

Outside the scope

Comments: 1, 2, 3, 7, 63, 106, 111

Comments Summary:

These comments are unrelated to AB 1221.

CA Dept of Alcoholic Beverage Control Response:

These comments are outside the scope of the Regulatory Action presented.

The Department is making no changes to the regulations in response to these comments

Training Provider Required Collection of Information

Comment 4

Comments Summary: Commenter requested what “required” information a training provider needs to collect from an alcohol server.

CA Dept of Alcoholic Beverage Control Response:

Under the Department’s current regulatory action, a training provider will only need to confirm a student’s identity from their alcohol server profile within the Department’s certification database. This alleviates the need for an alcohol server to provide the information listed in this comment to a training provider other than to confirm identity. The training provider records can be kept within the Department’s certification database to ensure the safety of the alcohol server’s private information. The Department is not requiring a training provider to collect any specific personal information from a registrant but does not prohibit a training provider from obtaining information from students if the training provider secures and protects an alcohol server’s private data as directed by the statute.

This comment does not require a change to the current regulatory package.

Training

Comment: 5, 36, 43, 73, 80, 110, 121

Comments Summary:

These comments question who is administering the RBS training or how to become approved to train.

CA Dept of Alcoholic Beverage Control Response:

The Department is not able to prepare and train a million servers throughout the state. The Legislature structured the RBSTPA to ensure the Department was not solely responsible for this task. In addition, the Legislature did not want to put current RBS training providers throughout the state out of business. The Legislature required the Department to authorize third-party training providers, either itself or through an accreditation agency in Business and Professions Code section 25681. The Department anticipates being the only entity authorizing training providers to participate in the RBS training course market. Thus, it is not appropriate for the Department to participate in the market while also being the sole gatekeeper.

The Department has established a minimum mandated curriculum that prospective training providers must follow in order to be approved to give RSB training courses. The process for becoming a training provider is outlined in the proposed regulatory action. Once approved for training, the Department will publish authorized training providers on its website and allow authorized training providers to advertise that they have been approved by the Department to give the mandatory training.

The Department will help local jurisdictions currently offering in-person training to continue to provide this service if they desire to be an approved training provider under the same standards required of all training providers.

With the implementation of the new RBSTPA program on July 1, 2021, all current and former RBS training certificates will not be valid for compliance with the certification requirements as laid out by the Legislature.

This comment does not require a change to the current regulatory package.

Companion to Comment 6 from TIPS/HCI Communications, Inc.

Note: Speaker 1 and Speaker 6 restate in their public hearing comments the same issues raised in Comment 6.

1. Introduction (Page 3 of attachment to comment 6)
 - 1.1. Purpose
 - 1.2. Scope

CA Dept of Alcoholic Beverage Control Response:

No response necessary. Summary of contents included in body of HCI Communications, Inc. comment.

2. Roles and Responsibilities (Page 4 of attachment to comment 6)
 - 2.1. CA Department of Alcoholic Beverage Control

CA Dept of Alcoholic Beverage Control Response:

No response necessary. Summary of contents included in body of HCI Communications, Inc. comment.

- 2.2. Reputable Training Provider (Page 4 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

Summary of contents included in body of HCI Communications, Inc. comments. In addition, the Department will be administering the certification exam, not the training providers. Given the number of servers and managers needing to be certified, the Department expects there to be more than 100 training providers available. The Department does not believe a reputable training provider needs to have at least 100 certified trainers, train in multiple formats, or train in multiple languages to be able to provide reputable training to alcohol servers. If the trainer is a solo practitioner with years of experience and an excellent training program, they need not work with any other trainers to be an asset to the statewide implementation of the RBSTPA.

Response to Comment 6 cont.

3. Challenges of a Decentralized Training Delivery Approach (Page 4 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

Summary of contents included in body of HCI Communications, Inc. comments. The Department's administration of an online alcohol server certification exam will limit the burden on alcohol servers, have better accessibility statewide, provide funds to build the Department's database and online alcohol server certification exam, and provide support to users of the online certification platform. The Department's online alcohol server certification exam would remove fraud possibilities by training providers. Data collection will allow the Department to use analytics collected from the exam results to show the effectiveness of each training provider and RBS training course to monitor the effectiveness of the RBSTPA implementation. In addition, data collection and conversion into functional analytics would not be possible under other exam options considered. Through the technology maintained within the Department's online certification database, the approach becomes centralized for all training providers and seamless through the administration. The Department agrees that decentralization of the RBSTPA will create problems. Therefore, the Department chose to create one exam and tie all training providers to its contents through the mandatory curriculum. (For a more extensive exploration of exam options considered by the Department see the Standard Regulatory Impact Assessment attached to the Initial Statement of Reasons.)

