

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

April 30, 2024

NOTICE OF PROPOSED RULEMAKING

The Department of Alcoholic Beverage Control (ABC) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

ABC has not scheduled a public hearing on this proposed action. However, the department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to ABC. The written comment period begins on May 10, 2024, and closes at 12:00 p.m on June 25, 2024. ABC will consider only comments received at ABC Headquarters by that time. Submit comments to:

Law and Policy Unit
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Comments may also be submitted by email to rpu@abc.ca.gov, please include “Protests” in the subject line of your email.

AUTHORITY AND REFERENCE

Authority: Sections 25750 and 24013 of the Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Sections 23001, 23958, 23958.1, 23958.2, 23985.5, 23987, 24013, 24013.1, 24013.2, 24014, and 24015 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking seeks to streamline the protest policy and procedure for both individuals and public agencies or governmental bodies that seek to protest an application for an alcoholic beverage license in the state. During the application process for an alcohol license, prospective licensees are required to post a notice of the intention to engage in the sale of alcoholic beverages at the intended premises. Within 30 days of the posting of this notice, an individual or public agency may submit a protest to ABC regarding the issuance of the alcohol license.

There is confusion for ABC staff, the public, applicants, and protestants about how a protest must be verified as required by law to be accepted by ABC. In addition, the parameters that ABC may use to reject a protest are unclear. Promulgating regulations to create factors clarifying the statutory parameters for the rejection of protests will establish a uniformed system and create a fair process for all who seek to protest the issuance of an alcohol license. This proposed regulation will establish a uniform system of verification and give ABC specific factors and elements of a protest to analyze to determine if protests submitted are “false, vexatious, frivolous, invalid or unreasonable, or without reasonable or probable cause.”

Summary of Existing Laws and Regulations

Current law requires ABC to accept verified protests but has no clarity as to how a protestant must verify their protest. In addition, current law allows ABC to reject protests that are “false, vexatious, frivolous, invalid or unreasonable, or without reasonable or probable cause.” These terms are broad and lack the specificity necessary for ABC to ever take this action under the statute. There is also some confusion over repeated applications at the same location, withdrawals of both protests or applications during the protest process and how they will affect a scheduled hearing on an accepted protest that has been set.

Summary of Effect

The proposed regulations seek to clarify and establish a uniform protest procedure to be used throughout the state by ABC staff. This is to alleviate confusion by applicants, protestants, ABC staff, and the public due to the broad language used in statute regarding the protests of applications for ABC licenses.

Comparable Federal Statute or Regulations

ABC has determined that this proposed regulation does not have a comparable federal statute or regulation.

Policy Statement Overview

The mission of ABC is to provide the highest level of service and public safety to the people of the State through licensing, education, and enforcement. This proposed regulation supports the commitment that ABC has to its licensees by working to streamline the protest process to help applicants open their businesses in a timely manner. While still preserving the rights of individuals, public agencies, and governing bodies to protest the issuance of licenses due to harm to the public health, welfare, and morals a new alcoholic beverage license could create for their homes and jurisdictions.

Benefits Anticipated

The proposed regulation should benefit both applicants and protestants by providing clear expectations for all sides of the process and ensure ABC only issues licenses that comply with the law, including preserving the quiet enjoyment of nearby residences, compliance with applicable laws by licensees, and reviewing all issues raised during a thorough investigation into each application as required by law.

This should both allow protestants better understanding and access to the protest process, while speeding up the processing time for applicants to obtaining issued licenses at the end of the process if found to have met their burden and not be a danger to public health, safety, or welfare.

Determination of Inconsistency/Incompatibility with Existing State Regulations

ABC reviewed the existing state regulations and statues currently enforced and has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

Effect Upon Small Businesses in California

Although licensees are often small business owners, this proposed regulation will have negligible regulatory effect on them. It is anticipated that this may be a benefit to small businesses that have applied for an alcohol license and been protested due to the streamlining and speeding up of the protest process, but this will be small and limited to a very small group every year.

Disclosures Regarding the Proposed Action

The ABC has made the following initial determinations:

1. Mandate on local agencies or school districts: None.
2. Costs or Savings to any state agency: None.
3. Cost to any local agency or school district that is required to be reimbursed by the state: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Cost impacts on housing costs: None.

Determination of Statewide Adverse Economic Impact on Business

The ABC has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The adoption of the regulation will have a negligible impact on businesses, nor will there be a foreseeable impact on businesses.

Results of the Economic Impact Assessment:

ABC concludes that it is (1) unlikely that the proposal will eliminate any jobs, (2) that the proposal will not likely create additional jobs, (3) that the proposal will not likely create additional new businesses, (4) unlikely that the proposal will eliminate any existing businesses, and (5) unlikely that the proposed regulations will result in the expansion of businesses currently doing business within the state, (6) unlikely that the proposal will impact worker safety.

As stated above under ‘Benefits Anticipated,’ the proposed regulations will benefit the health and welfare of California residents by providing clear guidance for prospective licensees, individuals, and communities during the protest process of issuing an alcohol license. These processes will help ensure ABC only issues licenses that comply with the law and do not disturb the nearby residences all while complying with applicable laws by licensees.

ABC has determined this proposed regulation will have no effect upon the environment.

Description of All Economic Impacts That a Representative Private Person or Business Would Necessarily Incur in Reasonable Compliance with the Proposed Action

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on private persons or businesses. There is no foreseeable impact on private persons or businesses based on the process laid out in the proposed regulation. If there is an economic benefit it is negligible and limited to a small segment of ABC license applicants.

These economic benefits would not be derived from any costs imposed by the proposed regulation.

Thus, ABC is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Need to Require Report from Businesses

The proposed regulation does not require any reports from ABC licensees or any other business. It does require the keeping of records in compliance with the ABC Act to ensure the extended hours are not being abused and can be enforced and restricted by actual scheduled voyages.

Consideration of Alternatives

The ABC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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.

ABC invites interested persons to submit alternatives with respect to the proposed regulation during the comment period from May 10, 2024, through 12 p.m. on June 25, 2024.

Agency Contact Person

Inquiries concerning the proposed regulatory action may be directed to the agency representative Robert de Ruyter, Assistant General Counsel, (916) 419-8958, (designated backup contact) Sarah Easter, Associate Governmental Program Analyst, Law and Policy Unit, (916) 823-1310 or via email at rpu@abc.ca.gov.

Availability of Documents

The ABC prepared an Initial Statement of Reasons for the proposed action. Copies of the Initial Statement of Reasons, and the full text of the proposed regulations may be accessed on ABC's website listed below or may be obtained from the Law and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after May 10, 2024.

ABC staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Change to the Proposed Full Text of the Regulation Action

If there is any change to the proposed full text of the regulation action in a substantial, or sufficiently related way, it will be made available for comment for at least 15 days prior to the date on which the department adopts the resulting regulation.

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons will be available, and copies may be requested, from the department contact persons in this notice or may be accessed on ABC's website listed below.

Internet Access

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ABC's website for this rulemaking at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>