

**Department of
Alcoholic Beverage Control**

INITIAL STATEMENT OF REASONS

PROPOSED ADOPTION OF REGULATIONS FOR

PROPOSED ADOPTIONS TO TITLE 4: SECTION 55.5. ON-SALE LICENSES FOR BOATS

PROBLEM STATEMENT AND PURPOSE

This update to the Department of Alcoholic Beverage Control (ABC) regulations is a response to a petition by the boat industry for a revision of alcoholic beverage service hours at times during which a boat is docked. ABC also intends to define language and clarify license privileges relating to on-sale licenses for boats. This proposed regulation coincides with ABC's efforts to modernize outdated language and establish consistency for periods of alcoholic beverage service for non-standard premises.

BENEFITS

The proposed regulation is beneficial because it will clarify the types of boat licenses issued by ABC, provide for sales of alcohol consistent with other similar types of venues (such as theaters), and to modernize outdated language. This proposed regulation also defines what constitutes a "passenger" for the purpose of this section. The clarified language will ensure that all who apply for these types of boat licenses understand the guidelines set forth for sales of alcoholic beverages on a boat. ABC anticipates that the proposed regulation will meet the industry's request to extend service hours for boats as well as maintain consistency with other entertainment venues' hours of service.

AUTHORITY

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.

NECESSITY

Specific necessity to remove former section as follows:

Title 4 California Code of Regulations section 55.5 was originally adopted in 1977. The most recent (very minor) amendment was filed in 1994. ABC recently was asked by the industry to open the regulation to extend the limitation on hours alcoholic beverages can be served at the dock prior to a departure and after a return from a scheduled trip or charter. This request was for two hours prior to departure and two hours after following a return rather than the one-half hour prior and one-half hour following a return.

With the opening of the regulatory section, ABC also proposes to modernize the language within it, to separate the various provisions within the regulation into easily understandable subsections and sub paragraphs, and to clarify the regulation's interactions with other provisions of the ABC Act regarding off-sale and delivery privileges for on-sale licenses,

ABC has rewritten Title 4 California Code of Regulations section 55.5 using similar language where appropriate and updating language when necessary to clarify provisions, while also considering the request made for extended hours for the sales of alcoholic beverages. The removal of former language was not to remove its effect, and portions of the proposed language throughout the proposed sections recaptures the legal effect of the entirety of the former Title 4 California Code of Regulations section 55.5, except for the specific hours extension.

The specific purpose for each proposed section is as follows:

§ 55.5 (a)

The proposed subsection is necessary to clearly identify the types of boat licenses ABC may issue pursuant to Business and Professions code section 23321.6.

§ 55.5 (a)(1)

This proposed subsection clarifies that license type 44 for an on-sale beer fishing party boat is established pursuant to Business and Professions code sections 23321.6 and the privileges outlined pursuant to this section. This is necessary to inform ABC staff, licensees, and the public of the license type number for an on-sale fishing party boat and to trim language from the regulation to avoid confusion.

§ 55.5 (a)(2)

This proposed subsection clarifies the license type 45 for an on-sale beer and wine boat is established pursuant to Business and Professions code sections 23321.6 and the privileges outlined pursuant to this section. This is necessary to inform ABC staff, licensees, and the public of the license type number for an on-sale beer and wine boat and to trim language from the regulation to avoid confusion.

§ 55.5 (a)(3)

This proposed subsection clarifies the license type 54 for an on-sale general boat is established pursuant to Business and Professions code sections 23321.6 and the privileges outlined pursuant to this section. This is necessary to inform ABC staff, licensees, and the public of the license type number for an on-sale general boat and to trim language from the regulation to avoid confusion.

§ 55.5 (b)

The proposed subsection is necessary to clearly identify the types of vessel licenses ABC may issue pursuant to Business and Professions code sections 23321.7.