3.1 Learning/User Experience (Page 5 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment but not the result. The Department's online examination will be immediately available to the training participant if the training provider completes the training program cycle and makes the online exam accessible via the online exam portal. The current proposed regulations require a training provider to allow an alcohol server access to the exam within 24 hours of the completion of an RBS training course to help alleviate this problem. The current regulation will allow training providers to create a seamless learning and testing experience using the technology in the Department's online database system, whether for in-person or online formats.

Response to Comment 6 cont.

3.2 Trainer Experience (Page 5 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment. A survey regarding the alcohol server's chosen RBS training course will be integrated into the online exam and must be completed by the alcohol server before exam results are given. Using the survey information as well as the data collected from the exam results, the Department will be able to provide the necessary feedback to approved training providers.

3.3 Record Keeping (Page 5 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment. Data collection will allow the Department to use analytics collected from the exam results to show the effectiveness of each training provider and RBS training course to monitor the effectiveness of each prospective program. Approved training providers can make minor changes to their programs with the Department's approval to make their program more effective. The Department developed its online certification database to ease the burden upon training providers of creating their own digital record keeping and data tracking system. In the Department's multiple stakeholder meetings, it was shown that many existing reputable training providers in California did not have these systems in place. The Department created one centralized system for all training providers, licensees, alcohol servers, and law enforcement agencies to use to better keep costs of implementation of the RBSTPA low and level the playing field for authorized training providers entering California's mandatory RBS training market.

3.4 Program Design (Page 6 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; therefore, the Department is centralizing the total program by administering the certification exam, rather than fragmenting the program through many various approved training providers. As the curriculum has been mandated, mandatory program updates should only follow the approved curriculum including any changes in laws/regulations that the training provider is made aware of through notification from the Department. Any updates to a training provider's mandatory training content will be allowed with Department approval under the regulatory

Response to Comment 6 cont.

process outlined in the regulatory action. This allows the Department to make changes to the online exam after the training providers are given notice of the required changes.

3.5 Customer Service (Page 6 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment. Customer service is required to be available from the training provider as well as the Department and this might create some confusion for alcohol servers. To overcome confusion, the Department anticipates handling most customer service through its online database service relieving the training providers of much of their customer service burden. The burden on the training provider to provide customer support for the exam is limited to their own course content and material and the opening of access to the exam portal in the chosen option. The Department will need to have an alcohol server contact the training provider's customer service to solve a problem with access to the exam after the completion of an RBS training course.

3.6 Consistency (Page 6 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment. Consistency when developing and implementing a program of this magnitude is vital to the successful implementation of the RBSTPA. Each RBS training course will be assessed based on the same criteria as outlined in the regulatory package. The Department made the decision to centralize the administration of the certification exam and have all training providers be subject to the same mandatory curriculum and testing procedures rather than having many different approved exams by each training provider providing diverse results. This will provide consistency across the entire implementation of the RBSTPA regardless of training provider.

Response to Comment 6 cont.

- 4. Training Strategy and Approach
- 4.1 Training Approach (Page 6 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, it will not be mandated that each training provider must offer their training both in-person and online, or in both English and Spanish. The requirement within the mandate is that in-person, online, English, and Spanish training providers must be available to serve the community in some form, not all by each approved training provider.

- 4.2 Needs and Skills Analysis (Page 7 of attachment to comment 6)
- 4.2.1 Audience

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment. The intent of this comment is found within the regulatory action as currently constituted.

- 4.2.2 Unique Environments (Page7 of attachment to comment #6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment, however, requiring off-premise tailored training is outside the scope of the RBSTPA. Any other niches, such as gaming or concessions, have not been excluded from being added to an approved RBS training program. The curriculum is a minimum standard that the Department expects will be tailored to these specific audiences with various elements more emphasized in the training depending on audience.

Response to Comment 6 cont.

- 5. Instructional Methods (page 8 of attachment to comment 6)
- 5.1 Train-the-Trainer Workshop Curriculum
- 5.1.1. Train-the-Trainer Model

CA Dept of Alcoholic Beverage Control Response:

While a train-the-trainer model works for TIPS, it may not work for all training providers interested in becoming a training provider. The Department mandates the curriculum being taught with the proposed regulatory action, not the delivery method of the mandated materials. The Department has determined that the legislature wanted the Department or an accreditation agency to approve training providers as entities not on an individual trainer level. Training providers are responsible for the actions, training, and ability of their employees and the Department hopes programs like those outlined in this comment will be used. However, mandating these functions would be outside the scope of the Department's legislative delegation of authority.

