

**Department of
Alcoholic Beverage Control**

ADDENDUM TO INITIAL STATEMENT OF REASONS

PROPOSED ADOPTION OF REGULATIONS FOR
THE RESPONSIBLE BEVERAGE SERVICE TRAINING PROGRAM ACT OF 2017

PROPOSED MODIFICATIONS
OF ADOPTIONS TO TITLE 4:

SECTIONS 160(b)(9), 161,
163(a)(2)(B) and (c)(2), 164(g)(9),
166(k), 169(c), and 170(b)(5) and (k)

NECESSITY

The specific purpose for each proposed modification of each modified section is as follows:

Section 160: *Subdivision (b)(9)* of the proposed rule is necessary to refine the definition of what actions constitute managing or supervising an alcohol server to allow ABC licensees to understand who is expected to be certified under the RBSTPA. It also specifically excludes distributors who give trainings to ABC licensee employees to market or distribute a product for sale. The exception is necessary because this activity is not within the intent of the statute of reducing the harm to public safety through limiting alcoholic beverage service to minors and obviously intoxicated patrons. The department received comments that the initial proposed definition was far too expansive and included individuals within an ABC licensee's business structure that had no relation to the service of alcohol for consumption at an ABC on-premises licensee location.

The department modified the manage or supervises definition to exclude trainers who do not teach alcohol servers about implementing policies regarding the service of alcohol for consumption by the public, such as sexual harassment training. It also excludes those who do not directly hire but are just a part of the hiring process at an ABC on-premises licensee. The department also removed the inclusion of policy-making due to all business and executive staff being involved in some form of policy creation, such as server uniforms, marketing, and pricing. Not all policy decisions related to the service of alcohol have a direct effect upon the purpose of the RBSTPA. The proposed regulation language is now targeting the ABC on-premises licensee's policy implementation when they train those who serve alcoholic beverages for consumption to patrons.

Section 161: *Subsection (d)* of the proposed rule is necessary to ensure and make clear that the content outlined in the mandatory curriculum for RBS training courses are not determined by the department or a court to create a new duty or modify an existing duty for ABC on-premises licensees. The department relies upon Business and Professions Code section 25686 as its legislative delegation of authority to mandate that nothing in the statute or regulations will expand the existing duties of an ABC licensee. The department worked with current California RBS training providers in determining what is meant by each of the five required topics in an RBS training course context through dozens of meetings, exchanges of ideas, and content exchanges. Additionally, the department reviewed multiple current RBS programs, including but not limited to TIPS, Serve Safe, 360 Training, Ace Food Handler, Seller Server, RS Serving, and Ready Training, and took content related to the mandatory topics currently used in

practice. With the help and input of stakeholders, the department paired down the content to the current curriculum requirements to establish a minimum standard RBS training course. When creating the mandatory curriculum, the department sought input on “best practices” that are currently taught throughout California in trainings already provided by the industry. These “best practices” are often much broader and stricter than the law requires. The department cannot enforce or make a legal avenue through its proposed regulations for any court to enforce the “best practices” taught in the mandatory curriculum and comply with its legislative delegation of authority given by the legislature in Business and Professions Code section 25686.

Section 163 defines the topics to be covered in an approved RBS training course for the statutory required topic “the impact of alcohol on the body.”¹ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

Subsection (a) of the proposed rule requires that training providers present a basic scientific understanding of how alcohol effects the human body physiologically. This includes subdivision (1) which describes alcohol’s path through the human body in subparagraphs (A) – (D), subdivision (2) which describes how the human body processes alcohol in subparagraphs (A) – (D), subdivision (3) which requires the training provider to give common myths about sobering up, and subdivision (4) that requires the training provider to define the specific effects on the body listed in subparagraphs (A)-(C). This subsection is necessary to provide alcohol servers with a basic common understanding of how alcohol changes the human body systems, how its processed and to reveal common myths about ways to sober up a person that do not work. This will help alcohol servers better recognize when to refuse service to an obviously intoxicated patron.

The department modified this section to better use both current industry wide terms of “alcoholic drink equivalent” and “standard drink.” Both definitions rely upon a set standard amount of alcohol in an alcoholic beverage that will fluctuate based on the beverage’s measure of alcohol by volume or ABV. This change will ensure there is no confusion of terms in both the teaching of an RBS training course, and the approval of RBS training courses by the department.

Subsection (c) of the proposed rule requires that training providers present established Blood Alcohol Concentration (BAC) levels and how to discuss how a person is intoxicated through that system. It also includes the important information that intoxication can occur in as little as one drink in subdivision (2). This section is necessary for alcohol servers to understand the BAC system and how to make sure obviously intoxicated persons are refused service.

The department modified this section to better use both current industry wide terms of “alcoholic drink equivalent” and “standard drink.” Both definitions rely upon a set standard amount of alcohol in an alcoholic beverage that will fluctuate based on the beverage’s measure of alcohol by volume or ABV. This change will ensure there is no confusion of terms in both the teaching of an RBS training course, and the approval of RBS training courses by the department.

Section 164 defines the topics to be covered in an approved RBS training course for the statutory required topic “state laws and regulations relating to alcoholic beverage control, including laws and regulations related to driving under the influence.”² This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

¹ Business and Professions Code § 25680(c)(2)

² Business and Professions Code § 25680(c)(3)

Subsection (g) of the proposed rule requires a training provider to present information about laws related to the service of alcohol for consumption. This section is necessary so alcohol servers are aware of basic relevant laws that apply to their employment.

