

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

SECOND ADDENDUM TO INITIAL STATEMENT OF REASONS

PURPOSE OF THE PROPOSED REGULATIONS

The purpose of the second modified regulations is to support government efficiency by allowing the Board, and all parties appearing before it, the option of serving and receiving documents electronically. The regulations would also eliminate the need for appellants to serve multiple copies of a Notice of Appeal. These proposed revisions also remove superfluous language from existing regulations.

Proposed rules 178(h), 178(j), 178(k), 181(a)-(c), 181.1(a)(1)-(3), 181.1(b)(1)-(3), 181.2, 184, 187(a), 187(c), 197.1 (a)(1), 197.1 (Note), and 199(d) will: add to the definition of “file” or “filed” to include electronic filing; add the definition of “serve” or “served” to include in-person service, service by mail, and electronic service; add the definition of “sign,” “signed,” or “signature” to include both physical and digital signatures; require proof of service to contain either a physical or electronic address where a document is served; allow proof of service to be in electronic form; allow electronic service to the Board’s email address, and electronic service to all parties, so long as the party gives notice that it agrees to accept electronic service, files said notice with the Board, lists any email address where it is to receive service, and signs the notice; allows for parties to terminate or modify their agreement to accept electronic service, and; eliminate the requirement for an appellant to file the original and three copies of the Notice of Appeal with the Board, and to serve a hard copy to the Department at its principal office.

PROBLEM STATEMENT

The Board did not have the authority to allow electronic filing and service until AB 1589 (Chapter 306) (amending Business and Professions Code sections 23081, 23081.5, and 23088) was approved by the Governor, filed with the Secretary of State on September 24, 2021, and became effective as of January 1, 2022.

Thus, for more than 60 years, the Board was limited to utilizing a paper and mail-based process. Current regulations require the Board, Department, and all other parties to deliver documents to

one another by hand or mail. Electronic service of documents does not satisfy the Board's procedural requirements.

Law offices, administrative bodies, and courts are modernizing at a faster pace than the Board by enabling electronic filing of pleadings and orders. As the extent to which society keeps paper records continually declines, electronic filing will be the standard across all professions.

As a government entity, it is important for the Board to promote efficiency, modernize the appeals process, and improve access to due process. The Board would also like to save state funds due to decreased postage, paper, and printing.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment of Rules 178(h), 178(j), 178(k), 181(a)-(c), 181.1(a)(1)-(3), 181.1(b)(1)-(3), 181.2, 184, 187(a), 187(c), 197.1 (a)(1), 197.1 (Note), and 199 (d) will benefit alcohol license applicants, licensees, the Department, and the public by making the appeals process more user-friendly and cost efficient for licensees and members of the public who want to exercise their right to appeal through electronic filing and service. Considering the COVID-19 pandemic, the option of electronic service will also help minimize any close contact that may otherwise result from filing or serving documents in person. Moreover, by being able to file and serve documents electronically, instead of through mail, this will streamline the appeals process. This proposal would also save state funds due to decreased postage, paper, and printing, as well as reduce waste created by paper and supplies.

NECESSITY

Article 1. General

§ 178. Definitions.

Proposed rule 178 provides definitions for terms used throughout these rules and regulations.

Subsection (h) amends the definition of "File" or "filed" to include a document received by the Board by electronic service. When a document is mailed to the Board through registered mail, the document is deemed "filed" on the date of registry with the United States Post Office. This is necessary because certain procedures (e.g., serving briefs) require the deadline to be based off the filing date. Therefore, this regulation provides needed guidance to parties on how to properly identify the filing date. Further, this allows for a new type of service (electronic) to allow for greater access to the Board's appeals process. Finally, even though this proposed regulation

substantially tracks existing statutory language, duplication is necessary for clarity, as it includes reference to the specific e-mail address to serve the Board and where that e-mail address can be found.