- 5.1.2. Train-the-Trainer Workshop Methodology (Page 8 of attachment to comment 6)
- 5.1.2.1. Trainers as Facilitators or Discussion Leaders

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods allowing for innovation by training providers.

- 5.1.2.2. Observation (Page 8 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods allowing for innovation by training providers.

Response to Comment 6 cont.

5.1.2.3. Practice (Page 8 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods allowing for innovation by training providers.

5.1.2.4. Feedback (Page 9 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods allowing for innovation by training providers.

5.1.2.5. Teaching Demonstration (Page 9 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods allowing for innovation by training providers.

5.1.3 Workshop Delivery (Page 9 of attachment to comment#6)

CA Dept of Alcoholic Beverage Control Response:

The Department is not regulating individual trainers. Each training provider will be responsible to ensure the qualifications of its own individual trainers. All in-person RBS training courses will be delivered by a trainer vetted by the training provider.

Response to Comment 6 cont.

5.1.4 Program Time (Page 9 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department is not regulating the time it takes to deliver the mandated curriculum. The length of training may fluctuate based on the method of delivery and if online or in-person.

5.1.5 Format/Content Outline (Page 9 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods allowing for innovation by training providers. The Department is not regulating the individual trainers. Each training provider will be responsible to ensure the qualifications of its own individual trainers. All in-person RBS training courses will be delivered by a trainer vetted by the training provider. The Department does not require training providers to give a certification exam for their employed trainers. The Department will not limit access to the certification exam and training providers may instruct their trainers to take and pass the certification exam if desired.

5.2 Classroom Training Curriculum

5.2.1. Classroom Training (Page 10 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the comment. The intent of this section is found within the regulatory action as currently constituted.

5.2.2. Classroom Training Methodology (Page 10 of attachment to comment #6)

5.2.2.1. Servers/Participants as Experts

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the comment. The intent of this section is found within the regulatory action as currently constituted.

Response to Comment 6 cont.

5.2.2.2. Observation (Page 10 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods. This allows for innovation amongst by providers. Interactivity within each approved training program is required.

5.2.2.3. Practice (Page 11 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods. This allows for innovation by training providers. Interactivity within each approved training program is required.

5.2.2.4. Feedback (Page 11 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods. This allows for innovation by training providers. Interactivity within each approved training program is required.

5.2.3 Classroom Training Delivery (Page 11 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department is not regulating the individual trainers and leaving the qualifications of individual trainers to the training provider. All in-person RBS training courses will be delivered by a trainer vetted by the training provider. A training provider remains responsible for the actions of their employee trainers when they are administering RBS training courses under departmental approval.

Response to Comment 6 cont.

5.2.4. Program Time (Page 11 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department is not regulating the time it takes to deliver the mandated curriculum. The length of training may fluctuate based on the method of delivery when online or in-person.

5.2.5. Format/Content Outline (Page 11 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with this comment. Contents in this statement are included in the mandated curriculum. In addition, although the Department is not mandating any specific training methods, the Department is requiring each approved RBS training course to include interactivity elements. The discussion found in this comment are examples of interactivity, but the Department is not mandating specific interactivity styles or content to allow for innovation by training providers as they continue to serve and train California's alcohol servers.

5.3 Online Training Curriculum (Page 13 of attachment to comment 6)

5.3.1. Online Training

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the comment. The content of this comment is found within the regulatory action as currently constituted.

Response to Comment 6 cont.

5.3.2. Online Training Methodology

5.3.2.1. Observation (Page 13 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods. This allows for innovation by training providers. Interactivity within each approved training program is required by the current regulatory action.

5.3.2.2. Engaging Content and Interactive Exercises (Page 13 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods which allows for innovation by training providers. Interactivity within each approved training program is required whether in-person or in an online format.

5.3.2.3. Job Aids (Page 13 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with this comment. Job aids are required via mandate to complement the approved RBS training courses whether they are in-person or in an online format.

5.3.2.4 Assessment (Page 13 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the intent of the comment; however, the Department is not requiring specific training methods which allows for innovation by training providers. Interactivity to test knowledge transfer is mandated within each approved training program, but the form of that interactivity is up to the training provider.

Response to Comment 6 cont.

5.3.3. Online Training Delivery (Page 14 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the comment. The content of this comment is found within the regulatory action as currently constituted.

5.3.4. Program Time (Page 14 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department is not regulating the time it takes to deliver the mandated curriculum. The length of training may fluctuate based on the method of delivery when online or in-person.

