

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

April 21, 2023

NOTICE OF PROPOSED RULEMAKING

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 closes at **12 p.m. on June 6, 2023**. 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 “Priority Drawings” in the subject line of your email.

AUTHORITY AND REFERENCE

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.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action is designed to further clarify terms regularly used by the industry and to further establish the processes and procedures for the Department of Alcoholic Beverage Control to conduct yearly priority drawings by expanding and refining on the regulations promulgated in 2022.

Summary of Existing Laws and Regulations

Business and Professions Code section 23961 describes the situation that a priority drawing is necessary and the requirements to participate in such drawings.

Summary of Effect

The broad objective of this regulation is to further refine the uniform process of selecting priority applications for hopeful ABC license holders.

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 the Department of Alcoholic Beverage Control is to provide the highest level of service and public safety to the people of California through licensing, education, and enforcement. ABC values trust, innovation, and professionalism. This proposed regulation further refines the process for a fair and uniform process for priority drawings.

Benefits Anticipated

By better refining the process for priority drawings, ABC anticipates a more fair and timely process for participating licensees. The anticipated benefit of this action will not only clarify commonly used terms but also ensure a fair and uniform process through all county priority drawings conducted by ABC.

Determination of Inconsistency/Incompatibility with Existing State Regulations

ABC has reviewed the existing applicable state statutes and regulations. After this review, ABC determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations or law.

Effect upon Small Businesses in California

Although licensees are often small business owners, this proposed regulation will have no regulatory effect on them. The intent of this proposed regulation is to further clarify the longstanding practice of conducting annual priority drawings for applicants seeking available alcohol licenses. The priority drawing process is for the privilege to apply for new licenses and will have no effect on existing alcohol license holders throughout the state. This will benefit potential small business owners as it allows for a more efficient and streamlined process.

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: Any additional cost will be absorbed into ABC's current budget.
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

The ABC has made an initial determination the adoption of this regulation 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. There is no foreseeable impact on businesses based on the policy laid out in the proposed regulation.

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 any jobs, (3) that the proposal will not likely create any 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. It is unlikely that the proposed legislation will impact the State's environment or worker safety.

As stated above under 'Benefits Anticipated', the proposed regulation will further ensure that priority drawings will be fair and equitable for all priority applicants and ensure alcohol licenses are distributed in a fair and equitable manner throughout the state. The implementation of the proposed priority drawing regulations will benefit the health and welfare of California residents

through the uniform statewide standards for the priority drawing process and issuance of priority licenses.

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 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.

Thus, ABC is not aware of any cost impacts that a representative 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.

Consideration of alternatives

ABC must determine that no reasonable alternative considered by ABC or that has otherwise been identified and brought to the attention of ABC would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to effected private persons than the proposed action or would be more cost-effective to effected private persons and equally effective in implementing the statutory policy or other provision of law. ABC invites interested persons to present statement or arguments with respect to alternatives to the proposed regulation during the written comment period.

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

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 February 18, 2022.

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 ABC 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 ABC 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/>