Subsection (j) adds the definition “Serve” or “served” to include all means of authorized service listed in section 181.1. This is necessary to set the limits on how parties can serve one another and the Board, and to ensure that documents are sent to the designated addresses of the parties.

Subsection (k) adds the definition of “sign,” “signed,” or “signature” to include both physical and electronic signatures. This is necessary to allow flexibility in signing a document electronically should a party wish to do so. It would defeat the purpose of streamlining appeals and making the process more cost effective if the Board required parties to print out digital copies of documents merely to sign them by hand.

§ 181. Proof of Service.

Proposed rule 181, subsection (a) is amended to include all the sections in these regulations where documents require a proof of service. This is necessary to make it clear for all parties which documents, when served, require a proof of service.

Subsection (c) is added so that proof of service may be in electronic form, subject to the provisions of rules 181.1 and 181.2. Having an alternative option for electronic service is necessary in order to streamline the appeals process as well as offer a user-friendly and cost-effective method of service for all parties to an appeal.

§ 181.1. Manner of Service.

Proposed rule 181.1, subsection (a)(3), is added to allow a party to serve a document to the Board electronically by sending the document to the Board’s electronic mail address as listed on the Board’s website. This is necessary so that when a party serves a document to the Board, they are sending it to the right email address.

Subsection (b)(3) is added so that parties may serve one another electronically subject to the requirements of rule 181.2. This is necessary to ensure fairness in the appeals process. Having an alternative option for electronic service is also necessary in order to streamline the appeals process as well as offer a user-friendly and cost-effective method of service for all parties to an appeal.

Additionally, legal offices and courts are modernizing at a faster pace than the Board by enabling or requiring electronic filing of pleadings and orders. The proposed revisions in sections 181.1(a)(3) and 181.1(b)(3) are necessary so that the Board and its operations may keep pace with this evolution. Through decreased postage, paper, and printing, this proposal would save state money and resources.

§ 181.2. Electronic Service.

Proposed rules 181.2(a)(1)-(2) are added to allow a party to agree to accept electronic service, so long as the party serves a notice on all other parties and files the notice with the Board.

This is necessary because it will allow for parties to agree to electronic service which will also streamline appeals and pass on those cost savings to the Department and other parties. By requiring a written notice, filed with the Board and served on all parties, the Board and all parties will share the same understanding regarding electronic service between the parties of the appeal.

Proposed rule 181.2(b) requires the notice to list the email address where a party is to receive service. This is necessary to hold parties to the email addresses listed in the notice, and prevents a party from attempting to delay the appeals process by electronically serving a document to an incorrect email address.

Proposed rule 181.2(c) requires the notice to be signed by the party agreeing to accept service. This is necessary to ensure that the individual agreeing to receive electronic service has the authority to do so.

Proposed rule 181.2(d)(1) allows a party to terminate its agreement to accept electronic service by filing a notice with the Board and serving the notice on all parties. Proposed rule 181.2(d)(2) allows a party to modify its agreement to accept electronic service by filing a notice with the Board and serving it on all other parties. Allowing a party to terminate or modify its agreement to receive electronic service is also necessary in case a party no longer wishes to receive electronic service, or wants to modify its agreement in the event its email address or other circumstance changes.

Article 2. Filing of Appeal

§ 184. Contents of Notice of Appeal.

Rule 184 relates to the contents of a notice of appeal, but the proposed amendments to rule 184 delete the requirement to provide an “original and three copies” of the Notice of Appeal to the Board and to physically serve a copy of the Notice to the Department at its principal office. This is necessary to streamline the appeals process and minimize waste of resources, especially given the Board’s shift to allow for electronic filing through email. If filing by email, there is no need to file copies; the Board can simply create copies of the attached file on its own. If filing by mail, the elimination of the requirement to provide three copies would result in saved resources for parties. Specific mention of the Department is added, which is necessary to clarify that a Notice of Appeal must be sent to them and to avoid confusion as some may not consider the Department a “party” to the appeal. Further, the elimination of the requirement to mail the Notice to the Department’s physical address is necessary if a party wanted to serve the Department electronically, and the Department agreed, in writing. The elimination of the requirement to file an “original” Notice of Appeal is necessary because if utilizing electronic filing, there are not originals and copies – there is just one filed Notice. Additionally, reference to an appellant’s “authorized agent” is removed, as “authorized agent” is included in the definition of a person or entity.