5.3.5. Format/Content Online (Page 14 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with this comment. Contents in this comment are included in the mandated curriculum currently within the regulatory action.

5.4. Exam (Page 15 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with this comment. Closed book exams are not needed as the exam is being created with the understanding students will have access to training materials and handouts. The certification exam is testing if the alcohol server has gained knowledge and understanding by completing an RBS training course, this does not require the memorization of the entire mandated curriculum.

Response to Comment 6 cont.

5.5 Certification (Page 15 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

This comment is outside the scope of the proposed regulations. Training providers are required to renew their program approvals every year due to their status as ABC licensees. Alcohol servers are mandated to re-certify every 3 years by the statute.

5.6 Expected Outcomes (Page 15 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with this comment and believes the purpose of the RBSTPA was given to have these outcomes throughout the state. Data from the exam results and related statewide alcohol-involved statistics will be analyzed to recognize the outcomes from mandatory statewide RBS training courses. Each training provider will have access to the data for their students they can analyze their own work and modify their RBS training course to make it more effective. In addition, the data will be available in aggregate to allow for scholarly work in establishing the outcomes of the RBSTPA.

5.7 Evaluation (Page 16 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with this comment. A survey will be given to the participants and the exam pass rates will be monitored by Department staff as well as be made accessible to training providers. The use of the Department's online database system will allow this type of data collection and analysis to be done for all approved training providers without wasting resources need for each training provider to build their own system.

Response to Comment 6 cont.

6. Processes & Procedures

6.1 Master Trainer Qualifications (Page 16 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

This comment is outside the scope of the Department's regulatory delegation of authority

6.2 Trainer Qualifications (Page 17 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

This comment is outside the scope of the Department's regulatory delegation of authority.

6.3 Server/Participant Qualifications (Page 17 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department is creating the certification exam using scientifically validated pedagogical standards through an expert test creation vendor. Exams will be graded immediately upon completion of the online exam and accessible to both the alcohol server and the training provider. The pass rate will be 70% as suggested. Certification renewal will be every 3 years as required by statute.

6.4 Denial or Revocation of Certification (Page 18 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department has a legislative mandate to choose an accreditation agency to approve training providers or approve training providers itself according to the standards found in the statute and this regulatory action. The Department has established the procedures and standards of approval for both accreditation agencies and training providers in the regulatory action. There is no approval for individual trainers within the Department's legislative delegation of authority. Alcohol servers within the RBSTPA can only be denied a certification after completing an approved RBS training course based on a failure of the certification exam.

Response to Comment 6 cont.

Alcohol server certifications cannot be revoked under the Department's legislative delegation of authority. The Department has determined it is not appropriate for the regulatory package to allow training providers to investigate alcohol server actions at ABC licensees and revoke alcohol server certifications they issue. This is outside the Department's legislative delegation of authority.

6.5 Checks and Balances (Page 18 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

Session Registers: The Department is not regulating or verifying individual trainers. All in-person RBS training courses will be delivered by a trainer vetted by the training provider.

Spot Checks: The Department will be auditing training providers and RBS training courses based on test results, survey answers, and any complaints given to the Department by the public. A training provider is not limited from doing the same.

Copies of Examinations: All training providers are required to keep records of the participants in their training programs. The results and analytics of alcohol server exams will be available for review by the training provider within the Department's online certification database. Training providers may use the Department's online certificate database to keep the required records but are not required by the proposed regulations to do so.

Liaison with State Liquor Authorities: The Department agrees with this comment. Training providers will be notified and required to change their curriculum based on any new or changed laws that affect RBS training courses. Local jurisdiction specific laws are outside the scope of the mandatory statewide regulations.

Investigations: This comment is outside the scope of the Department's regulatory delegation of authority. The Department has determined it is not appropriate for training providers to investigate alcohol server actions at ABC licensees to revoke their certification. The training provider is responsible for the actions of its trainers, and it is up to them to employ and oversee all trainings given under their authority granted by an accreditation agency or the Department.

Response to Comment 6 cont.

7. Compliance Record Keeping and Reporting (Page 20 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

All training providers are required to keep records of participants in their training programs that have completed an approved RBS training course. The Department determined that many of the current training providers throughout the state did not have sophisticated or technologically advanced tracking systems for their record keeping. The Department determined the regulatory action would have a lower economic impact upon existing California training providers by creating the Department's online certificate database to facilitate mandatory training provider record keeping. This unified system negates the need for the Department to request audits of training provider records kept in the system and share data in a centralized and seamless manner. This was an important decision to allow the many training providers who have served in small markets throughout the state to continue to be viable in the new RBS training course marketplace. The Department ensured the valuable experience in these companies was not lost through the creation of its online certificate database.

