

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

June 2, 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, the department 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 July 18, 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 “Boat Licenses” in the subject line of your email.

AUTHORITY AND REFERENCE

Authority: Sections 23320, 23321.6, 23321.7, and 25750, Business and Professions Code.

Reference: Sections 23397, 23800, 23985, 23986, 24040, and 25753 Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action is in response to a petition that ABC received from stakeholders requesting amendments to Rule 55.5. The petition was made specifically to address restrictions to the sale of alcohol with respect to the hours of operation of boats while docked. Additional amendments are included to comply with current rulemaking standards and clarify interactions of the regulation with further laws changing the privileges of other on-sale alcoholic beverage licenses and clarify noticing requirements in an application for these license types.

Summary of Existing Laws and Regulations

Current law authorizes ABC to issue alcoholic beverage licenses to a lessee or operator of a boat carrying passengers for hire under certain circumstances outlined in the ABC Act. Alcoholic beverages may be served only when the vessels are in the operation of transporting passengers with a limited exception immediately prior and after a voyage. Licensed vessels are currently authorized to sell alcohol to passengers and off duty employees one-half hour prior, during, and one-half hour after returning from scheduled trips. Alcohol is not permitted to be sold at any other time while the licensed boat is docked. Licensees may also designate yearly up to ten other docks in addition to their home port where they may exercise this privilege.

Additionally, the current regulation requires applicants for these licenses are to post notice of the intent to sell alcohol in specific and conspicuous locations both on the dock at the primary home port as well as on the vessel. Notice on the boat is not required if the boat is under construction or is being constructed.

Summary of Effect

The proposed regulations seek to accomplish two objectives. This regulation aims to address the concerns of the business that petitioned the ABC to promulgate new regulations to extend the hours of service for boats. This change creates consistency between boat license terms and other similar entertainment licenses. Additionally, this proposed regulation seeks to amend Rule 55.5 to clarify commonly used terms and make it consistent with current statutory and regulatory standards.

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 ABC is to provide the highest level of service and public safety to the people of the State through licensing, education, and enforcement. This proposed regulation supports the commitment that ABC has to its licensees by working to alleviate and end economic harms boat licensees faced during and after the COVID 19 Pandemic. This regulatory change is like other recent statutory changes the legislature has authorized to foster the recovery of on-sale licensees from the economic distress of the pandemic. By unifying the limitations on time before and after events for boats, theaters, and other entertainment venues, it simplifies enforcement and public understanding of all alcoholic beverage licensees while continuing to protect the public safety.

Benefits Anticipated

This proposed regulation may provide an economic benefit to ABC licensed businesses, and certainly the request was made to seek a better economic recovery for the boating industry post-pandemic. Implementing this regulation may provide benefits to the businesses that utilize alcohol licenses for boats and their passengers by increasing the time that passengers can enjoy alcoholic beverages. This would provide additional time for concession sales and could generate higher profits.

This regulation also benefits Californians and businesses by clarifying commonly used industry terms and specifying privileges of alcohol licenses for boats, there is an increase in openness and transparency of the law for Californians and business owners.

Determination of Inconsistency/Incompatibility with Existing State Regulations

ABC reviewed the existing state regulations and statues currently enforced and has determined that this proposed regulatory action is not inconsistent or incompatible with existing state regulations.

Effect Upon Small Businesses in California

Although licensees are often small business owners, this proposed regulation will have negligible regulatory effect on them. In the wake of the Covid-19 pandemic, many businesses that rely on alcohol sales suffered greatly. It is anticipated that this may be a benefit to small businesses that utilize alcohol licenses for boats providing for additional time for concessions including alcoholic beverages.

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: 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

The ABC has made an initial determination that the adoption of this regulation will have negligible economic impact on businesses. 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 additional jobs, (3) that the proposal will not likely create additional 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, (6) unlikely that the proposal will impact worker safety.

ABC has determined that the proposed regulation has a no effect upon the current health and welfare of California residents.

ABC has determined this proposed regulation will have no effect upon the environment.

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

The 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. There petitioner stakeholder claims that the extension of alcoholic beverage service hours prior to and after voyages will have a positive impact upon the current holders of the license, but ABC is unable to determine the amount of this economic benefit. If there is an economic benefit it is negligible and limited to a small segment of ABC license holders. These economic benefits would not be derived from any costs imposed by the proposed regulation.

Thus, ABC is not aware of any cost impacts that a representative private 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. It does require the keeping of records in compliance with the ABC Act to ensure the extended hours are not being abused and can be enforced and restricted by actual scheduled voyages.

Consideration of Alternatives

ABC considered three main alternatives for the request by the industry for extended hours of alcoholic beverage sales and service. The most restrictive alternative excluded any extension of sales or service. This would restrict boats or vessels from extending the sales and service of alcohol from the current allowance, which is one-half hour before, during, and one-half hour after a scheduled voyage. While this option would simplify the execution of the regulation, the industry has requested an exception to account for unexpected docking for inclement weather or other unforeseen causes. This restriction could potentially limit some economic growth in the industry, especially in an industry that was significantly harmed during the recent pandemic.

The second alternative considered by ABC would align the sales and service of alcohol with the current hours of service for certain theaters with performances. The period for sales and service of alcohol would be limited to two hours before departing, during, and one hour after returning to the designated commercial dock. These limitations are consistent with other entertainment venues allowed through the ABC Act

The extended hours requested by the industry consisted of two hours prior to departing, during, and two hours following the scheduled return. This is an extra hour after an event that is not afforded to any other ABC licensee by either statute or regulation. ABC does not see any reason or necessity to give more time to the licenses under this regulation than to others established by the legislature.

ABC has determined that no reasonable alternative considered by the department or that has been brought to the attention of the department 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 statements 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) Sarah Easter, Associate Governmental Program Analyst, Law and Policy Unit, (916) 823-1310 or via email at rpu@abc.ca.gov.

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 Law and Policy Unit, Department of Alcoholic Beverage Control, 3927 Lennane Drive, Suite 100, Sacramento, CA 95834, on or after June 2, 2023.

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, 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/>