Finally, legal offices and courts are modernizing at a faster pace than the Board by enabling or requiring electronic filing of pleadings and orders. The proposed revision is necessary so that the Board and its operations may keep pace with this evolution. Through decreased postage, paper, and printing costs, this proposal would save money and resources.

Article 3. Record on Appeal

§ 187. Preparation, Payment, and Filing of the Record of Appeal.

The proposed change to section 187(a) is necessary to clarify that Government code section 69950 applies only to the transcript, which is part of the overall record of appeal. Without this change, there would be confusion as to whether section 69950 applies to the entire record of appeal.

Article 5. Oral Argument

§ 197.1. Quorum.

The proposed change to section 197.1 (Note) is necessary to add supporting legal authority as a reference.

Nonsubstantive Changes

All other changes not specified are for syntax, cross-reference, grammar, and punctuation changes, and are therefore nonsubstantive in nature.

ECONOMIC IMPACT ASSESSMENT

The Board concludes:

- (1) Creation/Elimination of jobs within the state: It is unlikely that the proposal would create or eliminate jobs within the state because the proposed amendments only allow for an alternate means of service (electronic). Parties may still utilize in-person service and service by mail. The regulations in no way alter or enhance the legal or factual basis for a party's appeal, and do not affect the Board's decision to affirm or reverse an adverse action taken by the Department.
- (2) Creation/Elimination of businesses within the state: It is unlikely that the proposal would create new businesses or eliminate existing businesses within the state because the proposed amendments only allow for an alternate means of service (electronic). Parties may still utilize in-person service and service by mail. The regulations in no way alter or enhance the legal or factual basis for a party's appeal, and do not affect the Board's decision to affirm or reverse an adverse action taken by the Department.
- (3) Expansion of existing businesses within the state: It is unlikely that the proposal would result in the expansion of businesses currently doing business within the state because the proposed amendments only allow for an alternate means of service (electronic). Parties may still utilize in-person service and service by mail. The regulations in no way alter or enhance the legal or factual basis for a party's appeal, and do not affect the Board's decision to affirm or reverse an adverse action taken by the Department.
- (4) Benefits of proposed action to the health and welfare of California residents, worker safety and the state's environment: The proposed regulations will benefit alcohol license applicants, licensees, and the Department by making the appeals process more user-friendly and cost efficient for licensees and members of the public who want to exercise their

right to appeal through electronic filing and service. The option of electronic service will also help minimize any close contact that may otherwise result from serving documents in person. Moreover, electronic filing and service will streamline the appeals process by not having to wait for documents to be hand-delivered or mailed. The Board anticipates cost savings and reduced waste due to decreased postage, paper, and printing. Otherwise, these regulations do not benefit worker safety or the state's environment.

EVIDENCE SUPPORTING DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Historically, non-government shareholders in the Board's appeals process have mailed documents to the Board and to the Department. The Board anticipates that those parties wishing to file and serve documents electronically will decrease the amount of money they spend on printing and mailing these documents. Accordingly, the Board concludes the proposed regulations do not have any significant, statewide, and adverse economic impact on businesses.

PERFORMANCE STANDARD AS ALTERNATIVE

The Board made every effort to consider performance standards where possible by removing overly restrictive requirements. To the extent a regulation prescribes a specific action or procedure, the requirement is necessary to create greater access to the appeals process through electronic filing and service and will streamline the overall appeals process.

MANDATED USE OF TECHNOLOGY

The proposed regulations do not mandate the use of any technology. Any party not able to utilize electronic service may still serve the Board or the Department in-person or by mail.