

**Department of
Alcoholic Beverage Control**

INITIAL STATEMENT OF REASONS

**PROPOSED ADOPTION OF REGULATIONS FOR
PRIORITY APPLICATION DRAWINGS**

PROPOSED ADOPTIONS TO TITLE 4:

SECTION 69.1 -69.4.

PROBLEM STATEMENT AND PURPOSE

The Business and Professions Code provides that the Department of Alcoholic Beverage Control (“ABC”) shall determine annually the number of on-sale general and off-sale general licenses that are available in each county based upon population. Business and Professions Code section 23961 provides that ABC shall conduct a drawing to establish the priority of applicants seeking available licenses. This statute also establishes requirements to determine if a potential licensee is eligible to participate in the priority drawing. As written, the current law is informative, but requires additional explanation to clarify ABC’s intent and to establish procedures.

This action is a follow-up to last year’s regulatory action for clarification of various terms commonly used and understood by the industry, and that established processes and procedures for ABC to conduct yearly priority drawings. After going through the priority drawing process of 2022, ABC seeks to further update and modernize the process to better meet the needs of potential ABC licensees. This action will continue to refine and improve a transparent and uniform selection process for potential licensees.

BENEFITS

By refining and improving the uniform process for priority drawings and application standards, ABC will promote clear parameters for a more transparent and timely selection method for participating potential licensees. The anticipated benefit of this action will ensure a uniform process through all county priority drawings conducted by ABC.

AUTHORITY

Authority: Sections 23816, 23817, 23820, 23821, 23959, 23961, 23962, 24070, and 24079 Business and Professions Code.

Reference: Sections 494.5, 23394, 23396, 23396.1, 23396.2, 23396.3, 23691, 23816, 23817, 23818, 23820, 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, 23956, 23957, 23958, 23958.4, 23959, 23961, 23962, and 24070 Business and Professions Code.

NECESSITY

The specific purpose for each proposed section is as follows:

§ 69.1 (a)

The subsection establishes the date when the yearly count pursuant to Business and Professions Code section 23821 is done by ABC for each county to determine how many original and inter-county transfer licenses will be available for the limited license types that are subject to the priority drawing process. This subsection is necessary because the number of alcohol licenses can fluctuate in any given area daily due to licenses issuing, being surrendered, sold, and transferred. By setting a specific date for the count to be established, it will create an objective and measurable number of licenses available for the priority application period and drawing if necessary.

This subsection was modified to move the date of the determination of the count for a priority drawing period from June 30 of each calendar year to June 1 of each calendar year. This change was necessary to allow ABC staff more time to prepare the necessary materials for the priority drawing process each year.

§ 69.1 (b)

The subsection establishes a deadline for the yearly notice of the number of licenses available to be issued by ABC. The statute requires ABC to issue this notice on an annual basis pursuant to Business and Professions Code section 23821, but no specific date is provided. This subsection is necessary to ensure that those who desire to obtain a license in any particular county will have notice as to how many licenses, if any at all, will be available that year.

§ 69.1 (b)(1)

The subparagraph establishes a requirement for the yearly notice to be published electronically on the ABC's website and that the electronic notice will be sent directly to persons on the registered electronic mailing list managed by ABC. Business and Professions Code section 23821 requires ABC to issue notice by publishing in newspapers of general circulation in each county pursuant to Government Code section 6061. There have been many technological and social changes to legal notices since this Business and Professions Code section 23821 was last modified in 1969. This subparagraph is necessary to ensure the notice will be given through the modern electronic communication systems set up by ABC.

§ 69.1 (b)(2)

The subparagraph establishes a requirement for the yearly notice to include the dates for the priority application period, a yearly date for the close of a priority application period, and a minimum length of the priority application period established by ABC. Business and Professions Code section 23821 requires ABC to issue notice of the number of available licenses. Other aspects of the notice, as well as

the timing of the priority application period, are not addressed in statute. This subparagraph is necessary to standardize the priority application periods set by ABC in preparation for priority drawings on an annual basis.

This subsection was changed to clearly establish when the priority application period would commence, rather than when the period will close, on a yearly basis. This change is necessary to better inform potential licensees when a priority application will be due on an annual basis. ABC found some potential licensees were confused by the previously used language.

