

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS

Text of proposed language for adoption.

§147. Emergency Decision Procedures for Administrative Actions against Alcohol Licenses.

(a) The department may issue an emergency decision temporarily suspending a license, temporarily suspending specific licensed privileges, or temporarily imposing conditions on a license in situations involving an immediate threat to the public health, safety, or welfare that requires immediate action, pursuant to the provisions of Article 13 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with section 11460.10).

(b) If occurring on a licensed premises, or on any adjoining property rented or leased by a licensee, and directly connected to the operation of a licensed business, the department has determined the following circumstance constitutes an immediate threat to the public health, safety, or welfare that requires immediate administrative action through an emergency decision:

(1) The licensee or an employee or agent of the licensee acts in violation of a rule established by an order of a federal, state, or local official during a state of emergency to protect the public health, safety, and welfare.

(c) Prior to issuing an emergency decision, the department shall hold a Hearing on Emergency Action to determine if the licensee conduct is an immediate threat to the public health, safety, or welfare and if an emergency decision should be put into effect pending the conclusion of the department's normal accusation process.

(d) The department in its exclusive discretion shall consider scheduling all Hearings on Emergency Action at a time, including evening hours, and at a place convenient to all parties to the proceeding, including those witnesses required to be present, and the public affected. The hearing may be conducted as an informal hearing using electronic communication by the parties.

(e) If practicable, the department shall give the licensee notice of the Hearing on Emergency Action, whether oral or written, including by telephone, facsimile transmission, or other electronic means. If the department finds that giving notice to a licensee is impracticable at a Hearing on Emergency Action, the department shall present evidence at the hearing, proving by a preponderance of the evidence, that the department made a good faith effort to provide the licensee with notice of the Hearing on Emergency Action. In giving notice, if the department uses a mailing address, phone or facsimile number, or email address which the licensee has placed on file with the department, notice is presumed to be effective.

(f) During any Hearing on Emergency Action before the department, or before an administrative law judge as directed by the department, the department shall present evidence of the immediate threat to the public health, safety, or welfare that requires immediate action and shall recommend an appropriate action to be taken under an emergency decision.

(g) During any Hearing on Emergency Action before the department, or before an administrative law judge as directed by the department, the department shall give the licensee an opportunity to present evidence related to the alleged immediate threat to the public health,

safety, or welfare that requires immediate action and to request what the licensee believes to be an appropriate action, if any, to be taken under an emergency decision.

(h) If the department finds by a preponderance of the evidence that there exists a factual basis that the alleged violation occurred and that the alleged violation is an immediate threat to the public health, safety, or welfare that requires immediate action, the department shall issue an emergency decision.

(i) An emergency decision shall include an explanation of the factual and legal bases to justify the finding of the immediate threat to the public health, safety, or welfare that requires immediate action and shall include the department's reasoning for the action taken. An emergency decision issued by the department is effective when issued or as provided in the decision. Any suspension imposed by an emergency decision shall be performed in the manner prescribed in Title 4, California Code of Regulations, section 108.

(j) Any emergency decision issued by the department under this section may only be reviewed by the superior court of the county where the licensed premises is located as established in Business and Professions Code section 23090.5.

(k) Any emergency decision against a licensee shall end if the department does not commence its normal accusation process by registering the accusation within 10 days of issuing the emergency decision. In the event an emergency decision ends due to this subsection, the department retains the discretion to hold an additional emergency decision hearing and issue an emergency decision against the same licensee pursuant to this section if appropriate.

(l) If a temporary suspension is imposed by an emergency decision, the days a licensee is temporarily suspended will be deducted from any suspension imposed at the conclusion of the department's normal accusation process.

(m) If a suspension imposed at the end of the department's normal accusation process is 15 days or less solely due to a deduction of days from a previous temporary suspension, the suspension is not subject to a petition for offer in compromise under Business and Professions Code section 23095.

(n) Nothing in this section shall have any effect on the department's authority to cancel or suspend summarily an interim operating permit under Business and Professions Code section 24044.5(h).

(o) Nothing in this section shall have any effect on the department's authority to cancel or suspend summarily a temporary permit under Business and Professions Code section 24045.5.

(p) Nothing in this section shall have any effect on the jurisdiction of the Alcoholic Beverage Control Appeals Board as outlined in Business and Professions Code section 23080.

Authority: Section 25750, Business and Professions Code; Article XX, section 22, California Constitution; and Section 11460.20, Government Code.

Reference: Sections 23080, 23090.5, 23095, 24044.5, 24045.5, 24201, 24203, 24204, 24300 and 24301, Business and Professions Code; Article XX, section 22, California Constitution; and

Sections 11460.10, 11460.20, 11460.30, 11460.40, 11460.50, 11460.60, 11460.70, and 1460.80,
Government Code.