leadership in this area is critical as state definitions of "beer," "malt beverage," and "spirits" are generally consistent with the definitions found in federal laws and regulations. Thus, the proposed rule will likely be followed at the state level, helping to maintain clear and distinct definitions that will guarantee consistent tax, licensing, and distribution policies for each category.

Furthermore, any alternative to the TTB proposal will likely trigger disruptive state legislative and regulatory actions. These measures could have significant ramifications for the more than 1,400 small breweries and for thousands of alcohol beverage licensees, most of which are also small businesses. We reaffirm our company's support for the proposed "0.5% standard" for FMBs. Its consistency with historical interpretations of federal regulations will

help maintain and orderly marketplace and the integrity of the beer category. Sincerely, Steve Bradt

Brewmaster

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