§ 69.1 (b)(3)

The subparagraph establishes a requirement for the yearly notice to include tentative start dates for any priority drawings needed based on the number of priority applications received. Business and Professions Code section 23821 requires ABC to issue notice the number of available licenses and nothing else. Business and Professions Code section 23961 requires participants to establish residency in California 90 days prior to a priority drawing to be eligible to participate. This subparagraph is necessary to inform the public of the potential dates of any priority drawing. This will ensure the public will know if they will be eligible to participate in any priority drawing due to the residency requirement pursuant to Business and Professions Code section 23961 prior to submitting their priority application and submitting their required declaration.

§ 69.2 (a)

The subsection establishes that certain information is required to be submitted by an individual or entity to qualify as a valid priority application. Business and Professions Code section 23961 has specific requirements for individuals and entities who submit priority applications, but there is no requirement in statute for what information is required for ABC to investigate if applicants meet the statutory requirements to be eligible to participate in the priority drawing. This subsection is necessary to inform the public what information is required to submit a valid priority application and participate in a priority drawing for an available license.

§ 69.2 (a)(1)

The subparagraph establishes that the names of all individuals or entities that will appear on the formal application submitted by the applicant must appear on the priority application. This will ensure that individuals or entities do not apply under one name for the priority license and then attempt to submit their formal application under a different individual name or entity. This subparagraph is necessary to aid ABC in enforcing the statutory requirements for priority applicants pursuant to Business and Professions Code section 23961.

§ 69.2 (a)(2)

The subparagraph establishes that priority applications must include identifying information for all individuals and entities listed in the priority application. This subparagraph is necessary to aid ABC in enforcing the statutory requirements for priority applicants pursuant to Business and Professions Code section 23961.

§ 69.2 (a)(2)(i)

The subparagraph establishes that individuals listed in priority applications must submit their name, date of birth, and either the last four digits of their social security number, or their state-issued driver license number, or state-issued identification card number, or their passport number. This subparagraph is necessary to aid ABC both in identifying priority applicants and in enforcing the statutory requirements for priority applicants pursuant to Business and Professions Code section 23961.

The changes proposed to this section are necessary to establish the need for individuals to provide their name, and better accommodate individual priority applicants and the various government issued numerical identifiers that they may use to establish their identity in priority application. ABC found these numbers to be easier for an applicant to obtain than the tax identification number.

§ 69.2 (a)(2)(ii)

The subparagraph establishes that entities listed in priority applications must submit the entity name, the date of incorporation or establishment of the entity, and the entity's California Secretary of State business identification number. This subparagraph is necessary to aid ABC both in identifying priority applicants and in enforcing the statutory requirements for priority applicants pursuant to Business and Professions Code section 23961.

The changes proposed to this section are necessary to establish the need to provide the entity's name, the date of their creation, and the entity's California Secretary of State business identification number. ABC found this number to be easier for an applicant to obtain than the tax identification number.

§ 69.2 (a)(2)(iii)

The proposed subparagraph establishes the unique identifiers required of the trust that submits a priority application under this section. The unique identifiers required are the name of the trust, for each individual trustee or beneficiary the identification documents required of individuals in Title 4 California Code of Regulations section 69.2 (a)(2)(i), if the trustee is not an individual, then it shall submit the identifying information required of a business entity in Title 4 California Code of Regulations section 69.2 (a)(2)(ii). This subparagraph is necessary because trusts can be established in many ways and may have both individuals and entities involved. Executors of trusts questioned which

elements of the trust needed to be disclosed on a priority application, and this subparagraph clarifies what is required in for these priority applicants.

§ 69.2 (a)(3)

The subparagraph establishes that priority applications must include a declaration that they meet the residency requirement pursuant to Business and Professions Code section 23961. Due to ABC's limited resources, it is unable to investigate each priority application during the application period to ensure each meets the requirements to participate. This requirement aids applicants in understanding that the requirement exists, that they acknowledge they comply, and can be used as justification for the disqualification of a priority winner if they did not comply with the requirement after ABC investigates their eligibility. This subparagraph is necessary to aid ABC in enforcing the statutory requirements for priority applicants pursuant to Business and Professions Code section 23961.

