

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
NOTICE OF PROPOSED RULEMAKING CONCERNING TRUST APPLICATIONS

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, ABC 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 December 13, 2024, and closes at 12:00 p.m. on January 28, 2025. 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 “Trusts” in the subject line of your email.

AUTHORITY AND REFERENCE

Authority cited: Section 25750, Business and Professions Code; Section 22 Article XX California Constitution

Reference: Sections 23008, 23394, 23396, 23396.1, 23396.2, 23396.3, 23816, 23818, 23821, 23826, 23826.5, 23836.7, 23836.9, 23826.10, 23826.12, 23836.13, 23836.14, 23827, 23950, 23951, 23952, 23953, 23954, 23954.6, 23959, 23961, 24070, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking seeks to define and clarify the requirements for applications submitted to ABC that include a trust.

When an application is submitted to ABC for an alcohol license, applicants include information about the business, including business structure and ownership details. One commonly used ownership structure is to place the business into a trust. A trust is a legal entity, that operates in a similar way to a corporation and can have multiple trustees and beneficiaries. As with every application that ABC receives, trust applications must be investigated before an application can be issued. By conducting these investigations, ABC can determine possible ownership and/or tied-house conflicts.

Due to the complex nature of trust applications, and little specific statutory requirements currently, there is some ambiguity for ABC staff and applicants surrounding application requirements when a trust is involved. This proposed regulation would create more clarity and transparency in the application process with respect to trusts, thus allowing for a more streamlined investigation. This could result in faster license processing, more straightforward application expectations, and a reduction in tied-house related ownership conflicts.

Summary of Existing Laws and Regulations

ABC has had a long history of granting a variety of ABC licenses to various trusts based on the definition of person in Business and Professions Code section 23008. However, there is little specific statutory guidance from the legislature on trusts as there is for other entities such as limited liability companies, partnerships or corporations. Recently, trust entities applying for licenses have become increasingly complex, and often are created with the intent of circumventing tied house laws by hiding disqualifying interests held by those either settling property into a trust, those controlling a trust, or those benefiting from a trust.

Summary of Effect

The proposed regulations seek to clarify and establish a uniform application process for applications that include trust ownership entities. This this will alleviate confusion by applicants and ABC staff due to the broad language used in statute regarding application requirements for ABC licenses attached to trusts. This will also assist ABC staff to conduct more complete investigations to assure that there are no existing tied-house conflicts within the ownership structure of the prospective licensee.

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 clarify application requirements, streamlining the application process, and helping new licensees open their businesses in a timely manner, all while still preserving the investigative process.

Benefits Anticipated

This proposed regulation should benefit all parties involved in the application, licensure, and even consumers of alcohol. Applicants would have more clarity throughout the application process about the requirements expected of prospective licensees. This is accomplished by defining terms associated with trust applications, clarifying expectations of trust applications, and spelling out requirements of trust applications. This creates less confusion of applicants and ABC staff, more transparency within the application process, and peace of mind to the consumer that the alcohol they are consuming has been vetted and comes from a safe and properly licensed source.

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. This proposed regulation clarifies application requirements when an applicant is applying for a license using a trust. Outside of the application process and investigation this proposed rulemaking action has no impact on businesses.

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 Significant, 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.

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, and (7) will have no impact upon the environment..

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 who apply for an alcohol license using a trust. These processes will help ensure ABC only issues licenses that comply with the law but create a more transparent and equitable process by which trust applications are reviewed.

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 impact, 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 specify requirements from applicants which may require additional forms to be submitted to ABC.

Consideration of Alternatives

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 itself considered two possible alternatives to this proposed regulation. These alternatives are described in our Initial Statement of Reasons.

ABC invites interested persons to submit alternatives with respect to the proposed regulation during the comment period from December 13, 2024, through 12 p.m. on January 28, 2025.

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) Shelby Pender, Associate Governmental Program Analyst, Law and Policy Unit, (916) 285-8517 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 December 13, 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/>