

TITLE 4. ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

[Notice published June 25, 2021]

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Appeals Board (“Board”) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Please submit comments to:

Alcoholic Beverage Control Appeals Board
Attn: Ms. Taryn Kinney, Executive Officer
1325 J Street, Suite 1560
Sacramento, CA 95814

Comments may also be submitted by e-mail to abcboard@abcappeals.ca.gov. The written comment period closes at **5:00 p.m. on August 10, 2021**. The Board will consider only comments received at the Board offices by that time.

PUBLIC HEARING

There is currently no scheduled public hearing. However, the Board will hold a public hearing if one is requested in writing no later than 15 days prior to the close of the written comment period. (Cal. Gov. Code § 11346.8(a).)

AUTHORITY AND REFERENCE

Section 22 of Article XX of the California Constitution and Business and Professions Code section 23077 authorizes the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific sections 23080 to 23089 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking clarifies, streamlines, and makes specific the appellate process of administrative decisions issued by the Department of Alcoholic Beverage Control (“Department”).

Business and Professions Code section 23077 provides that the Board “shall exercise such powers as are vested in it by Section 22 of Article XX of the Constitution and may adopt such rules pertaining to appeals and other matters within its jurisdiction as may be required.” Additionally, Business and Code section 23083 restricts the Board from accepting new evidence not considered by the Department, and section 23084 limits the Board’s review to the following questions: whether the department has proceeded without, or in excess of, its jurisdiction; whether the department has proceeded in the manner required by law; whether the decision is supported by the findings; whether the findings are supported by substantial evidence in the light of the whole record, and; whether there is relevant evidence, which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department. If the Board discovers relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the underlying hearing, Business and Professions Code section 23085 permits the Board to remand such cases to the Department. This statute also instructs that, in all other appeals, the Board shall enter an order either affirming or reversing the decision of the Department, and that the Board may direct the reconsideration of the matter to the Department in light of any reversal it issues.

The proposed regulations will clarify or make specific what the principal office of the Board and the Department refers to; that references to one gender shall apply to all genders and references to singular numbers shall apply to plural numbers; definitions of commonly used terms; how to attach a proof of service; the ways in which a party may serve documents; how to file and serve the notice of appeal; how to file and serve the administrative record; how to file briefs that argue a party’s position; how to file and serve motions; the method by which dates for oral argument may be scheduled; limits on oral arguments; the procedure by which a two-member quorum of the Board decides on appeals; how to move to remand a case due to new evidence; and the reasons for which the Board may dismiss an appeal.

Through these revisions, the Board seeks to clarify and make specific the various procedures to be followed by license applicants, licensees, members of the public/protestants, and the Department when participating in an appeal. These proposed revisions also seek to clarify definitions and update existing language, which were drafted decades ago. The overarching goal is to provide as clear, consistent, and predictable appeals process as possible for all parties.

More urgently, ongoing evaluation of the process for an appeals case preparation has identified an opportunity to reduce the processing time for assessing and coordinating the appeals fee and obtaining the necessary copies of the Department’s administrative hearing transcript and record.

Previously, the Board requested a calculation of the cost for a copy of the court reporter's transcript from the Department. Depending on the Department's workload, this can take several days or weeks. Then the Board communicates this fee to the appellant and requests payment. After payment is received, the Department will request a copy of the transcript from the court reporter. Depending on the Department's workload and the workload of the court reporter, this can also take several weeks.

The risk to the appeals process is that the Department's workload and the workload of the court reporter controls the time it takes to process the appeals fee and prepare the case for an appeal hearing.

Anticipated Benefits of the Proposed Regulation:

The proposed addition and amendment of Rules 176-199 will benefit alcohol license applicants, licensees, and the Department by clearly defining the process parties must follow when filing, or responding to, an appeal of a licensing decision by the Department.

The rules and regulations will clarify what the Board's deadlines and criteria are for hearing and deciding cases – thus fostering greater transparency in the appeals process. The adoption of a uniform appeals process will help prevent discrimination and promote fairness for parties appealing an adverse licensing decision. It also provides for openness in how the Board conducts its business.

The rules and regulations will benefit the Board by defining a clear structure under which it will accept, hear, and decide appeals. This will enable the Board to handle incoming cases in a fair and consistent manner.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Board has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the appellate process and procedure for administrative decisions issued by the Department.

DISCLOSURES REGARDING THE PROPOSED ACTION:

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

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

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Board concludes that it is unlikely that the proposal will: 1) eliminate any jobs; 2) create any jobs; 3) create new businesses; 4) eliminate any existing businesses, or; 5) result in the expansion of businesses currently doing businesses in the state.

Benefits of the Proposed Action: The proposed regulations will benefit the health and welfare of California residents, including individuals and businesses that possess a license to sell alcoholic beverages in California, by creating a clearer and more streamlined appeals process and timely resolution of administrative appeals before the Board. The proposed regulations are not anticipated to benefit worker safety or the state's environment.

Small Business Determination: The Board has determined that the proposed regulation does not affect small business because proposed regulations will allow a clearer and more streamlined appeals process and timely resolution of administrative appeals before the Board. Further, the proposed regulations do not have any fiscal impact, and do not materially alter any party's responsibilities who appear before it.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Ms. Taryn Kinney, Executive Officer
Alcoholic Beverage Control Appeals Board
1325 J Street, Suite 1560
Sacramento, CA 95814
916-445-4005
abcboard@abcappeals.ca.gov

The backup contact person for these inquiries is:

Mr. Sean O'Dowd, Attorney III
Alcoholic Beverage Control Appeals Board
1325 J Street, Suite 1560
Sacramento, CA 95814
916-445-4005
abcboard@abcappeals.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to:

Ms. Maria "Teena" Sevilla
Alcoholic Beverage Control Appeals Board
1325 J Street, Suite 1560
Sacramento, CA 95814
916-445-4005
abcboard@abcappeals.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing (if requested) and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board 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 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Ms. Sevilla at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above or by accessing the Web site listed below.

WEBSITE

Materials regarding this proposal can be found at <https://abcab.ca.gov/statutes/>.