Subdivision (g)(9) of the proposed rule requires that training providers present the information contained in Health and Safety Code § 11362.3 to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the smoking or ingesting of cannabis at an ABC licensed premises.

The department limited the application of Health and Safety Code § 11362.3 to subsections (a)(1)-(3), (b)(2), (b)(4), and (c) because the other parts of that section do not apply to ABC on-premises licensees.

Section 166 defines the topics to be covered in an approved RBS training course for the statutory required topic “the development of management policies that support the prevention of service or sale of alcoholic beverages to underage persons or intoxicated persons.”³ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

Subsection (k) of the proposed rule requires training providers to present four subdivisions of methods to monitor a patron’s alcoholic intake through; proper pours, using measuring devices, knowing the number of pours in a given drink, and the profitability of using correct pours. This subsection is necessary to teach alcohol servers and their managers industry standard procedures to ensure a patron does not become obviously intoxicated in an ABC licenses premises.

The department modified this section to better use both current industry wide terms of “alcoholic drink equivalent” and “standard drink.” Both definitions rely upon a set standard amount of alcohol in an alcoholic beverage that will fluctuate based on the beverage’s measure of alcohol by volume or ABV. This change will ensure there is no confusion of terms in both the teaching of an RBS training course, and the approval of RBS training courses by the department.

Section 168.3 Subsection (f) of the proposed rule outlines ten reasons that the department can take disciplinary action against a training provider for violating the RBSTPA or the proposed regulations.⁴ This subsection is necessary to inform a training provider of administrative actions that could be taken against them and give the power to the department to suspend or revoke approval for misconduct by a training provider. Each of the ten reasons for disciplinary action are necessary because they are either a training provider not meeting the standards of approval set forth in the RBSTPA or the regulatory action, or an action of fraud or dishonesty on behalf of the training provider. The department must be able to deny or revoke approval of a training provider that does not meet the appropriate standards or commits acts of fraud or dishonesty to ensure the online certificate system remains valid.

The department modified a typo in Section 168.3(f)(7).

Section 169 defines how an ABC on-premises licensee will verify that the alcohol servers in their employ have been certified.⁵ This section also defines records required for an ABC on-premises licensee to prove an affirmative defense against an action under the RBSTPA.⁶ This rule is necessary so ABC on-premises licensees will understand what is required of them by the RBSTPA.

³ Business and Professions Code § 25680(c)(5)

⁴ Business and Professions Code § 25681(a)(2) and § 25685(b)

⁵ Business and Professions Code § 25682(b)(1)

⁶ Business and Professions Code § 25682(b)(2)

Subsection (c) of the proposed rule was modified to mandate the department provide ABC on-premises licensees automatic notifications from the department's online certification system for employed alcohol servers prior to expiration but still removes any additional duty from the department to legally notice an ABC on-premises licensee prior to an expiration of a certification. When an ABC on-premises licensee checks the validation of an employee, the system will automatically set up a notification to the ABC on-premises licensee to be sent when that alcohol server's certification is going to expire. This subsection is necessary because the department's online certification will be capable of providing notifications to alcohol servers and ABC on-premises licensees prior to expiration, but the department cannot be responsible to ensure all notifications are legally noticed to ABC on-premises licensees because the licensees will control where the notifications are sent from the system. The modification is also necessary to ensure an ABC on-premises licensee will have the ability to opt out of these automatic notifications if they do not wish to receive email notifications prior to expiration of an alcohol server's certification.

Section 170 defines how the department will craft the alcohol server certification exam, and how alcohol servers will register with ABC to receive their alcohol server certifications, be advised of approved training providers, describes the administration and fee for the alcohol server certification exam, explains the pass rate for the alcohol server certification exam and by what method the records of alcohol server certifications will be kept.⁷ This rule is necessary so that alcohol servers will know how they must interact with the department to receive their certification as required by the RBSTPA.

Subsection (b) of the proposed rule requires registering alcohol servers to submit their various contact information for department records. This subsection is necessary for the department to monitor and enforce the standards of the RBSTPA and contact the alcohol server when their certification is going to expire. It also is necessary to ensure that the correct alcohol server certification is connected to the alcohol server that completed an approved RBS training course and passed the alcohol server certification exam. This allows the ABC on-premises licensees, training providers, alcohol servers, local law enforcement agencies and the department to correctly, quickly, and easily validate alcohol server certifications throughout the state.

The department received many comments regarding the privacy of alcohol servers and the dangers of a potential breach of the department's online database system's private information. The department does not anticipate a breach of its proposed system, but to lessen any potential harm if a breach occurs, the department will only require alcohol servers to provide the last four digits or characters of the personal identifying information along with identifying the type of personal identifying information. This will allow department agents and law enforcement to confirm the identity of certified alcohol servers and enforce the RBSTPA while limiting the program's access to private information of alcohol servers.

Subsection (k) of the proposed rule requires the department to notify alcohol servers sixty days prior to the expiration of their alcohol server certification of the expiration date at the email provided to the department by the alcohol server. This subsection is necessary to require the department to notify and remind alcohol servers of the need to renew their alcohol sever certification and aid them in ensuring they follow the RBSTPA.

The department modified this section to require two additional notifications to servers at ninety and thirty days. It requires no further costs to the program and will help ensure that alcohol servers are notified when their certification is getting ready to expire.

⁷ Business and Professions Code § 25685(b)