8. Quality Control

8.1 Security

8.1.1 Security- Classroom Training (Page 20 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with the comment. However, proctors will not be required to be present during the exam as the exam may be taken online at any hour of the day, and not necessarily at the same time the training program is taken. If a training provider wishes to proctor their students for an in-person course to ensure identity of the individuals taking the certification exam, they are free to do so. However, the Department has chosen not to require special requirements of in-person training courses or online training courses that would not apply to the other. The Department will prepare the exam in a way to allow the use of notes when taking the test and therefore any proctoring done by training providers should not limit alcohol server access to the required handouts or materials.

Response to Comment 6 cont.

8.1.2. Security- Online Training (Page 20 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with this comment. A knowledge-based authentication mechanism is outside the scope of the Department's legislative delegation of authority. The Department has followed the statutory mandate to require security of all sensitive private information by all parties, including itself, to ensure the private information of ABC licensees, approved training providers, RBS trainers, and alcohol servers do not become public.

8.2 Customer Service and Technical Support (Page 20 of attachment to comment 6)

CA Dept of Alcoholic Beverage Control Response:

The Department alleviated much of the training provider's customer support burden by implementing its online certificate database system. This was done to limit the economic impact of the implementation of mandatory statewide RBS training courses. Training providers will still be required to provide support to their students for access to their content, provided study materials, the exam portal correctly in a timely manner as required by the statute and regulatory action. Chat customer support is not mandated nor is it prohibited by the regulatory action.

9. Conclusion

CA Dept of Alcoholic Beverage Control Response:

The Department agrees with HCI in that the administration of the RBSTPA should not be decentralized. The Department anticipates multiple training providers' exams each with their own standards would create a race to the bottom where alcohol servers and ABC licensees seek the "easiest" certification possible. By centralizing the exam and requiring all training providers to teach to the same exam, the Department can promote fairness and consistency across all approved training providers in both in-person and online classes as well as in multiple languages. The creation and use of the Department's online certificate database will make the alcohol server experience seamless, even with the bifurcation of RBS training course and certification exam. The Department bears the burden of much of a training provider's cost of entry through this option. The option was determined as the best course to allow the training provider marketplace to flourish and allow smaller training providers who have years of experience to continue to train alcohol servers. For a more extensive exploration of exam options

Response to Comment 6 cont.

considered by the Department see the Standard Regulatory Impact Assessment attached to the Initial Statement of Reasons.

The sharing of data within the Department's online certificate database will allow the problems with the learning/user experience, the trainer experience, record keeping, program design, customer service and consistency to be more robust across all training providers approved under the RBSTPA without the need for each to create their own technology-based data system. This will provide one place, one standard, and one exam for the entire program's implementation creating consistency and a streamlined experience regardless of the training provider an alcohol server selects. The Department believes this will incentivize a wide array of training providers to continue to innovate and make their programs better in order to increase their market share over time.

Owners Required to Receive Certification

Comments: 8, 80

Comment Summary: Suggestion to require all owners to receive the training as alcohol servers.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that ABC licensees have vast authority and power given to them by the Department through the licensing process. ABC licensees are required to ensure public safety when delivering alcohol to the public in any form. Therefore, there is an extensive statutory and regulatory scheme to ensure ABC licensees act according to standards set by the Legislature.

In this case, the Legislature limited the Department by mandating alcohol servers and their managers be certified under the RBSTPA. The Department cannot overstep its delegated legislative authority to require all owners to be certified. However, most ABC licensees act as managers by directly hiring, managing, or training alcohol servers regarding policies for serving alcohol for consumption under the definition found in Rule 160(b)(9). In addition, no one is excluded from being certified under this regulatory action and the Department recommends all ABC licensees complete their own alcohol server certification. This comment does not require a change to the current regulatory package.

Include Marijuana Impairment Specifically in Curriculum

Comments: 8, 80

Comment Summary: Marijuana Impairment included within the Department's mandatory curriculum.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that many stakeholders want the signs of impairment specific to cannabis mandated within the curriculum. The signs of impairment of medications or recreational and illegal drugs in Section 163(4)(A)-(B) would include this information. A training provider can be more specific in their instruction of this section to cover cannabis in depth if they desire. This comment does not require a change to the current regulatory package.