§ 69.2 (a)(4)

The subparagraph establishes that priority applications must include a declaration that they have no interest in any other priority application for the same priority drawing pursuant to Business and Professions Code section 23961. Due to ABC's limited resources, it is unable to investigate each priority application during the application period to ensure each meets the requirements to participate. This requirement aids applicants in understanding that the requirement exists, that they acknowledge they comply, and can be used as justification for the disqualification of a priority winner if they did not comply with the requirement after ABC investigates their eligibility. This subparagraph is necessary to aid ABC in enforcing the statutory requirements for priority applicants pursuant to Business and Professions Code section 23961.

§ 69.2 (b)

The subsection establishes that priority applicants bear the burden to ensure their priority application is both complete and submitted to ABC within the priority application period. This subsection is necessary to inform the public that ABC is not responsible for lost, or misplaced priority applications. In addition, an incomplete application submitted by a priority applicant is not the responsibility of ABC to remedy.

This subsection was changed to modify the burden on the priority applicant to submission within the priority application period, not for the reception by ABC. This is necessary to allow for mailings that occur within the priority application period that are postmarked by the United State Postal Service to be accepted by ABC even if the application is received after the close of the priority application period pursuant to the proposed subparagraph in Title 4 California Code of Regulations section 69.2 (b)(1).

§ 69.2 (b)(1)

The proposed subparagraph establishes that submission of a priority application is completed either the day ABC receives the application, or the postmark date if the application is sent via the United States Postal Service. This subparagraph is necessary to allow priority applications to be mailed and postmarked within the priority application period to be accepted by ABC. This change was necessary to provide more support to potential licensees participating in the priority application process.

§ 69.2 (c)

The subsection establishes that any priority application that ABC receives that is either incomplete or untimely, regardless of reason, shall be disqualified by ABC. This subsection is necessary to inform the public that ABC will treat every priority application received in an equal and fair manner regardless of where or when it is submitted.

§ 69.2 (d)

The subsection allows ABC to contact priority applicants to inform them of the need to amend their application to avoid disqualification. However, this subsection does not create a burden upon ABC to contact every applicant that has an incorrect or incomplete priority application. The change to this subsection is necessary to allow ABC staff, when time and availability allow, to help priority applicants remediate incomplete or incorrect priority applications within the priority application period. ABC in the past performed these functions and during the priority application period in 2022 where this aid was prohibited priority applicants expressed their desire for this subsection to be changed.

By making this change, ABC is not creating a burden on itself to contact all priority applicants with an incomplete or incorrect priority application nor is ABC reliving the applicant's burden established pursuant to Title 4 California Code of Regulations section 69.2 (b). However, it does allow ABC staff to provide better service to priority applicants during the priority application period when incorrect or incomplete priority applications are discovered and there is still time to direct applicants to cure those mistakes.

§ 69.2 (e)

The subsection establishes that if the number of valid priority applications received by ABC during the priority application period is equal to, or less than, the number of licenses available in the count, since no drawing would be required, each of the priority applications will be deemed eligible to apply for a license. This subsection is necessary to describe the process outlined pursuant to Business and Professions Code section 23961 in determining whether a priority drawing is necessary.

§ 69.2 (f)

The establishes that if the number of valid priority applications and disqualified applications received by ABC during the priority application period is equal to, or less than, the number of licenses available in the count, since no drawing would be required, each of the priority applications, including those that would otherwise be disqualified to participate in a draw, will be deemed eligible to apply for a license. However, to treat all applicants equally and fairly, either all otherwise disqualified applicants must be included in making this determination, or none. This subsection is necessary to describe the process outlined pursuant to Business and Professions Code section 23961 in determining whether a priority drawing is necessary and ensuring all available licenses are assigned to all applicants, even if they would be disqualified were a priority draw required.

§ 69.3 (a)

The subsection establishes a limit on when ABC must publish notice of the number of priority applications received during the priority application period and the notice of the scheduling of any priority drawings. The fifteen-business day period was chosen to ensure ABC has time to correctly consolidate all priority applications, schedule priority drawings, and construct an ADA compliant notice to publish on ABC website and send to the mailing list maintained by ABC. This subsection requires that ABC not schedule any priority drawing prior to the tentative date noticed pursuant to Title 4 California Code of Regulations section 69.1(b)(3). This subsection is necessary to ensure ABC provides notice to priority applicants and the public of the need for any priority drawings and when the drawing will be held in a timely manner after the close of the priority application period. In addition, it ensures the tentative date for priority drawings that priority applicants relied upon for their 90-day residency declaration will not thereafter be disqualified by holding the priority draw earlier than the initial tentative date.