§ 55.5 (b)(1)

This proposed subparagraph clarifies the license type 56 for an on-sale general vessel is established pursuant to Business and Professions code sections 23321.7 and the privileges outlined pursuant to this section. This is necessary to inform ABC staff, licensees, and the public of the license type number for an on-sale general vessel and to trim language from the regulation to avoid confusion.

§ 55.5 (b)(2)

This proposed subparagraph clarifies the license type 62 for an on-sale general bona fide public eating place intermittent dockside vessel is established pursuant to Business and Professions code sections 23321.7 and the privileges outlined pursuant to this section. This is necessary to inform ABC staff, licensees, and the public of the license type number for an on-sale general bona fide public eating place intermittent dockside vessel and to trim language from the regulation to avoid confusion.

§ 55.5 (b)(2)(A)

This proposed subparagraph establishes the parameters of the extent of privileges of a type 62 license. A type 62 license only applies to one vessel, and one county, meaning each vessel must hold a separate type 62 license for each county in which it operates. This is necessary to inform ABC staff, licensees, and the public of the licensing requirements for a type 62 license and to trim language from the regulation to avoid confusion.

§ 55.5 (c)

The proposed subsection is necessary to clarify that all boat licenses exclude off-sale and delivery privileges of alcoholic beverages.

§ 55.5 (d)

The proposed subsection limits alcoholic beverage sales for all boat licensees to passengers and off-duty employees, consistent with the statutory requirements. This subsection further establishes the definition for “passenger” as used in the proposed regulation to mean a member of the public that has purchased a ticket to travel upon the boat or vessel, and the ticket is not solely for boarding the ship for the purchase and consumption of alcoholic beverages. As it is still illegal to furnish or sell alcoholic beverages to a minor under separate statutes, no exclusion for alcoholic beverages being furnished to minor passengers under this subparagraph would be necessary. This subparagraph is necessary to add language into the proposed regulation to clarify that boat and vessel licensees may only serve alcoholic beverages to passengers who intend to travel on the boat, and not persons who are merely walking by the boat when it is docked. This clarification becomes necessary when extending the hours these licenses can serve alcohol prior and after scheduled trips.

§ 55.5 (e)

The proposed subsection establishes who may hold boat licenses. This subsection limits licensure to owners, lessees, or operators of boats operated or navigated by a person who is licensed by the United States Coast Guard carrying passengers for hire, or by qualified concessionaires who operate on publicly

or privately owned, leased, or operated boats carrying passengers for hire. This is necessary to inform the public, potential licensees, and ABC staff who qualifies to apply for licenses established by this section and trim language from the regulation to avoid confusion.

§ 55 (f)

The proposed subsection establishes the need for a designation of the primary home port for a boat which is the premises for a license under this section. Primary home port is defined as the main place for embarkation or debarkation of passengers, or the loading or unloading of supplies, and is normally used for the overnight berthing of the boat. This is necessary to inform licensees, the public, and ABC staff of the complete meaning of primary home port within the proposed regulation and to trim language from the proposed regulation to avoid confusion.

§ 55 (g)

The proposed subsection clarifies that the normal limitation on alcoholic licenses being within 600 feet of specific locations established pursuant to Business and Professions Code section 23789 applies to license types established under this section. The proposed subsection also clarifies that posting, publication, and mailing to nearby residents notice of the intent to be licensed as an alcoholic beverage premises established pursuant to Business and professions Code sections 23985, 23985.5, and 23986 apply to license types established under this section. The proposed subsection is necessary to clarify and to inform ABC staff, the public, and potential licensees that normal license application requirements for a license type established pursuant to this section apply, in addition to other statutory provisions.

§ 55 (h)

The proposed subsection establishes the parameters for posting the notice of intention to sell alcoholic beverages for the license types established by this section. It designates the notice be placed in a conspicuous area both on the boat and at the entrance to the primary home port. However, if the application is made pursuant to Business and Professions Code section 24044 due to the boat being under construction, the posting on the boat is not required. This is necessary to inform ABC staff, licensees, and the public how license types established by this section must comply with the posted notice requirement.

