

**TITLE 4. BUSINESS REGULATIONS**  
**DIVISION 1. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**  
**ARTICLE 19. MALT BEVERAGE REGULATIONS**  
**Section 130**

INITIAL STATEMENT OF REASONS

SPECIFIC PURPOSE OF THE REGULATION (Amendment to Section 130)

The Department of Alcoholic Beverage Control (ABC) proposes amending Section 130 to be consistent with, and to implement and enforce, statutes enacted since Section 130 was last amended. ABC also proposes to provide further clarity to Section 130 by defining the terms “address” and “affixed”, replacing the term “person” with “packager,” and clarifying that the label must be affixed before the product is shipped into this state , and thus prior to first delivery to the importer. Specifically, the Department of Alcoholic Beverage Control (ABC) proposes:

1. 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 this language of Rule 130 by specifying 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 (CFR), 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.
2. Implementing and enforcing Business and Professions Code Section 25205 added by AB 346 (Beall, Chapter 624, Statutes of 2008) by:
  - 1) requiring licensees to “file” rather than “furnish” copies of labels to the Department; 2) prohibiting the sale or shipment of beer into California unless the Department has accepted the label for filing; and 3) 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.

Business and Professions Code Section 25205(a) 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, must 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 amendments implement and enforce Business and Professions Code Section 25205 by making it a condition for labels to be properly filed with ABC in order for licensees to sell or ship beer into California.

3. Defining the term "address" to conform to the applicable provisions of the CFR.
4. Defining 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.
5. Replacing the term "person" with "packager" where Section 130 refers to the names and addresses that may appear on any label of beer.
6. Replacing the phrase "delivery in this State" with "shipment into this State" to clarify that the label must be affixed before the product is shipped into California, and thus prior to first delivery to the importer.

#### NECESSITY

1. Section 130, as currently written, is in conflict with Business and Professions Code Section 25204 which was added by SB 1923 (Thompson, Chapter 900, Statutes of 1996). Section 130 currently prohibits labeling of any product with alcohol content greater than 4% as "beer." And, it 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. ABC proposes striking this language from Section 130 because it is inconsistent with Business and Professions Code Section 25204. Business and Professions Code Section 25204 supersedes this language in Section 130.

2. Amendments are also needed to implement and enforce Business and Professions Code Section 25205 which was added by AB 346 (Beall, Chapter 624, Statutes of 2008). They 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. Requiring labels to be properly filed with ABC in order beer to be sold or shipped into California will help ensure that labels are in compliance with Business and Professions Code Section 25205 and Rule 130, and are submitted to ABC for filing.
3. The term “address” needs to be defined to conform to the Code of Federal Regulations (CFR, Title 27, Section 7.25). This will assist the beer industry when developing beer labels that comply with both California and federal regulations. Defining address so that a beer manufacturer may use the principal place of business as its address on beer labels provides clarification to manufacturers regarding the meaning of Business and Professions Code Section 25200 and also provides a suitable alternative for the manufacturers so that manufacturers will only need to design and print one version of a product label to comply with both state and federal regulations.
4. The term “affixed” needs to be defined 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 affixed with glue to containers of beer.
5. The term “person” needs to be replaced with “packager” where the names and addresses that may appear on any label of beer are referenced in order to provide clarity. “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.
6. The phrase “delivery in this State” needs to be replaced with “shipment into this State” to clarify that the label must be affixed before the product is shipped into California, and thus prior to first delivery to the importer.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

ABC relied on CFR, Title 27, Section 7.25 to define “address.” Other than that, ABC did not rely on any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these amendments.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

No other reasonable alternatives were presented to or considered by the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

No other reasonable alternatives were presented to or considered by the Department.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed amendments will not have a significant impact on businesses. Business and Professions Code Section 25205 authorizes ABC to require licensees to submit information as it deems necessary and further authorizes ABC to adopt regulations to implement and enforce it. Section 130 currently requires licensees to furnish labels to ABC. These proposed amendments provide an enforcement mechanism by prohibiting beer from being sold or shipped into California unless the label has been filed with ABC in accordance with Section 130 and the Alcoholic Beverage Control Act. And, they authorize ABC to refuse to accept a label for filing that is not in compliance. Filing a label with ABC does not create a significant adverse economic impact on any business.