The change proposed to this subsection allows for an increased time for ABC to complete the required information and make the information public. The change is necessary because the previous 10-business day period was too short and caused an undue burden upon ABC staff to meet the deadline. ABC does not anticipate this change to negatively impact priority applicants in any way.

§ 69.3 (a)(1)

The subparagraph establishes a requirement of notice upon ABC for the scheduling of priority drawings and informing the public of the number of priority applications received during the priority application period. This subparagraph mandates that ABC publish this notice on ABC's website and send a copy to the electronic mailing list maintained by ABC. This subparagraph is necessary to ensure those in the industry and who have submitted priority applications are aware of the outcomes of the priority application period and any scheduled priority drawings.

§ 69.3 (b)

The subsection establishes the procedure for ABC to conduct a priority drawing pursuant to Business and Professions Code section 23961. This subsection is necessary to establish the rules, policies, and procedures ABC will follow to ensure that all priority applicants are treated equally and fairly. This subsection will require all drawings to follow the same procedure throughout the state and ensure ABC employees cannot affect any outcomes of the priority drawing.

§ 69.3 (b)(1)

The subparagraph requires ABC to assign a randomized number to each priority applicant in a drawing prior to a priority drawing taking place. This subparagraph is necessary to ensure that no one ABC employee can affect a priority drawing's equality and fairness for any priority applicant. Although ABC has never had any evidence of tampering in a priority drawing, the proposed regulation is being put in place to ensure all future priority drawings proceed in a fair and equitable manner.

§ 69.3 (b)(2)

The subparagraph requires ABC to randomly select the order of the randomized numbers assigned pursuant to Title 4 California Code of Regulations section 69.3 (b)(1). This subparagraph is necessary to ensure that no one ABC employee can affect a priority drawing's equality and fairness for any priority applicant. Although ABC has never had any evidence of tampering in a priority drawing, the proposed regulation is being put in place to ensure all future priority drawings proceed in a fair and equitable manner.

§ 69.3 (b)(3)

The subparagraph establishes how ABC will use the order of randomized numbers to choose priority winners in a priority drawing. This subparagraph is necessary to notify the public how priority winners are chosen and to ensure equality and fairness for all priority applicants. Although ABC has never had any evidence of tampering in a priority drawing, the proposed regulation is being put in place to ensure all future priority drawings proceed in a fair and equitable manner.

§ 69.3 (b)(4)

The subparagraph requires ABC to publish all results of all priority drawings on ABC's website within fifteen business days and send a copy to all persons upon the electronic mailing list maintained by ABC. The fifteen-business-day period was chosen to ensure ABC has time to correctly consolidate all priority winners and construct an ADA compliant notice to publish on ABC website and send to the mailing list maintained by ABC. It also requires ABC to post the 90-day deadline for priority winners to submit their formal application pursuant to Title 4 California Code of Regulations section 69.4 (b). This subparagraph is necessary to notify of the priority winners chosen and to ensure equality and fairness for

all priority applicants. Although ABC has never had any evidence of tampering in a priority drawing, the proposed regulation is being put in place to ensure all future priority drawings proceed in a fair and equitable manner. This subparagraph is also necessary to ensure all priority winners know of the deadline and have equal and reasonable time to submit their formal application within the time limits set pursuant to Title 4 California Code of Regulations section 69.4 (b).

The change proposed to this subsection allows for an increased time for ABC to complete the required information and make the information public. The change is necessary because the previous ten-business-day period was too short and caused an undue burden upon ABC staff to meet the deadline. ABC does not anticipate this change to negatively impact priority applicants in any way.

§ 69.3 (c)

The subsection establishes how long ABC will retain the ordered list of randomized priority applicants to replace any priority winners who are subsequently disqualified or withdraw their application. ABC will hold all randomized lists generated in a priority drawing and published to its website until August 1 following year. At this point the previous year's priority list is discarded, and the process of starting a new list begins. This subsection is necessary to ensure any available licenses that would remain open due to withdrawals or disqualifications of priority winners will be available to be assigned a new priority winner until the next years priority application process begins. Priority applicants who are next on the randomized list will not lose their spot until August 1 of the following year.