Curriculum Requirements

Comments: 9, 17, 23,39, 41, 44,45, 46, 47, 52, 53, 56, 59, 62, 67, 78, 81, 83, 89, 90, 91, 96, 113, 126, 127, 129, 130, 131, Speaker 2, Speaker 3, Speaker 4, Speaker 5

Comments Summary:

These comments question the contents of the mandatory curriculum as outlined in the proposed regulations.

CA Dept of Alcoholic Beverage Control Response:

The Department is under the obligation to use the five mandatory curriculum topics set by the legislature in executing its legislative delegation of authority to create the RBSTPA curriculum standard. Each of these five mandatory topics correspond to sections 162-166. The Department's proposed mandatory curriculum is limited to the topics laid out by the Legislature in the RBSTPA.

The Department included a list of definitions and required those definitions to be a part of the curriculum outline for section 163 on the laws and regulations with alcoholic beverage control to ensure alcohol servers understand the various elements within the RBSTPA and this regulatory package and how they affect their alcohol server certification.

The Department worked with stakeholders to determine what is meant by each of the five required topics in an RBS training course context through dozens of meetings, exchanges of ideas, and curriculum exchanges. Additionally, the Department reviewed multiple existing 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. The Department recognizes that changes to the curriculum will need to occur over time as science and laws change. The Department will regulate those changes in the future by consulting with educational experts as it has done in this regulatory action.

This comment does not require a change to the current regulatory package.

Response to Comment 10; Institute for Public Strategies

Comment Summary: Suggestion to make it mandatory for the Department to notify an ABC on-premise licensee of the expiration of an alcohol server's certification.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that this small change would not add any additional costs to the implementation of the regulations as written. The Department also recognizes that this change will allow ABC licensees to opt out of receiving notifications but automate the notification process to not require another burden upon ABC licensees. The Department has made the requested change in its modifications noticed on October 18, 2019.

Comment Summary: Suggestion to change the alcohol server certification exam mandatory passing score from 70% to 75%.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that the service of alcohol is a very important duty and the over consumption of alcohol leads to many documented harms on individuals and communities. The Department has begun working with pedagogical experts to ensure the certification exam is one that shows the alcohol server has gained knowledge and understanding of their role as a gatekeeper to the public. The current practical standard is 70%. The Department reserves the right to modify this pass rate if it is determined the exam pass rate is too low to create the desired effects of the implementation of the RBSTPA. This comment does not require a change to the current regulatory package.

Comment Summary: Suggestion to mandate the Department notify an alcohol server multiple times prior to expiration.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that this small change would not add any additional costs to the implementation of the regulations as written. The Department also recognizes that this change will better ensure alcohol servers receive the automatic notifications about an expiration of their alcohol server certification. The Department has made the requested change in its modifications noticed on October 18, 2019.

Response to Comment 10 cont.

Comment Summary: Four suggested changes to mandatory curriculum.

CA Dept of Alcoholic Beverage Control Response:

The Department appreciates additional feedback on the mandatory curriculum. Each of these points can be addressed when a training provider teaches material under the sections described, even if they are not specifically enumerated.

Section 162(c)(4)(D) specifically denotes death is a public health risk, even though it does not separate that into homicide and suicide.

Section 163(b) gives some specifics to alcohol impaired driving and although fatigue is not specifically included, it is a symptom similar to reduction in concentration and coordination found in Section 163(b)(4).

The signs of impairment of all medications or recreational and illegal drugs in Section 163(4)(A)-(B). This would include information regarding combining cannabinoids and alcohol.

Section 166(k) includes the industry standard drinks and can be supplemented as the nature of alcohol packaging and changes in ABV occur in the future by training providers. This section was modified by the Department in its modifications noticed on October 18, 2019, to provide more clarity.

A training provider can be more specific in their instruction of any of these sections to include the suggested content.

Comment Summary: Four additional miscellaneous comments

CA Dept of Alcoholic Beverage Control Response:

1. The Department understands many in the training and prevention groups throughout the state want to emphasize in-person training. However, the Department in its legislative delegation of authority was specifically mandated to make RBS training courses available in-person and online. A Department regulation contradicting that would be outside the scope of its legislative delegation of authority.
2. Local law enforcement agencies will have access to the Department's online certification system for enforcement purposes.
3. As outlined in the Department's Standardized Regulatory Impact Assessment, proctoring of the alcohol server certification exam was currently prohibitively expensive for alcohol servers and ABC on-premises licensees. The Department will monitor the technology and costs of various proctoring options to see if it can be implemented with a regulatory change in the future.
4. The Department will not approve any online course that has functionality to skip all content as it will be deemed to not be interactive and non-compliant with the regulations as currently constituted.