§ 55 (i)

The proposed subsection establishes universal conditions pursuant to Business and Professions Code section 23800 that shall apply to all type 45 and type 54 licenses issued pursuant to this section. This is necessary to inform ABC staff, licensees, and the public of the required conditions to be placed upon each of these licenses issued by ABC.

§ 55 (i) (1)

The proposed subparagraph establishes a condition limiting service hours for the sale of alcoholic beverages for all type 45 and type 54 licenses issued pursuant to this section. Pursuant to this condition,

if the boat remains at a dock, the sale of alcoholic beverages may only occur two hours prior to a scheduled departure, during the time scheduled for a trip or charter, and one hour after returning to the primary dock. These limits are consistent with other statutory alcoholic beverages sales time limitations around specific events established in the ABC Act. This provision also allows for a certain degree of flexibility in the event a boat cannot leave the dock at the scheduled departure time, or is unable to leave the dock, or must return to the dock earlier than the scheduled return time (in unforeseen circumstances such as bad weather). This subparagraph is necessary to inform ABC staff, licensees, and the public of the universal conditions for time periods for the sale of alcoholic beverages aboard a boat resting at dock.

§ 55 (i) (1)(A)

The proposed subparagraph establishes a record keeping requirement for the licensees for scheduled trips and charters so that ABC may enforce the time limitation condition for the sales of alcoholic beverages pursuant to Title 4 California Code of Regulations section 55.5(j)(1). This record keeping is not overly burdensome upon licensees and is often already published in either written materials or on a website. Three years is the standard period for record keeping relating to alcoholic beverage sales established elsewhere in the ABC Act and the California Code of Regulations. This subparagraph is necessary to ensure ABC can reliably ensure that alcoholic beverage sales by licensees do not occur outside of the established times in Title 4 California Code of Regulations section 55.5(i)(1).

§ 55 (i) (2)

The proposed subparagraph establishes a universal condition for all type 45 and type 54 licenses issued pursuant to this section which allows for the designation by licensees of up to ten commercial docks each year at which passengers may embark or disembark separate from the home port attached to the license and whereby alcoholic beverages may be served on the boat pursuant to Title 4 California Code of Regulations section 55.5(i)(1). This is necessary to inform ABC staff, licensees, and the public of the number of additional commercial dock designations allowed under type 45 and type 54 licenses established pursuant to this section.

§ 55 (i) (2) (A)

The proposed subparagraph establishes the eligibility of any commercial dock within the state and the method and timing by which the designation shall be given to ABC by the licensee. This subparagraph is necessary to inform ABC staff, licensees, and the public of the process to designate commercial docks pursuant to the universal condition established in Title 4 California Code of Regulations section 55.5(i)(2).

§ 55 (i) (1) (C)

The proposed subsection establishes the definition of "commercial dock" as used in the regulation to mean a dock generally used by vessels carrying passengers for hire, for the embarkation or disembarkation of passengers, or the loading or unloading of supplies. This is necessary to inform ABC staff, licensees, and the public of the definition of commercial dock which can be designated by licensees pursuant to the universal condition established in Title 4 California Code of Regulations section 55.5(i)(2).

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 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 adjustment to the regulations on alcoholic beverage licenses for boats will not likely create or eliminate any jobs or businesses or expand existing businesses in the alcoholic beverage industry because these licenses are mostly already issued. The extension of the sales hours limitation may provide some small economic benefit for existing licensees. The request by the industry seems to indicate that this change will provide a significant opportunity for the industry to recover from the recent difficult issues of the COVID pandemic and a way to save currently existing jobs and companies, even if it does not create new ones. There are no anticipated benefits to worker safety or the state's environment because these amendments do not relate to or impact worker safety issues or the environment.

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

Based on the above, ABC has 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 INCREASED HOURS OF SERVICE FOR ALCOHOLIC BEVERAGES ON BOARD A BOAT OR VESSEL

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 similar types of venues, most particularly 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 similar type of venue 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.

REGULATORY MANDATES

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