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# DAR File No. 31640

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## Alcoholic Beverage Control, Administration

# R81-1-27

## Label Approvals

### NOTICE OF PROPOSED RULE

DAR File No.: 31640

Filed: 06/30/2008, 02:27

Received by: NL

### RULE ANALYSIS

#### Purpose of the rule or reason for the change:

This rule amendment is being proposed to implement S.B. 211 that was passed by the 2008 legislature in Title 32, Chapter 1, Part 8, Malted Beverages Act. (DAR NOTE: S.B. 211 (2008) is found at Chapter 211, Laws of Utah 2008, and was effective 05/05/2008.)

#### Summary of the rule or change:

This proposed rule: 1) establishes administrative fees that may be assessed by the Department of Alcoholic Beverage Control (DABC) to process applications for the approval of malt beverage labels and packaging; 2) provides supplemental procedures for applying for and processing label and package approvals; 3) defines the meaning of certain terms in the Malted Beverages Act; and 4) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

#### State statutory or constitutional authorization for this rule:

Sections 32A-1-107 and 32A-1-807

#### Anticipated cost or savings to:

##### the state budget:

DABC staff will be required to approve the labels for all malted beverages sold in the state. This will be a cost to the state budget, though it is not clear what the cost will be because it is unknown how many applications for label approval will be received each year. At the same time, the DABC will assess a cost incurred.

##### local governments:

None--This rule amendment only affects the DABC and does not affect local governments since local governments do not enforce product labeling laws in Utah.

##### small businesses and persons other than businesses:

The only small businesses that will be affected by this rule amendment are small businesses that manufacture malted beverages. There will be a cost of \$30 to these businesses for each label approval application submitted to the DABC. For those small manufacturers that produce flavored malt beverages, there will be other costs associated with printing and affixing required labeling on containers and product packaging. The exact dollar amount cannot be determined. Persons other than businesses will not be impacted by this proposed rule amendment.

**Compliance costs for affected persons:**

The only businesses that will be affected by this rule amendment are businesses that manufacture malted beverages. There will be a cost of \$30 to these businesses for each label approval application submitted to DABC. For those manufacturers that produce flavored malt beverages, there will be other costs associated with printing and affixing required labeling on containers and product packaging. The exact dollar amount cannot be determined.

**Comments by the department head on the fiscal impact the rule may have on businesses:**

DABC recognizes that this rule amendment will have a fiscal impact on businesses that produce malt beverages by way of costs assessed for label approvals and the need for additional labeling on products that are look-alikes for nonalcoholic beverages. DABC feels the costs to manufacturers are justified since these labeling restrictions will almost certainly help in the state's fight to eliminate the accessibility of alcoholic beverages to Utah's young people. Dennis R. Kellen, Director

**The full text of this rule may be inspected, during regular business hours, at the Division of Administrative Rules, or at:**

Alcoholic Beverage Control

Administration

1625 S 900 W

SALT LAKE CITY UT 84104-1630

**Direct questions regarding this rule to:**

Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at [smackay@utah.gov](mailto:smackay@utah.gov)

**Interested persons may present their views on this rule by submitting written comments to the address above no later than 5:00 p.m. on:**

08/14/2008

**This rule may become effective on:**

08/21/2008

**Authorized by:**

Dennis R. Kellen, Director

**RULE TEXT**

**R81. Alcoholic Beverage Control, Administration.**

**R81-1. Scope, Definitions, and General Provisions.**

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32A-1-806(2)(c) and (d) and 32A-1-807 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act , 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32A-1-804, effective October 1, 2008, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging

of the beverage has been first approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32A-1-804 to -806.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of \$30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(g) Pursuant to 32A-1-805(6):

(i) the department may revoke any label and packaging approved by the department prior to October 1, 2008, that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32A-1-806, effective October 1, 2008, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible;

(v) separate and apart from any descriptive or explanatory information; and

(vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.

(i) Pursuant to 32A-1-806, effective October 1, 2008, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) in a format that is readily legible; and

(iv) separate and apart from any descriptive or explanatory information.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [**

**August 27, 2007]**2008

**Notice of Continuation: August 31, 2006**

**Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c);**

32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

**ADDITIONAL INFORMATION**

Text to be deleted is struck through and surrounded by brackets (e.g., [

**example**]). Text to be added is underlined (e.g., example). Older browsers may not depict some or any of these attributes on the screen or when the document is printed.

For questions regarding the *content* or *application* of this rule, please contact Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at [smackay@utah.gov](mailto:smackay@utah.gov)

For questions about the *rulemaking process*, please contact the Division of Administrative Rules (801-538-3764). *Please Note:* The Division of Administrative Rules is *NOT* able to answer questions about the content or application of these administrative rules.

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