The notice of the priority application period is required to be published prior to August 15 annually pursuant to Title 4 California Code of Regulations section 69.1 (b), but the date of actual publication will change. The change proposed to this subsection establishes a definite annual date when the previous year's randomized list will be discarded. This change is necessary to avoid confusion from the public, priority applicants, and ABC staff as to when the previous year's priority lists will be discarded.

§ 69.3 (d)

The subsection requires ABC to notify the next priority applicant in the event a priority winner is disqualified or withdraws from the license application process. ABC will hold all randomized lists generated in a priority drawing and published to its website until the notice of the next priority application period the following year. This will allow ABC to notify the next person on the list if a priority license becomes available during the formal application process. This subsection also requires ABC to include within this notice the deadline for submission of the formal application pursuant to Title 4 California Code of Regulations section 69.4 (c). This subsection is necessary to ensure any available licenses that would remain open due to withdrawals or disqualifications of priority winners will be able to be assigned a new priority winner and to allow that replacement priority winner to know the deadline to submit a formal application pursuant to Title 4 California Code of Regulations section 69.4 (c).

§ 69.3 (e)

The subsection requires ABC to investigate each priority winner to ensure the validity of their declarations of meeting both the 90-day residency requirement at the time of the priority drawing and having no direct or indirect interest in any other priority application submitted for the same priority drawing. ABC must investigate each priority winner prior to their accepting and acting upon a formal application. This subsection is necessary to ensure that all priority winners meet the statutory standards pursuant to Business and Professions Code section 23961 (a)(1), and that ABC investigates and finalizes its determination that the priority winner meets the statutory standards prior to any action by ABC upon any formal application submitted by the priority winner.

§ 69.3 (e)(1)

The subparagraph establishes how ABC will determine if a priority winner has established residency within the state prior to the 90-day requirement pursuant to Business and Professions Code section 23961 (a)(1). Proof of residency may be established by the priority winner pursuant to Business and Professions Code section 23961 (c) by providing ABC with 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 a filing for a California tax identification number. This subparagraph is necessary to inform the public and priority winners how ABC will seek to establish proof of the priority winner meeting the 90-day residency requirement.

§ 69.3 (f)

The subsection requires ABC to disqualify any priority winner who ABC determines does not comply with either the 90-day residency requirement or the additional interest requirement at the conclusion of ABC's investigation pursuant to Title 4 California Code of Regulations section 69.3 (e). This subsection is necessary because ABC cannot legally accept a formal application from a priority winner that does not meet the requirements of Business and Professions Code section 23961 (a)(1). This subsection notifies the public that ABC will not disqualify a priority winner until after a priority drawing takes place, but that through investigating the priority winners, ABC will exclude priority winners who did not comply with the statutory requirements.

The proposed change to this subsection clarifies that a priority applicant that appears on multiple priority applications within a draw will disqualify all applications received, not just a priority winner. This change is necessary to ensure understanding by the public, priority applicants, and ABC staff that if there is a violation of Title 4 California Code of Regulations section 69.2 (a)(4), all priority applications in that priority draw will be disqualified. This change better expresses the original intent of ABC than the previously approved language.

§ 69.4 (a)

The subsection requires ABC to subject the formal applications submitted by priority winners to the same laws and regulations as all other license applications submitted to ABC, other than the rules laid out in the proposed section on formal applications. This subsection is necessary to ensure priority winners and the public are aware that the same standards and processes established by ABC for all license applications will apply to the formal applications submitted following the priority drawing process. This makes clear that license applications submitted to ABC by a priority winner after a priority drawing must comply with the normal licensing procedures in addition to the timing and limitations pursuant to Title 4 California Code of Regulations section 69.4.

§ 69.4 (b)

The subsection requires priority winners to submit their formal application for their general alcoholic beverage license by the close of business the 90th day following the date notification is sent by ABC to the applicant that the applicant is a priority winner. If a priority winner fails to submit a formal application by this deadline, it is the same as the priority winner withdrawing their participation in the priority drawing and they are removed from being a priority winner. This subsection is necessary to inform the public and priority winners of the deadline to submit a formal application after the priority drawing. It is also necessary to ensure ABC can act pursuant to Title 4 California Code of Regulations section 69.3 (d) and move to the next-in-order priority winner to ensure available licenses are fairly and equitably offered to priority applicants when a priority winner fails to submit their formal application for the available license.

