

**State of California
Office of Administrative Law**

In re:
Alcoholic Beverage Control Appeals Board

Regulatory Action:

Title 04, California Code of Regulations

APPROVED:

Amend sections: 178, 179, 180, 183
(renumbered to 184(c)),
184, 187, 188, 189, 190,
193, 197, 198, 198.1
(renumbered to 195), 199,
200

WITHDRAWN:

Amend sections: 200.1, Appendix

**NOTICE OF APPROVAL IN PART AND
WITHDRAWAL IN PART OF CHANGES
WITHOUT REGULATORY EFFECT**

**California Code of Regulations, Title 1,
Section 100; Government Code Section
11349.3**

OAL Matter Number: 2020-1006-01

OAL Matter Type: Nonsubstantive (N)

This action makes nonsubstantive changes to existing regulation text for purposes of improving syntax, grammar, punctuation, and organization.

The sections listed as APPROVED above are approved by OAL as changes without regulatory effect meeting the requirements of California Code of Regulations, title 1, section 100.

The sections listed as WITHDRAWN above were withdrawn from OAL review pursuant to Government Code section 11349.3(c).

Please contact me at (916) 322-3761 or eric.partington@oal.ca.gov, or the OAL Reference Attorney at (916) 323-6815, if you have any questions about the resubmittal process. You may request the return of your rulemaking record by contacting the OAL Front Desk at (916) 323-6225.

Date: December 8, 2020



Eric Partington
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Del Haws, Chief Executive
Officer

Copy: Linda Mathes

NONSUBSTANTIVE

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2020-1006-01	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
		2020 OCT -6 P 12:37 OFFICE OF ADMINISTRATIVE LAW	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Alcoholic Beverage Control Appeals Board			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 08 2020

1:26 PM

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Alcoholic Beverage Control Administrative Appeals Process	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S) 4	SEE ATTACHED
3. TYPE OF FILING	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
	<input type="checkbox"/> File & Print
	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input type="checkbox"/> Print Only
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)	
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State
	<input checked="" type="checkbox"/> \$100 Changes Without Regulatory Effect
	<input type="checkbox"/> Effective other (Specify)
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission
<input type="checkbox"/> Other (Specify)	<input type="checkbox"/> State Fire Marshal
7. CONTACT PERSON Linda Mathes	TELEPHONE NUMBER (916) 203-1670
	FAX NUMBER (Optional)
	E-MAIL ADDRESS (Optional) linda.mathes@abcab.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>[Signature]</i>	DATE 10/6/2020
TYPED NAME AND TITLE OF SIGNATORY Taryn Kinney, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 08 2020

Office of Administrative Law

Alcoholic Beverage Control Appeals Board

OAL matter no. 2020-1006-01N

Form 400 attachment: SECTIONS AFFECTED

- ADOPT: N/A
- AMEND: 178, 179, 180, 183 (renumbered to 184(c)), 184, 187, 188, 189, 190, 193, 197, 198, 198.1 (renumbered to 195), 199, 200
- REPEAL: N/A

§ 178. Definitions.

For the purpose of these rules and regulations:

(a) "Board" means Alcoholic Beverage Control Appeals Board.

(b) "Department" means Department of Alcoholic Beverage Control.

(c) Unless the context otherwise requires, the words "appellant" or "party," include the attorney or other authorized agent of such person.

(d) "Party" includes the Department, the appellant and any person, other than an officer or an employee of the Department in his official capacity, who has been allowed to appear in the proceeding before the Department.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077 and 23081, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 179. Computation of Time Limitations.

The time provided by the regulations contained in this subdivision within which any act must be performed, shall be computed by excluding the first day, ~~but~~ and including the last day unless the last day is a Saturday, Sunday or holiday, in which case such day shall also be excluded.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23081, Business and Professions Code; Section 12, Code of Civil Procedure; and Article XX, Section 22, California Constitution.

§ 180. Notices to Authorized Agents.

Whenever the records of the Board indicate that a party is represented by an attorney or other authorized agent, such agent shall be entitled to a copy of all notices and decisions to which the principal would be entitled.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077 and 23081, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 183. Form of Appeal.

The notice of appeal should be typewritten or printed upon paper 8 1/2 x 11 inches in size and be double spaced.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23081, Business and Professions Code; Article XX, Section 22, California Constitution.

§ 184. Contents of Notice of Appeal.

(a) The Nnotice of App~~ea~~l shall be signed by the appellant or his authorized agent.

(b) The Notice of App~~ea~~l~~h~~ should state the general grounds for appeal (see Business and Professions Code Section 23084) and the specific questions to be considered by the Board on review. The original and three copies of the Notice of App~~ea~~l shall be filed with the Board and a copy shall also be served upon all parties to the proceeding before the Department, including the Department at its principal office in Sacramento. Such service shall be made by delivering or mailing a copy of the Notice of App~~ea~~l to each party. Proof of service shall be filed with the original Notice of App~~ea~~l.

(c) The Notice of Appeal should be typewritten or printed upon paper 8 1/2 x 11 inches in size and be double spaced.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23084, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 187. Filing Record.