Comment 11, Health Net

Comment Summary: Suggestion that the Department include the signs of impairment by cannabis and/or edibles as part of the curriculum.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that many of our stakeholders want the signs of impairment specific to cannabis mandated within the curriculum. The signs of impairment of all medications or recreational and illegal drugs are included in Section 163(4)(A)-(B). A training provider can be more specific in their instruction of this section to cover cannabis in depth if they desire. This comment does not require a change to the current regulatory package.

Comment Summary: Suggestion that training providers could purchase sample ID's for use in training.

CA Dept of Alcoholic Beverage Control Response:

This is outside the scope of the legislative delegation of authority given to the Department. The Department does not regulate or control the ID's within the state or federal systems which issue appropriate ID's.

Comment Summary: Suggestion that owners be replaced by trainers for training provider approvals.

CA Dept of Alcoholic Beverage Control Response:

Once a training provider is approved to give RBS training courses under the RBSTPA, that training provider is an ABC Licensee. The Department regularly approves ABC licensees and their owners in this manner and believes it is a standard that the Department should continue. In addition, individual trainers are not regulated by the Department under the statute. Regulating trainers would be outside the scope of the Department's legislative delegation of authority in this program. Training providers, as a corporation or entity, would be responsible for the actions of their trainers. Corporate owners and officers that govern the training provider must meet the Department standards as currently regulated to ensure the Department approves legitimate and reputable training providers to give RBS training courses. If an individual trainer's action constitutes a breach of the authorization on behalf of their training provider, the Department can act to remove that approval under the regulatory action as currently constituted. This comment does not require a change to the current regulatory package.

Response to Comment 11 cont.

Comment Summary: Suggestion to extend the 24-hour mandated time for a training provider allow an alcohol server access to the online certification exam to 48 hours.

CA Dept of Alcoholic Beverage Control Response:

Although the Department understands holidays and weekends usually exempt burdens upon actors in law and regulation, the Department desires to create a seamless user experience for alcohol servers. Alcohol server certification exam access should be as close to the end of an RBS training course as possible to provide a seamless experience. Through the Department's online certificate database, it is anticipated this will require minimal work for a training provider and could even be done at a break or shortly after an in-person class. The Department also anticipates the complete automation of this process for RBS training courses taken online.

The 24-hour requirement is not over burdensome and should not be affected by weekend or holidays if a trainer is also giving an in-person RBS training course on weekends or holidays. The 24-hour requirement period begins at the end of a course, so it is up to the training provider to schedule the time to comply with this requirement after or during the administration of an RBS training course. A training provider can choose not to give courses on weekends or holidays if they cannot comply with this requirement in a timely manner. This comment does not require a change to the current regulatory package.

Comment Summary: Suggestion that training providers only renew every three years rather than every year.

CA Dept of Alcoholic Beverage Control Response:

Once a training provider is approved to give RBS training courses under the RBSTPA, that training provider becomes an ABC Licensee. The renewals for ABC licensees have historically been yearly. If the time for renewal was every three years, the fees for the administration and review of training providers would need to be changed accordingly to create a higher cost of entry, and less review of a training provider's course by the Department would occur. The Department does not favor either of those incentives and believes one-year training provider renewals are proper. This comment does not require a change to the current regulatory package.

Companion to Attachment of Comment 12, Hinman & Carmichael

Note: Speaker 2 and Speaker 5 incorporated these into their comments and spoke to the same issues.

Comment Summary: Comment attachment introduction recommends (1) implementing shorter rules, (2) increased paper work burdens placed upon training providers to protect ABC licensee employee privacy, and (3) the curriculum-related regulations should be simplified to avoid making the exam unnecessarily difficult and allow for content to be updated quickly with the most modern data about alcohol consumption. (Comment 12 Attachment, Page 1)

CA Dept of Alcoholic Beverage Control Response:

1) The Department recognizes the need for plain language and succinct rulemaking. The Department has repeatedly engaged stakeholders to make the regulatory action as minimal and unobtrusive as possible while still implementing all the necessary elements of the RBSTPA as outlined by the Legislature. The regulatory action must address each of the required curriculum topics within the package for the creation of a mandatory curriculum, establish rules a procedure for authorizations to accreditation agencies and training providers, outline record keeping procedures for ABC licensees and alcohol servers, and establish due process and penalty procedures for violations of statute or regulatory rules. The Department does not have the power to remove aspects of the regulatory package that are integral to its creation, implementation, and enforcement. This comment does not require a change to the current regulatory package.