The proposed change modifies the start of the 90-calendar day period for the submission of the formal application from the date of the priority drawing to the date the notification to priority winner is sent by ABC. This change is necessary to alleviate confusion of priority winners and ABC staff as the 90 calendar days can be calculated from the date the notice is prepared and sent by ABC. This will have minimal effect in practice because these notices are sent within a few days of the priority drawing itself, but this ensures that those notified the first day are not treated differently than those who are notified a few days later.

§ 69.4 (c)

The subsection establishes a 90-day deadline upon replacement priority winners who have been notified pursuant to Title 4 California Code of Regulations section 69.3 (d). The 90-day period begins upon the date the notification is sent by ABC to the new priority winner pursuant to Title 4 California Code of Regulations section 69.3 (d). This subsection is necessary to provide notice to the public and priority winners of the deadline for a replacement priority winner informed pursuant to Title 4 California Code of Regulations section 69.3 (d) to submit their formal application. The rules for submission by a replacement priority winner are the same as those found in Title 4 California Code of Regulations section 69.4 (d).

The proposed change modifies the start of the 90-calendar day period for the submission of the formal application from the date of notice, which can be indefinite depending on reception of the notice, to the date the notification to priority winner is sent by ABC. This change is necessary to alleviate confusion of priority winners and ABC staff as the 90 calendar days can be calculated from the date the notice is prepared and sent by ABC. This will have minimal effect in practice because these notices are received within a few days of preparation by ABC, but this ensures that those who receive the notice the first day are not treated differently than those who receive notice a few days later.

§ 69.4 (d)

The subsection establishes when a formal application is deemed submitted, pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). For clarity, it specifically provides that a formal application being sent by mail or that is postmarked prior to the close of business of the 90th day will meet the requirement for submission pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). This subsection is necessary to inform the public and priority winners when the formal application is considered submitted for the determination of timeliness pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). This subparagraph ensures that there is no confusion about whether mailing or postmarking a formal application prior to the close of business on the 90th day is sufficient to meet this requirement.

The proposed change to this subsection allows for priority winners to mail their formal application by United States Postal Service and continue to be timely. The requirement that applications be received by ABC within the required time, and not just mailed by the required period created confusion with priority winners. This change is necessary to provide better service to priority winners and allow more options to submit their application timely under this regulation.

§ 69.4 (e)

The subsection establishes that a formal application submitted by a priority winner must only include the individuals and entities that were listed in its priority application, unless they are under the specific exceptions outlined pursuant to Title 4 California Code of Regulations sections 69.4 (e)(1) and 69.2 (e)(2). If a priority winner attempts to change the person or persons involved with the priority application without compliance with an exception, the formal application will be rejected by ABC. This subsection is necessary to ensure that priority winners submit a formal application only for the person(s) or entities that won the priority drawing. This subparagraph makes clear that by attempting to submit a formal application for different entities or individuals that did not win the priority drawing will be rejected by ABC.

The proposed change to this subsection will allow for priority winners to change the individuals on their formal application from the ones submitted on their priority application under specific exceptions. This change is necessary because circumstances for priority winners may have changed between the

submission of their priority application, and being declared a priority winner, especially if they are a replacement priority winner notified later in the year.

§ 69.4 (e)(1)

The proposed subparagraph allows for a priority winner to amend their formal application to add a spouse. This subparagraph is necessary because all ABC licensees are required to include a spouse on their license if they hold it as an individual. If a priority applicant has a new spouse when it comes time to process the formal application, the spouse is required to be placed upon the formal application. However, if the addition of the priority winner's spouse to the formal application would have disqualified the priority application at that time, ABC may retrospectively disqualify the priority application and cancel the formal application pursuant to the proposed Title 4 California Code of Regulations section 69.4 (1).

§ 69.4 (e)(2)

The proposed subparagraph allows for a priority winner that is an entity to amend their formal application to add individuals newly participating in the entity that are different than at the time of the priority application process. This subparagraph is necessary because all ABC licensees are required to include the current individuals in the various roles of an entity at the time the formal application is made. If a priority winner has a change in the entity's construction, they are required to modify their formal application by law. However, this subparagraph also limits the availability of this exception to those persons changed in the ordinary course of business and requires priority winners to submit a detailed explanation for the changes requested. ABC may deny the request or deny the application if it appears the changes were made to circumvent the requirements of this section or any other law. This subparagraph is necessary to allow for normal changes to the application of a priority winner, but not allow for the changes of structure or allow for things otherwise prohibited by law. In addition, If the addition of any person under this subsection would have disqualified the priority application at that time, ABC may retrospectively disqualify the priority application and cancel the formal application pursuant to the proposed Title 4 California Code of Regulations section 69.4 (1).

