

# ARKANSAS REGISTER



## Proposed Rule Cover Sheet

Secretary of State  
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Name of Department Department of Finance and Administration

Agency or Division Name Alcoholic Beverage Control Division

Other Subdivision or Department, If Applicable \_\_\_\_\_

Previous Agency Name, If Applicable \_\_\_\_\_

Contact Person Doralee Chandler

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Name of Rule Label and Size Containers Rule 2.19

Newspaper Name Arkansas Democrat Gazette

Date of Publishing February 13, 2020 through February 15, 2020

Final Date for Public Comment March 18, 2020

Location and Time of Public Meeting 1515 West 7th Street, 5th Floor, 9:00 a.m.

## **MARKUP COPY**

### **Section 2.19 Labels and Size of Containers to be Approved by Director.**

The contents of all labels affixed to containers of controlled beverages and the size and combination of such containers shall be approved by the Director. In no event shall any label or design be approved by the Director which contains any statement, design, device or representation which is obscene or indecent. Any product that does not meet the criteria for TTB COLA or Certification of Exemption, (such as IRC beers or ciders under 7% ABV), shall submit the following: proposed label(s), lab certificate of analysis, and a certification that the product does not qualify for TTB COLA or Certificate of Exemption. Any Primary American Source (PAS) submitting a brand registration to the agency for distribution of a product shall, in addition to all other requirements, submit to the Alcoholic Beverage Control Division a copy of the Alcohol and Tobacco Tax and Trade Bureau (TTB) Certificate of Label Approval (COLA) or a Certificate of Exemption from label approval. Any PAS that wishes to register a product for sale where the PAS has obtained a Certificate of Exemption from the TTB and any PAS that cannot be issued a COLA or Certificate of Exemption by TTB shall certify to the Director that the labels will still comply with TTB labeling criteria as found in the "Federal Alcohol Administration Act" Title 27 CFR Subchapter A – Liquors, Part 4, Subpart D, Section 4.39, Part 5, Subpart D, Section 5.42, Part 7, Subpart C, Section 7.29. Beer, light wine, and malt beverage products may submit a COLA with an updated label; provided only amended labels with TTB permitted changes will be accepted. If the ABV on the amended label differs from the COLA, a certificate of lab analysis must accompany the submission. In no instance shall permitted containers of spirituous beverages be less than one hundred (100) ml, vinous beverages or wine be less than one hundred eighty-seven (187) ml or beer or malt liquor be less than one hundred sixty-nine (169) ml or five and seventy-five hundredths (5.75) ounces. (Amended 8-16-11)

### **SUMMARY OF SUBSTANTIVE CHANGES**

This update will permit brand label registration, and in turn distribution into Arkansas, of products that do not qualify for a TTB COLA such as the ones described. This update also relaxes the rule for registering beer and malt beverage products. The TTB has relaxed its rules for COLA issuance and in numerous circumstances, does not require a new COLA for modifications to an existing label. In addition, the TTB will not issue a certificate of exemption for any products that will be shipped interstate. This has resulted in confusion and additional red tape for manufacturers who are trying to import products. Arkansas Code § 3-2-409 never required TTB COLA for beer, malt beverage, or light wine. This rule keeps the requirement of a COLA for these beer and malt beverages, but will allow new labels that have been modified from their original TTB COLA.

## *Clean copy*

### **Section 2.19 *Labels and Size of Containers to be Approved by Director.***

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**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT**     DFA

**DIVISION**             Alcoholic Beverage Control

**PERSON COMPLETING THIS STATEMENT**     Doralee Chandler

**TELEPHONE** 501-682-2916             **FAX** 501-682-2221             **EMAIL:** Doralee.Chandler@dfa.arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE**     Labels and Size of Containers to be Approved by Director (Rule 2.19)

- 1. Does this proposed, amended, or repealed rule have a financial impact?             Yes                             No x
  
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?             Yes x                             No
  
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?             Yes x                             No

If an agency is proposing a more costly rule, please state the following:

(a) How the additional benefits of the more costly rule justify its additional cost;  
NA

(b) The reason for adoption of the more costly rule;  
NA

(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;  
NA

(d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.  
NA

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following: N/A

(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total                     0

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total                     0

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total                    0

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
  
Total                    0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ 0

**Next Fiscal Year**

\$ 0

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

(b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

(4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;

- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.