

## **TITLE 4. ARTICLE 11. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS**

Text of amendments proposed for adoption.

Text removed from the initial proposal is in ~~striketrough~~.

Text added to the initial proposal is in *underlined italics*.

### **§69 Drawings for Priority of Obtaining Limited General Alcoholic Beverage Licenses.**

- (a) The intent of this regulation is to establish the processes and procedures for the department to conduct yearly priority drawings pursuant to Business and Professions Code section 23961 for general licenses in counties throughout the state.
- (b) Definitions for use in Title 4 California Code of Regulations Sections 69-69.4:
  - (1) “Count” means the number of on-sale general licenses and off-sale general licenses, including both issued licenses and pending applications, within a county that are limited by population pursuant to Business and Professions Code sections 23816 and 23817.
  - (2) “Department” means the California Department of Alcoholic Beverage Control.
  - (3) “Formal application” means a full licensing application for an alcoholic beverage license pursuant to Business and Professions Code sections 23950-23954.
  - (4) “Intercounty transfer” means a transfer of either an on-sale general license or an off-sale general license from one county in the state to another county in the state.
  - (5) “Off-sale general license” means any alcoholic beverage license described in Business and Professions Code section 23394 and 23826.5.
  - (6) “On-sale general license” means any alcoholic beverage license described in Business and Professions Code sections 23396, 23396.1, 23396.2, 23396.3, 23826, ~~23826.5~~, 23826.7, 23826.9, 23826.10, 23826.11, 23826.12, 23826.13, 23826.14, 23827.
  - (7) “Population” means the estimated county population as determined by Business and Professions Code section 23818.
  - (8) “Priority application” means an application as prescribed by Title 4 California Code of Regulations section 69.2 for an individual or entity to participate in a priority drawing pursuant to Business and Professions Code section 23821 and 23961.
  - (9) “Priority application period” is the time prescribed by Business and Professions Code section 23821 that the department will accept priority applications to participate in a priority drawing.
  - (10) “Priority drawing” means the random selection of applicants by the department and granting applicants priority to apply for on-sale general licenses, off-sale general licenses, the intercounty transfer of on-sale general licenses, or the intercounty transfer of off-sale general licenses, on a yearly basis pursuant to Business and Professions Code section 23961.
  - (11) “Priority winner” means a priority applicant who is chosen in a priority drawing, or as a replacement for a former priority winner, and can submit a formal

application to the department for one of the limited licenses available in a county.

(12) “Residency” means an individual living in California, a California business with valid articles of incorporation, or any business registered with the California Secretary of State to do business in California.

Authority: Sections 23820, 23821, 23959, and 23961 Business and Professions Code.

Reference: Sections 23394, 23396, 23396.1, 23396.2, 23396.3, 23816, 23817, 23818, 23821, 23826, 23826.5, 23826.7, 23826.9, 23826.10, 23826.11, 23826.12, 23826.13, 23826.14, 23827, 23950, 23951, 23952, 23953, 23954, 23954.6, 23959, 23961, and 24070 Business and Professions Code.

**§69.1 Calculation and Notification of Available General Licenses by County.**

- (a) The department shall determine the count of on-sale general licenses and off-sale general licenses in each county as of June 30 in every calendar year.
- (b) The department shall publish notice of the number of new original on-sale general licenses, new original off-sale general licenses, intercounty transfer of on-sale general licenses, and intercounty transfer of off-sale general licenses available in each county for the public to apply for by August 15 in every calendar year.
  - (1) This notice shall be published on the department's website and sent through direct electronic communication to stakeholders who have requested to be notified of a priority application period.
  - (2) The notice shall include the exact dates of the priority application period pursuant to Business and Professions Code section 23821. The priority application period shall last for a period of no less than 5 business days concluding on the last Friday in September of every calendar year.
  - (3) The notice shall include the tentative start date for any priority drawings that would need to be held.

Authority: Section 23816, 23817, 23820, 23821, 24070, and 24079 Business and Professions Code.