§ 69.4 (f)

The subsection establishes that a rejected formal application submission does not ensure compliance with the submission requirement pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). If a formal application is submitted that is thereafter rejected due to noncompliance with the various requirements, even if rejected after the 90th day, the priority winner will be deemed to have withdrawn from participating in the priority drawing. ABC will then notify a new priority winner pursuant to Title 4 California Code of Regulations section 69.3 (d). This subsection is necessary to ensure that the public and priority winners know that submitting a formal application that does not comply with the requirement for submission pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) will be subject to rejection, and that if they do not comply with the requirement in

Title 4 California Code of Regulations section 69.4 (e), their formal application will be rejected, and if they fail to submit a complete and correct formal application prior to the deadline, the priority winner's participation in the priority drawing will be deemed withdrawn.

§ 69.4 (g)

The subsection establishes that the burden to ensure compliance with Title 4 California Code of Regulations section 69.4 (e) is upon the priority winner, even though ABC may review a submitted formal application prior to the 90th day deadline. This subsection has a proposed change to allow ABC staff to review formal applications prior to the end of the formal application deadline and notify priority winners of any discovered problems with the formal application. By making this change, ABC is not creating a burden on itself to contact all priority winners with an incomplete or incorrect formal application nor is ABC relieving the applicant's burden established under this subsection.

If a priority winner's formal application is rejected pursuant to noncompliance with 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) has passed, ABC will deem the priority winner to have withdrawn their participation and will proceed to inform a new priority winner pursuant to Title 4 California Code of Regulations section 69.3 (d).

This subsection is necessary to inform the public and priority winners that the burden is upon priority winners to ensure that they follow Title 4 California Code of Regulations section 69.4 (e) when submitting their formal application. ABC may review submitted formal applications prior to the deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c), if submitted in advance, depending on staffing and workload availability.

This subsection does not preclude priority winners from asking for and receiving help on their formal application to ensure compliance with Title 4 California Code of Regulations section 69.4 (e) prior to submission, or for ABC to notify a priority winner if a noncompliant application is discovered prior to the expiration of the deadline in Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). The rejection of the formal application submitted does not preclude a priority winner from submitting a second formal application or fixing their initial application in compliance with Title 4 California Code of Regulations section 69.4 (e) if done so prior to the expiration of the deadline in Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c).

§ 69.4 (h)

The subsection establishes a procedure for a priority winner to request an additional 30 days to submit their formal application beyond the 90-day limits pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). The priority winner must make its request prior to the expiration pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) at the close of business on the 90th day. The priority winner must provide good cause as to why there is a need for an additional 30 days to

submit its formal application. Once a request for extension has been made, the 90-day period pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) is extended until ABC responds to the priority winner about its decision to grant or deny an additional 30 days to submit a formal application. This subsection is necessary to inform the public and priority winners how a priority winner can request an extension to submit their formal application for good cause prior to the expiration of the 90-day deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). This subsection is necessary to provide ABC's standard of review to grant or deny a 30-day extension to a priority winner. This subsection is also necessary to allow the 90-day deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) to continue without expiration while ABC examines the request and decides to grant or deny that request. The continuation within this subsection ensures ABC cannot refuse to address a priority winner's request for an extension until the deadline passes pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) and act pursuant to Title 4 California Code of Regulations section 69.3 (d) to pick a new priority winner instead. This subsection is also necessary to provide priority winners with additional time to submit their application if there is a reasonable reason for the delay in submitting their formal application within the regulatory deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c).

§ 69.4 (h)(1)

The subparagraph establishes a definition for good cause to be used for the purposes of this section. The definition was chosen to reflect the common law meaning of good cause. This subparagraph is necessary to ensure that priority winners seeking an extension know that good cause involves a situation that is not the fault of the priority winner and beyond the priority winner's control and makes it unreasonable for the priority winner to meet the regulatory 90-day deadline.

