

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

Text of regulations proposed for adoption.

Text proposed to be removed from the regulation is in ~~striketrough~~.

Text proposed to be added to the regulation is in *underlined italics*.

### **§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 ~~1 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~~ *commencing on the second Monday* 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: name, date of birth, and the last four digits of their social security number or tax identification number or their state-issued driver license number or their state-issued identification card number or their passport number.
    - ii. A business entity shall submit the following: tax identification number or entity name, the date of incorporation or establishment of the entity, and the entity's California Secretary of State business identification number.
    - iii. A trust shall submit the following: name of the trust, the identification documents required of individuals in Title 4 California Code of Regulations section 69.2(a)(2)(i) for controlling individuals, trustees, and beneficiaries, 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).
  - (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~~ submitted to the department within the noticed priority application period.
- (1) Submission of a priority application shall be either the date the department receives the priority application or the postmark date if the application is sent via the United States Postal Service.
- (c) Any priority application received by the department that is incomplete or untimely shall be disqualified.
- (d) The department ~~shall not~~ *may* 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. This provision shall not be construed to require the department to contact any priority applicant or to contact all priority applicants that may have incomplete priority applications if any applicant is contacted. It shall always be the responsibility of a priority applicant to ensure its priority application is complete and accurate.
- (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 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~~ 15 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~~ 15 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~~ August 1st of 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, that priority application will be disqualified by the department. *If a priority applicant does not comply with Title 4 California Code of Regulations section 69.2(a)(4) and appears on multiple applications in the same priority draw, all priority applications in that priority draw bearing the same priority applicant shall be disqualified.*

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

Reference: 23816, 23817, 23818, 23820, 23821, 23961, 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 following the date notification is sent by the department to the applicant that the applicant is a priority winner ~~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 following the date notification is sent by the department to the applicant that the applicant is a replacement priority winner ~~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~~ shall be either the date the department receives the formal application or the postmark date if the formal application is sent via the United States Postal Service., ~~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 unless it is under the exceptions in this subsection. A completed formal application with other individuals or entities included, which do not meet an exception pursuant to this subsection, will be rejected by the department as an invalid formal application.
  - (1) At any time prior to the completion of the department's licensing investigation, an applicant may amend their application to add a spouse.
  - (2) If the applicant is a general partnership, limited liability company, corporation, limited partnership, or trust, at any time prior to the completion of the department's licensing investigation, the applicant may request that the department allow an update to its application to add or change any partners, owners, members, limited partners, stockholders, or trustee, as applicable. This does not authorize the applicant to change the type of entity that has filed the application. The changes authorized by this provision shall have been made in the normal course of business and the applicant shall submit a detailed explanation as to the reason for the changes requested. The department may deny the request, or deny the application, if it is not satisfied that the changes were made in the normal course of business or if it appears that the changes have been made to avoid or circumvent any requirements of these rules or other law.
- (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, but is not required to, 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 finds an application is incomplete or erroneous through its early review, the department may contact the applicant to suggest necessary corrections to complete the formal application. Any such corrections must be made and submitted to the department before the expiration of the deadline established by Title 4 California Code of Regulations section 69.4 (b) or 69.4 (c). This provision shall not be construed to require the department to contact any applicant or to contact all applicants that may have incomplete or erroneous applications if any applicant is contacted. It shall always be the responsibility of an applicant to ensure its formal application is complete and accurate. 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).
- (l) If it is determined while investigating a 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, the department may retrospectively disqualify the priority application and cancel the formal application.

*Any disqualification pursuant to this subsection is subject to the selection of a new priority winner pursuant to Title 4 California Code of Regulations section 69.3(d).*

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.