Reference: Sections 23394, 23816, 23817, 23396, 23396.1, 23396.2, 23396.3, 23818, 23826, 23826.5, 23826.7, 23826.9, 23826.10, 23826.11, 23826.12, 23826.13, 23826.14, 23827, and 24070 Business and Professions Code.

## §69.2 Priority Applications to Participate in a Priority Drawing.

- (a) An individual or entity must submit the following information to complete a priority application for an alcoholic beverage license during a priority application period.
  - (1) All names of individuals and entities that will appear in the formal application for a license if the priority applicant is a priority winner.
  - (2) Identifying information for all individuals and entities listed in the priority application:
    - i. Individuals shall submit the following: date of birth, and social security number or tax identification number.
    - ii. A business entity shall submit the following: tax identification number or California Secretary of State business identification number.
  - (3) Declaration that all individuals and entities have established residency in California beginning at least 90 *calendar* days prior to the date a priority drawing will be held.
  - (4) Declaration that all entities and individuals listed have no direct or indirect interest in any other priority application for the same priority drawing.
- (b) The applicant bears the burden for ensuring their priority application is complete and received by the department within the noticed priority application period.
- (c) Any priority application received by the department that is incomplete or untimely shall be disqualified.
- (d) The department shall not contact priority applicants concerning incorrect or incomplete priority applications submitted during the priority application period to inform them of the need to amend their priority application to avoid disqualification.
- (e) If at the conclusion of the priority application period the number of applications received, excluding any applications disqualified pursuant to this section, is less than or equal to the count of available licenses for a license type available in a county, the department shall deem all priority applications received for that license type in a county a priority winner.
- (f) If at the conclusion of the priority application period the number of all applications received, including the applications disqualified pursuant to this section, is less than or equal to the count of available licenses for a license type available in a county, the department ~~may~~ *shall* deem all the applications for that license type in a county a priority winner. The department shall not deem individual disqualified applications the status of priority winner unless all disqualified applications are granted that status.

Authority: Section 23820, 23821, and 23961 Business and Professions Code.

Reference: Section 494.5, 23817, and 23821 Business and Professions Code.

### §69.3 Priority Drawings.

- (a) Within 10 business days of the close of the priority application period, the department shall publish notice of the amount of priority applications received during the priority application period. If needed, this notice will also include the final scheduled date of all priority drawings. The date for any priority drawing shall not be prior to the previously noticed tentative date for the priority drawings sent pursuant to Title 4 California Code of Regulations section 69.1(b)(3).
  - (1) Notice pursuant to this section shall be published on the department's website, and through direct electronic communication to stakeholders who have requested to be notified of the scheduling of priority drawings.
- (b) The department shall conduct all priority drawings in the following manner to ensure all priority applications are treated equally and fairly.
  - (1) The department shall assign each priority applicant a randomized number in preparation for a priority drawing.
  - (2) During the priority drawing, the department will randomly select the order of the randomized numbers establishing a priority order for all priority applicants.
  - (3) Priority applicants will be made priority winners in the established randomized order, one applicant for each available license.
  - (4) The department shall publish results of the priority drawing to its website and notify stakeholders who have requested to be notified of priority drawings through electronic communication within 10 business days of the priority drawing. This notice shall include the deadline for submission of formal applications by priority winners pursuant to Title 4 California Code of Regulations section 69.4 (b).
- (c) The numeric list of priority applicants who are not priority winners in the randomized ordering established pursuant to Title 4 California Code of Regulations section 69.3 (b)(2) shall be retained by the department until the publication of a notice for a new priority application period the following year.
- (d) If a priority winner is disqualified, or withdraws, from a drawing with results still retained pursuant to Title 4 California Code of Regulations section 69.3 (c), the department will notify the next highest priority applicant from the list and notify them of being a priority winner. This notice will include the deadline date for the submission of the formal application for the replacement priority winner pursuant to Title 4 California Code of Regulations section 69.4 (c).
- (e) The department shall investigate all priority winners, chosen at the priority drawing or informed later pursuant to Title 4 California Code of Regulations section 69.3(d), to ensure each priority winner meets both the 90-calendar day residency requirement and the requirement that they have no direct or indirect interest in any other priority application submitted for the same priority drawing. This investigation must be complete prior to any action being taken upon a priority winner's formal application.
  - (1) Proof of residency may be established using a valid California identification, a utility bill for a California address in the name of the priority applicant, a filing with the California Secretary of State, or the filing for a California tax identification number.