§ 69.4 (i)

The subsection establishes the start date of a 30-day extension for the deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) once it has been granted by ABC for a priority winner's request pursuant to Title 4 California Code of Regulations section 69.4 (h). The proposed subsection also requires ABC to include the new deadline date for the priority winner pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4(c). This subsection is necessary for the public, priority winners, and ABC how to calculate the new date for a deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) after an extension is granted. This subsection is also necessary to require ABC to notify the priority winner of the deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) to ensure the priority winner is aware of the new deadline.

§ 69.4 (j)

The subsection establishes the procedure for ABC to follow if it is determined the priority winner's request for extension pursuant to Title 4 California Code of Regulations section 69.4 (h) does not show

good cause and must be denied. ABC must notify the priority winner of this rejection and then provide 5 additional business days for the priority winner to submit their formal application. ABC must also provide the deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) within its rejection notice. This subsection is necessary to inform the public and priority winners of the process that ABC must follow in rejecting a request for extension pursuant to Title 4 California Code of Regulations section 69.4 (h). The subsection is also necessary to require ABC to notify the priority winner of the deadline pursuant to Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c) to ensure the priority winner is aware of the new deadline of 5 additional business days to comply with submission of a formal application.

§ 69.4 (k)

The subsection requires ABC to reject all requests for extensions from any priority winners who request additional extensions to submit their formal application beyond the 30-day request pursuant to Title 4 California Code of Regulations section 69.4 (h). This subsection is necessary to ensure all priority winners are treated fairly and equally by ABC and to ensure that priority applicants on the randomized list held by ABC pursuant to Title 4 California Code of Regulations section 69.3 (c) shall be given the opportunity to submit a formal application pursuant to Title 4 California Code of Regulations section 69.3 (d) when a priority winner cannot submit a formal application after more than 120 days.

§ 69.4 (l)

The proposed subsection establishes that if a determination is made by ABC while investigating the formal application, or through the addition of persons to the application pursuant to Title 4 California Code of Regulations section 69.4 (e), that the applicant improperly participated in the priority drawing, ABC can retroactively disqualify the priority application and cancel the formal application. The proposed subsection also clarifies that disqualification is subject to the selection of a new priority winner pursuant to Title 4 California Code of Regulations section 69.3(d). This subsection is necessary to clarify what happens to a priority winner's application if it is discovered during the investigation of the formal application that the priority winner didn't properly participate in the priority drawing. This subsection is also necessary to ensure that a new priority winner is selected even through a disqualification pursuant to this subsection.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS RELIED UPON.

Articles

There are no articles that pertain to these proposed regulations.

Department and Appeals Board Decisions

There are no Appeals Board decisions that affect these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

ABC of Alcoholic Beverage Control has determined that these regulations have a negligible economic impact. ABC anticipates no costs associated with implementing this proposed regulation on its budget, but if there are any unforeseen small costs associated with these regulations, they will be absorbed in ABC's current budget. The additional formal regulating of this annual process will create a more efficient streamlined priority drawing process, but it will not create or eliminate any jobs at ABC for facilitating the priority drawing for the public. In addition, the additional formal regulating of the priority drawing process will not create or eliminate any jobs in the alcoholic beverage industry through the further standardization of the priority drawing procedure. The further regulation of this process will not increase or decrease the number of alcoholic beverage licenses available, just make it easier for both ABC and the public to facilitate the yearly priority drawing for available licenses allowed under the law previously.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

ABC has made the determination that the adoption of these regulations will have negligible economic impact on current and prospective licensees because it merely further memorializes a standard process for priority applicants to submit their applications and otherwise further clarifies how ABC will conduct the drawing and determine priority winners. The further regulation of this process will not increase or decrease the number of alcoholic beverage licenses available and therefore has no effect on the number of businesses within the alcoholic beverage industry.

Based on the above, ABC determined that the proposed regulatory action will not have a significant statewide adverse economic impact to businesses statewide including the ability of California businesses to compete with businesses in other states.

ALTERNATIVES CONSIDERED FOR THE IMPLEMENTATION OF PRIORITY APPLICATION DRAWINGS BY ABC

There is no economic impact through the proposed regulatory package, and there are no alternatives considered for their implementation.

REGULATORY MANDATES

This regulatory package creates no new duties or regulatory mandates for licensees, local governments, or ABC.