

## TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

August 7, 2020

### NOTICE OF PROPOSED RULEMAKING

The Department of Alcoholic Beverage Control (“ABC”) proposes to adopt the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. This proposed rulemaking is a certificate of compliance action for a previously approved emergency rulemaking action that is effective through January 30, 2021.

#### 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. Comments may also be submitted by email to [RPU@abc.ca.gov](mailto:RPU@abc.ca.gov). Please include “Delivery Minor Decoy Requirements” in the subject if submitted in this fashion to ensure proper response. The written comment period closes at **12:00 p.m. on September 23, 2020**. 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

#### AUTHORITY AND REFERENCE

Business and Professions Code Section 25658 and 25750 authorizes ABC to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific section 25658 of the Business and Professions Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

### **Summary of Existing Laws and Regulations**

Current ABC regulations did not include an enforcement mechanism addressing retail alcoholic beverage delivery away from the licensed premises for off-premises consumption. ABC has enacted these regulations on an emergency basis, but there is a need for these regulations to become permanent to ensure the increasing use of alcohol delivery does not allow persons under 21 years of age to obtain alcohol.

### **Summary of Effect**

The unregulated delivery of alcoholic beverages to minors or merely dropping off alcoholic beverages at unattended doorsteps by licensees or third-party services is detrimental to the public health, safety, and welfare. Simply asking a customer whether they are of legal age to consume alcohol when taking an order for alcoholic beverages online or over the phone is not adequate if, at the point of delivery, the identification, appearance, or age of the recipient is not visually inspected or verified, especially when the delivering party does not even attempt actual contact with the customer. In order to continue to address this problem, ABC will need the ability to deploy minor decoys covering off-premises deliveries of alcoholic beverages permanently.

### **Comparable Federal Statute or Regulations**

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

### **Policy Statement Overview**

ABC's mission to protect the public health, safety, and welfare through licensing alcohol businesses and enforcing legislative standards is limited when it is undermined by the conduct of ABC licensees, their agents, or employees. Preventing sales to and furnishing of alcoholic beverage to persons under 21 years of age, and prosecuting violators, is one of the highest public safety priorities of ABC. By utilizing minor decoys for delivery service, ABC can identify licensees violating their duty as an alcohol licensee and will be able to enforce the law against them, thereby protecting the public's health, safety, and welfare. In addition, the permanence of delivery minor decoy regulatory standards will ensure licensees are continued to be treated in a fair manner.

## **Benefits Anticipated**

By continuing the use of minor decoy operations for off-premises delivery of alcoholic beverages, ABC can investigate actions of licensees, their agents, or employees who are violating legal delivery standards and hold licensees who violate the law accountable through enforcement actions. Although this issue was an emergency due to the COVID-19 pandemic, the increase in legal alcohol delivery is not anticipated to cease once the pandemic circumstances are over. This will require ABC to continue to monitor and hold ABC licensees accountable for delivery standards long after the industry returns to a new normal.

## **Determination of Inconsistency/Incompatibility with Existing State Regulations**

ABC has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

## **Effect upon Small Businesses in California**

ABC has determined this proposed regulatory action does not affect small businesses: the laws that ABC seeks to enforce via the proposed regulation are laws to which small businesses are already subject. The proposed action only lays out the process by which ABC will investigate potential violations and seek enforcement of these same laws. Further, ABC is not affecting any business with this regulation without due process or providing evidence that the business has violated the ABC Act through furnishing alcohol to a person under 21 years of age.

## **Disclosures Regarding the Proposed Regulatory Action**

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**

ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on businesses that do not violate the law. The laws that ABC seeks to enforce via the proposed regulation are laws to which businesses are already subject. The proposed action only lays out the process by which ABC will investigate potential violations and seek enforcement of these same laws. There is no foreseeable impact on businesses based on the process laid out in the proposed regulation.

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

ABC has made the determination that the adoption of this regulation will have negligible economic impact on a representative private person or business that does not violate the law. The laws that ABC seeks to enforce via the proposed regulation are laws to which persons and businesses are already subject. The proposed action only lays out the process by which ABC will investigate potential violations and seek enforcement of these same laws. There is no foreseeable impact on representative private persons or businesses based on the process laid out in the proposed regulation.

## **The Need to Require Report from Businesses**

The proposed regulation does not require any reports from ABC licensees or any other business.

## **Consideration of Alternatives**

ABC has determined that no reasonable alternative considered by ABC would be more effective in carrying out the purpose for which the action is proposed. Utilizing minor decoys would be as effective, less burdensome to, and more cost-effective to affected private persons, and equally effective in implementing statutory policies or other provision of law. ABC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

## **Agency Contact Persons**

Inquiries concerning the proposed regulatory action may be directed to the agency representative Robert de Ruyter, Assistant General Counsel, (916) 419-8958 or (designated backup contact) Sonny Bains, Associate Governmental Program Analyst, Law and Policy Unit, (916) 285-0891.

### **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 Regulations and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after August 7, 2020.

The 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, along with the full text of the proposed regulations, is available at <https://www.abc.ca.gov/law-and-policy/regulations-rulemaking/>