- (f) If it is determined that a priority winner did not comply with priority application requirements in Title 4 California Code of Regulations section 69.2(a), or provided inaccurate information in their priority application, ~~either the 90-day residency requirement at the time of the priority drawing, or the additional interest requirement,~~ that priority application will be disqualified by the department.

Authority: Section 23820, 23821, and 23961 Business and Professions Code.

Reference: 23816, 23817, 23818, 23820, 23821, 23691 and 24070 Business and Professions Code.

#### §69.4 Formal Applications for Priority Drawing Winners.

- (a) Other than the rules for formal applications pursuant to this section, the formal application submitted by a priority winner shall be subject to the same laws and regulations as all other license applications submitted to the department.
- (b) A priority winner shall submit their formal application to the department by close of business on the 90<sup>th</sup> calendar day after the priority drawing. By failing to submit a valid formal application by the 90<sup>th</sup> calendar day, the priority winner withdraws their participation from the priority drawing.
- (c) A replacement priority winner notified pursuant to Title 4 California Code of Regulations section 69.3(d) shall have 90 calendar days from the providing of notice by the department to submit their formal application. By failing to submit a valid formal application by the 90<sup>th</sup> calendar day, the replacement priority winner withdraws their participation from the priority drawing.
- (d) Submission of a formal application occurs when the department receives the formal application, not when the application is sent or postmarked by the priority winner.
- (e) A priority winner can only submit a formal application with the same individuals and entities listed in its priority application. A completed formal application with other individuals or entities included will be rejected by the department as an invalid formal application.
- (f) The submission of a rejected formal application prior to the close of business on the 90<sup>th</sup> calendar day will not be considered compliant with Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c).
- (g) The burden for the validity of the submitted formal application is upon the priority winner. Even if submitted early, the department may not review submitted applications for compliance pursuant to Title 4 California Code of Regulations section 69.4 (e) prior to the deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). If the department rejects a formal application pursuant to Title 4 California Code of Regulations section 69.4 (e) after the deadline in Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) the priority winner will be deemed to withdraw their participation in the priority drawing and a new priority winner will be chosen pursuant to Title 4 California Code of Regulations section 69.3 (d).
- (h) If a priority winner can show good cause as to why they will not be able to meet the deadline for the submission of their formal application by close of business of the 90<sup>th</sup> calendar day, they can request only one extension of up to 30 calendar days. The written request for extension must be received by the department on or before the 90<sup>th</sup> calendar day, and the current 90 calendar day period shall continue while the department determines if there is good cause to extend the period.
  - (1) For purposes of this section, “good cause” means the existence of a situation that is not the fault of the priority winner and beyond the priority winner's control that demonstrates it is not reasonably possible to complete the application within the 90-calendar day deadline.
- (i) A 30-calendar day extension pursuant to Title 4 California Code of Regulations section 69.4 (h) shall begin from the date the department notifies the priority winner that the extension request has been granted. The department shall provide the new date of the

deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4(c) in its notice to the priority winner that their request was granted.

- (j) If the department determines that there is no good cause to extend the period, the department shall provide notice of its decision to the priority winner. The priority winner shall then have 5 additional business days from the date notice is sent by the department to submit their formal application or their participation in the priority drawing shall be withdrawn pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). The department shall include the date of the new deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) in the notice of rejection of extension sent to the priority winner
- (k) The department shall not grant any further extensions to a priority winner except for those issued on a request pursuant to Title 4 California Code of Regulations section 69.4 (h).

Authority: 23961 and 23962 Business and Professions Code.

Reference: 23950, 23951, 23952, 23953, 23954, 23954.6, 23956, 23957, 23958, 23958.4, 23959, 23961, and 23962 Business and Professions Code.