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MCDERMOTT, WILL & EMERY

June 20, 2003

By Hand

Mr. William Foster
Chief, Regulations & Procedures Division
Alcohol & Tobacco Tax & Trade Bureau
ATTN: Notice No. 954
P.O. Box 50221
Washington, D.C. 20091-0221

Re: Notice 954: Organic Claims in Labeling and Advertising of Alcoholic Beverages

Dear Mr. Foster,

I write on behalf of the Brewers' Association of America ("BAA") in order to comment on ATF Notice 954, 67 Fed. Reg. 62860 (October 8, 2002), as reopened by TTB Notice No. 7, 68 Fed. Reg. 24903 (May 9, 2003). Notice 954 seeks comments on the TTB¹ temporary rule concerning organic claims in the labeling and advertising of alcoholic beverages. Notice 954 and the temporary rule it seeks comment on relate to the National Organic Program ("NOP") and regulations promulgated by the U.S. Department of Agriculture ("USDA").

BAA has represented the interests of America's small brewers since its formation in 1942. Today, domestic brewers producing fewer than 2 million barrels per year are eligible to become BAA Brewer Members, while larger brewers and suppliers may join as Associate and Allied Members, respectively. BAA speaks for the more than 1,200 breweries nationwide that produce less than 2 million barrels per year. Since 1997, small brewers have tapped into a growing market for organic beers.

BAA fully supports the NOP, as it provides growers and producers of organic food and beverages, including brewers of organic beer, with a rigorous and nationally-uniform standard for producing products that can be marketed as "organic." Likewise, the NOP creates a standard that will allow consumers to trust the integrity of products labeled as organic.

TTB proposes a new regulation, section 7.81, governing use of the term "organic" on malt beverage labels. Nothing in the text of that proposed regulation is problematic, but BAA is concerned that the mechanism TTB proposes to review organic labels will prove unworkable.

¹ For consistency, we employ the term "TTB" to denote both TTB and its immediate predecessor, the Bureau of Alcohol, Tobacco & Firearms.

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The preamble to TTB's temporary rule explains that a Memorandum of Understanding between TTB and USDA's Agricultural Marketing Service ("AMS") gives AMS responsibility for reviewing certificate of label approval ("COLA") applications for labels making organic claims. This procedure appears fraught with the danger of delays and confusion beyond the those inherent in the COLA-review process. To the best of my knowledge, AMS has no expertise with the COLA process, and lacks any knowledge of the brewing industry. We accordingly urge TTB to revisit the process established in the Memorandum of Understanding and, instead, retain responsibility for reviewing COLAs for compliance with the NOP. By giving an agency with no experience in reviewing malt beverage labels this authority, the proposed procedure may inadvertently undermine the rigorous enforcement of NOP standards.

The NOP and its enabling legislation does not require TTB to create a cumbersome two-agency COLA review process like the one discussed in the preamble to the temporary rule. Even assuming that the NOP gives USDA sole authority to promulgate policies towards organic labeling claims, this does not require USDA to actually review and approve each COLA making an organic claim. TTB remains capable of reviewing labels for compliance with the laws and policies of other agencies and, indeed, it does so every day in reviewing labels for compliance with the country-of-origin requirements of the U.S. Customs Department. *See* 27 C.F.R. § 251.60; ATF Ruling 2001-2. If exceptional issues or questions arise in connection with an organic label, TTB can consult with USDA as the "expert" agency in the same way that TTB consults with the Food & Drug Administration ("FDA") on issues concerning the GRAS (generally recognized as safe) status of alcohol beverage ingredients.

We also take this opportunity to applaud USDA's recent decision not to require full ingredient labeling on alcohol beverages. Based on that decision, TTB may wish to reconsider its previously-announced intention to require all holders of organic COLAs to surrender those COLAs and apply for new ones. In the absence of a requirement to list all ingredients on the label, previously-approved labels meet NOP requirements. Requiring their surrender would create needless paperwork.

BAA supports the National Organic Program and believes that TTB, not AMS, is in the best position to enforce the NOP's application to alcohol beverage labels. We accordingly urge TTB to re-think its decision to give AMS responsibility for reviewing COLAs. BAA thanks you for this opportunity to comment on Notice 954.

Sincerely,



Marc E. Sorini

Cc: Daniel Bradford, BAA President (by fax)