

ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
TITLE 4. BUSINESS REGULATIONS
DIVISION 1.1 ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

ADDENDUM TO INITIAL STATEMENT OF REASONS

NECESSITY

The specific purpose for each proposed modification of each modified section is as follows:

Article 1. General

§ 177. Gender and Number.

The modified proposed revision would remove “tenses” from the title and remove Business and Professions Code¹ sections 23081 and 23083 as reference authority, replacing it with section 23077 and Article XX, Section 22 of the California Constitution. This proposed rule is necessary to avoid any confusion, as the subject of the rule does not discuss “tenses,” even though it is in the heading. Further, the reference authority previously cited is not pertinent to the section. Changing the reference authority is necessary to cite to the proper authority.

§ 178. Definitions.

Subsection (i) is modified to specify that “Section” or “subsection” refers to the rules and regulations “contained in Title 4, Division 1.1. of the California Code of Regulations,” unless otherwise specified. This is necessary to prevent confusion and to explicitly state that the Board is referring to its own rules and regulations.

¹ All statutory references are to the California Business and Professions Code unless otherwise stated.

§ 181.1 Manner of Service.

Sections 181.1(a)(2) and 181.1(b)(2) are modified to remove language referencing “regular or certified” service by mail. This is necessary because there is no legal requirement that mail must be sent as either regular or certified, and it is confusing to suggest that those two forms of mail are the only acceptable forms. For example, section 23081.5 allows an appeal to be sent to the Board by “registered mail.”

Article 4. Filing of Briefs and Motions

§ 194. Requirements for Briefs.

Subsection (a) is modified to state that if a brief is typed, it shall have a minimum font size of 12. This is necessary to ensure that parties do not try to artificially make the font smaller to circumvent the page length requirements stated in section 194(b).

§ 195. Motions.

Subsection (a)(3) is modified to change “to” to “with.” Subsection (c) is modified to remove the word “otherwise.” Both changes are necessary for grammar and syntax, and are non-substantive in nature.

Article 5. Oral Argument

§ 196. Hearing.

Subsection (b) is modified so that failure to timely request oral argument “shall” result in submission of the appeal on the pleadings. The prior proposed rule used “may” instead of “shall.” This change is necessary to give the Board and parties a clear standard to follow for a party’s failure to timely request oral argument.

Another modification to section 196(b) allows a party to request continuance of the hearing, even if they did not timely request oral argument. This change is necessary to allow a party to continue a hearing, and request oral argument, if circumstances change, and upon a showing of good cause (subsection (d)).

§ 197. Oral Argument.

Modification was made to section 197(a)(1) to specify that all appellants and all respondents, collectively, will each have 15 minutes for oral argument. This change is necessary to ensure that appeals with numerous parties will be limited to a maximum of 30 minutes oral argument, which is the same standard for appeals with a single appellant and a single respondent. Without this modification, each party would have 15 minutes for oral argument, and in cases where there are numerous appellants and respondents, oral argument could last for several hours and strain the Board's time and resources.

Further change is made to section 197(a)(2) to state that "only one person for a party shall be heard." The previous version of the rule used the word "may" instead of "shall." This change is necessary to ensure that oral argument proceeds in an organized and time-efficient manner but allows for each party to be represented and not grouped together by a single speaker for an entire side. It also sets a clear standard for the Board and parties to follow.

Section 197(b) has also been modified to change "may" to "shall" to determine whether additional time for oral argument will be granted upon a showing of good cause. This change is necessary to allow oral argument to exceed the proscribed time limits in the proper circumstances and sets a clear standard for the Board and parties to follow.

§ 197.1 Quorum.

197.1 is modified to add section 23077 and Article XX, Section 22 of the California Constitution. This change is necessary to add additional reference authority regarding the Board's authority for enacting regulations.

Section 197.1(b) is modified to change "for" to "to" regarding the time when the third board member can be present. This change is necessary for grammar and syntax, and is non-substantive in nature.

Article 6. Newly Discovered Evidence

§ 198. New Evidence.

Proposed rule 198(b) has been modified to remove “or the exclusion of evidence” as an invalid ground for remand. This is necessary to conform with existing law and to remove any confusion, as the exclusion of evidence may be a valid ground for remand under existing legal authority.

Article 8. Dismissal of Appeal

§ 199. Dismissal of Appeal.

Section 199(c) is modified to remove “in the case,” which is unnecessary and superfluous language. This change is necessary for grammar and syntax, and is non-substantive in nature