When a Notice of Appeal has been filed with the Board, the Board shall request the Department to furnish appellant an itemized statement of the estimated cost of the record on appeal in accordance with the fee schedule provided in Section 69950 of the Government Code. Cost of the record on appeal shall include the filing of an original and three copies of the reporter's transcript and file transcript, accompanied by the original exhibits, with the Board. Such statement of costs shall also include the cost of preparing and delivering to appellant a copy of the reporter's transcript, exhibits and file transcript, should any or all be requested by appellant. In those instances, however, where the Department has previously ordered an original copy of the reporter's transcript because of action taken by it pursuant to Government Code Section 11517(c), the appellant need only pay the fee for a first copy of the reporter's transcript, plus the fee for each additional copy, as provided by Section 69950, for the record on appeal furnished to the Board and appellant. Upon receipt of payment from appellant, the Department shall forthwith arrange for the preparation and delivery of the record on appeal.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 188. Contents of Record.

The record on appeal filed with the Board shall consist of:

(1) The file transcript, which shall include all notices and orders issued by the administrative law judge and the Department, including any proposed decision by an administrative law judge and the final decision issued by the Department; pleadings and correspondence by a party; notices, orders, pleadings and correspondence pertaining to reconsideration;

(2) the hearing reporter's transcript of all proceedings;

(3) exhibits admitted or rejected.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 189. Documents Filed with Board.

In addition to the Nnotice of Appeal and the record on appeal, other documents which may be legally filed with and received by the Board in connection with the appeal, shall also become part of the record.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23083 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 190. Cost of Record and Payment Therefor.

The Department shall calculate the cost of the record on appeal as provided by Section 187, shall notify appellant thereof, and demand payment. Payment shall be made by appellant to the Department within fifteen days after the date of issuance of such demand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; Section 69950, Government Code; and Article XX, Section 22, California Constitution.

Article 4. Filing of Briefs and Motions

§ 193. Filing of Briefs by Parties.

Appellant may file an opening brief, respondent may file a reply brief, and appellant may thereafter file a closing brief.

(a) Form and Filing of Briefs. Briefs shall be typewritten or printed upon paper 8 1/2 x 11 inches in size. Reproduction thereof may be by any process, provided all copies are clear and permanently legible. Only one side of the paper shall be used, unless printed, and the margins shall not be less than one inch on all sides of the page. The lines shall be double spaced. Headings shall be capitalized. An original and three copies of all briefs shall be filed with the Bboard. The original of each brief shall contain a certification that copies have been served upon or mailed to each party, his attorney or agent, as well as the Ddepartment, and the Attorney General's office.

(b) Time for Service and Filing. The opening brief shall be served and filed within fifteen days after the date on the notice issued by the Bboard stating that the record on appeal has been filed with the Bboard. The reply brief shall be served and filed within fifteen days after the filing date of the opening brief with the Bboard. The closing brief shall be served and filed within five days after the filing date of the reply brief with the Bboard. An extension of time within which to file a brief will be granted only upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 197. Oral Argument.

(a) Unless otherwise ordered by the Board: (1) A party shall be allowed a maximum of 30 minutes for oral argument; (2) not more than one person on a side need be heard; (3) the appellant, or moving party, shall have the right to open and close.

(b) Continuances. Requests for continuances of oral argument will be granted only upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 198. Nature of Evidence and Showing.

(a) When the Board is requested to remand the case to the Department for reconsideration upon the ground that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing before the Department, the party making such request must, in the form of a declaration or affidavit, set forth:

(1a) The substance of the newly-discovered evidence;

(2b) Its relevancy and that part of the record to which it pertains;

(3e) Names of witnesses to be produced and their expected testimony;

(4d) Nature of any exhibits to be introduced;

(5e) A detailed statement of the reasons why such evidence could not, with due diligence, have been discovered and produced at the hearing before the Department.

(b) Merely cumulative evidence shall not constitute a valid ground for remand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23084 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ ~~195198~~.1. Motions.

The provisions of Section 193(a) as to form and filing of briefs shall apply to a motion filed with the Board. Any showing in opposition to the motion of a party shall be served and filed within ten days after the date on the notice by the Board providing therefor. The Board may place any motion on the calendar for hearing or the Board may otherwise dispose of the motion.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

§ 199. Dismissal of Appeal.

The Bboard may issue an order dismissing an appeal:

(a) Upon appellant filing with the Bboard a request to dismiss the appeal;

(b) Upon motion of a party, or the Bboard itself, that appellant has failed to perfect his appeal by failure to timely file same or to pay the amount specified pursuant to Sections 187 and 190 of these rules;

(c) Upon certification by the Ddepartment that reconsideration has been granted in the case, said dismissal to be without prejudice to the filing of a subsequent appeal; or

(d) Upon a motion by the Ddepartment or other party, or upon the Bboard's own motion, where sufficient cause exists for dismissal.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081, 23083 and 23087, Business and Professions Code; Section 11521, Government Code; and Article XX, Section 22, California Constitution.

§ 200. Disqualification of Board Members

A Board member shall voluntarily disqualify himself/herself and withdraw from any case in which such person cannot accord a fair and impartial hearing. Any party may request the disqualification of any member by filing an affidavit before the submission of the case stating with particularity the grounds upon which it is claimed that a fair and impartial appeal cannot be accorded by a Board member. The issue raised by the request shall be determined by the other members of the Board. No member of the Board shall withdraw voluntarily, or be subject to disqualification, if this would prevent the Board from acting in the particular case. The affidavit shall become a part of the record.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23075, Business and Professions Code; Article XX Section 22, California Constitution; and Fed. Construction Co. v. Curd, 179 C. 489, 177 P. 469.