

**TITLE 4. BUSINESS REGULATIONS
DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
ARTICLE 19. MALT BEVERAGE REGULATIONS**

NOTICE OF PROPOSED RULEMAKING

The California Department of Alcoholic Beverage Control (ABC) proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

ABC proposes to amend Section 130 of Title 4, Article 19 of the California Code of Regulations (CCR). This section concerns beer labeling requirements.

The purpose of the proposed amendments is to make Section 130 consistent with statutes added since Section 130 was last amended, to define the term “address” to conform to Code of Federal Regulations (CFR, Title 27, Section 7.25), and to define the term “affixed” to clarify that it means the placement, by any means, of a label or notice, or the information required on a label or notice, on a container of beer as not all labels are made out of paper and glued to containers of beer. The proposed amendments also replace “person” with “packager” where Section 130 refers to the names and addresses that may appear on any label of beer. “Packager” is more specific and accurate than “person.” A “packager” is the only person, other than a manufacturer or bottler, whose name could appear on the label. “To bottle and to package” is defined in Business and Professions Code Section 23030. The proposed amendments also clarify that the label must be affixed before the product is shipped into this state, and thus prior to first delivery to the importer.

Specifically, ABC proposes deleting the first two paragraphs of Section 130 to conform to Business and Professions Code Section 25204 added by SB 1923 (Thompson), Chapter 900, Statutes of 1996. Business and Professions Code Section 25204 supersedes Rule 130. Business and Professions Code Section 25204 specifies that any beer container sold within this state shall bear a label that conforms with the alcohol content labeling requirements prescribed in Section 7.71 of Part 7 of Title 27 of the Code of Federal Regulations, as adopted pursuant to the Federal Alcohol Administration Act (FAAA) (27 U.S.C. Sec 201 et seq.). It also requires that any beer container sold within this state that contains more than 5.7 percent alcohol by volume shall include a statement of alcoholic content. The first two paragraphs of Section 130 conflict with Business and Professions Code Section 25204. The first paragraph of Section 130 prohibits labeling of any product with alcohol content greater than 4% as “beer.” The second paragraph provides that products in excess of 4% alcohol may only be sold as ale, porter, brown, stout or malt liquor if it bears a label identifying it as such.

Business and Professions Code Section 25205 added by AB 346 (Beall), Chapter 624, Statutes of 2008 requires any container of beer or alcoholic beverage, other than sake, that is approved for labeling as a malt beverage under the FAAA, that derives 0.5% or more of its alcohol content by volume from flavors or other ingredients containing distilled alcohol and that is sold by a manufacturer or importer to a wholesaler or retailer within California on or after July 1, 2009, to bear a distinctive, conspicuous, and prominently displayed label, or firmly affixed sticker containing the following information:

- a) The percentage alcohol content of the beverage by volume; and,
- b) The phrase "CONTAINS ALCOHOL" in bold capitalized letters at least three millimeters in height and that is distinguishable from the background and placed conspicuously in either horizontal or vertical lettering on the front of the brand label, as specified.

Business and Professions Code Section 25205(b) provides that ABC may require licensees to submit information as it determines to be necessary, and may adopt regulations, as may be required, to implement and enforce this section. It also specifies that any information required to be provided by any licensee to ABC, shall be considered confidential and corporate proprietary information, as defined.

These proposed amendments implement and enforce Business and Professions Code Section 25205 by: a) requiring licensees to "file" rather than "furnish" copies of labels to the Department; b) prohibiting the sale or shipment of beer into California unless the Department has accepted the label for filing; and c) authorizing the Department to refuse to accept a label for filing that is not in compliance with Section 130 or the Alcoholic Beverage Control Act.

PUBLIC HEARING

ABC has not scheduled a public hearing on this proposed action. However, ABC will hold a hearing if it receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. The written comment period closes at **5:00 p.m. on Monday, April 26, 2010**. ABC will consider only comments received at the ABC Headquarters Office by that time. Please submit comments to:

Susie Smith, Regulations Coordinator
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, California 95834
E-mail: Susie.smith@abc.ca.gov
Phone: (916) 928-6821
FAX: (916) 419-2599

AUTHORITY AND REFERENCE

Authority for the proposed amendments is provided by Business and Professions Code Section 25750.

The proposed amendments implement, interpret, or make specific the following reference: Business and Professions Code Sections 23030, 25200, 25204, and 25205.

DOCUMENTS INCORPORATED BY REFERENCE

No documents are being incorporated by reference.

DISCLOSURES REGARDING THE PROPOSED ACTION

ABC has made the following initial determinations:

LOCAL MANDATE

These amendments do not impose a mandate on local agencies or school districts.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT THAT MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500-17630.

These amendments do not create costs to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 – 17630.

IMPACT ON PRIVATE PERSONS/BUSINESSES

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON BUSINESS

It is anticipated that the proposed amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Adoption of the proposed amendments will not create or eliminate jobs within California, will not create new businesses or eliminate existing businesses within California, and will not affect the expansion of businesses currently doing business within California.

IMPACT ON SMALL BUSINESS

The proposed amendments will not have a significant impact on small businesses. The statute requires licensees to submit information to the Department and authorizes the Department to adopt regulations for implementation and enforcement. These proposed amendments just specify that copies of the labels must be “filed” with the Department and if a label for beer has not been filed and accepted by the Department, it may not be sold or shipped into California.

SIGNIFICANT EFFECT ON HOUSING COSTS

The proposed amendments will have no effect on housing costs.

COST OR SAVINGS TO ANY STATE AGENCY

The proposed amendments will not result in costs or savings to any State agency.

OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

These proposed amendments will not result in other non-discretionary costs or savings to local agencies.

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

These proposed amendments will not result in costs or savings in federal funding to the state.

CONSIDERATION OF ALTERNATIVES

ABC has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

ABC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

ABC will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Headquarters office located at 3927 Lennane Drive, Suite 100, Sacramento, California 95834. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, CFR, Title 27, Section 7.25 (document relied upon), and the Economic and Fiscal Impact Statement, Form STD. 399. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Department's contact person or viewed on the website.

CONTACT PERSONS

Copies may be obtained by accessing ABC's website at www.abc.ca.gov or by contacting:

Susie Smith, Regulations Coordinator
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, California 95834
E-mail: Susie.smith@abc.ca.gov
Phone: (916) 928-6821
FAX: (916) 419-2599

In the event the contact person is unavailable, inquiries regarding the proposed regulatory action should be directed to the following back-up contact person:

Matthew D. Botting, General Counsel
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, California 95834
E-mail: matthew.botting@abc.ca.gov
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AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, ABC may adopt the proposed regulations substantially as described in this notice. If ABC makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 calendar days before ABC adopts the regulations as revised. Requests for copies of any modified regulation should be sent to the ABC's contact person identified above at the address indicated, or may be viewed on ABC's website. ABC will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.