2) The record keeping burden was placed upon every training provider and every ABC on-premise license under the statutory framework laid out by the Legislature. These records must be kept and be available on demand for the Department or Law Enforcement. In its stakeholder meetings, the Department received requests from all stakeholders that the Department create a more secure certificate system than one that relies upon paper certificates. It was requested that the Department ease the burden on licensees and training providers for the burden of digital recordkeeping required by a digital certificate system. If the Department did not have a centralized online certificate database, a digital certificate system would require each training provider and ABC on-premises licensee to create an electronic system for their recordkeeping. The Department worked with its stakeholders to develop one centralized system to easily confirm training and keep all required records. This lessened the economic burden of record keeping for ABC on-premises licensees which already were facing statutory burdens for paying their employees for their time and training costs which the Department could not change through regulation. This comment does not require a change to the current regulatory package.

3) The Department worked with stakeholders to determine what is meant by each of the five required topics in an RBS training course context through dozens of meetings, exchanges of ideas, and curriculum exchanges. Additionally, the Department reviewed multiple existing RBS programs, including but not limited to TIPS, Serve Safe, 360 Training, Ace Food Handler, Seller Server, RS Serving, and Ready

Response to Comment 12 cont.

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. The Department recognizes that changes to the curriculum will need to occur over time and will regulate those changes in the future by consulting with educational experts as it has done in this regulatory action. This comment does not require a change to the current regulatory package.

Comment Summary: Request for extension of the Comment Period and a Public Hearing (Comment 12 Attachment, pages 1-2)

CA Dept of Alcoholic Beverage Control Response:

The Department refers the commenter to its reasoning in Notice of the Extension of the Written Comment Period and Notice of Scheduled Public Hearing on October 11, 2019, dated September 24, 2019. This comment does not require a change to the current regulatory package.

Summary of Serious Questions (Comment 12 Attachment, pages 2-3)

CA Dept of Alcoholic Beverage Control Response:

The Department will respond to these questions and comments as they are addressed through the rest of the document in more detail.

Comment Summary: Section I – Government Code Section 11346.3 Requires Greater Consideration of Lessening the Economic Impact on Business. (Comment 12 Attachment, pages 3-4)

The Commenter states that the Notice and Initial Assessment (the Department believes this to refer to the Regulatory Notice and the Initial Statement of Reasons) does not explain facts and evidence upon which the Department developed its regulatory action and economic impact.

Response to Comment 12 cont.

CA Dept of Alcoholic Beverage Control Response:

Necessity of the Regulatory Actions

The Initial Statement of Reasons outlines the necessity of each individual section and subsection of the proposed regulatory action. The regulatory action must address each of the required curriculum topics within the package for the creation of a mandatory curriculum, establish rules a procedure for authorizations to accreditation agencies and training providers, outline record keeping procedures for ABC licensees and alcohol servers and establish due process and penalty procedures for violations of statute or regulatory rules. The stakeholder meetings addressed the best practices for the process and procedure for implementing, administering, and enforcing the RBSTPA to ensure the execution of the RBSTPA mandates would have as little impact as possible upon the stakeholders' practices. Each section and subsection were drafted to provide certainty to stakeholders and ensure all parties are aware of their obligations under the new program. Each section and subsection are necessary to properly implement the Legislature's desired program effectively and efficiently as outlined individually in the Initial Statement of Reasons.

Explanation of Economic Impact

The Initial Statement of Reasons includes the Standard Regulatory Impact Assessment outlining the economic impact and how the Department sought to reduce the economic impact of the statute as much as possible. To summarize, the burden and economic impact of this statute on ABC on-premises licensees is an impact created by statute due to the need to pay for their employees' time to take the training and reimburse them for costs of the training. These costs were outside the scope of the Department's legislative delegation of authority to change.

This comment does not require a change to the current regulatory package.

Comment Summary: Section I.A. The Department did not provide enough evidence to support its estimate of costs and Benefits to the proposed regulations. (Comment #12 Attachment, pages 4-5)

CA Dept of Alcoholic Beverage Control Response:

The Initial Statement of Reasons includes the Standard Regulatory Impact Assessment outlining the economic impact and how the Department sought to reduce the economic impact of the statute as much as possible. This was published with the Notice on August 9, 2019. It was also published by the

Response to Comment 12 cont.

Department of Finance on the Department of Finance's Website at the following link.
http://dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/

This comment does not require a change to the current regulatory package.

Comment Summary: Section II. The Proposed Regulations Must be Consistent with the Purpose of the Act. (Comment 12 Attachment, page 5)

CA Dept of Alcoholic Beverage Control Response:

The Department has shown through its Initial Statement of Reasons how each section and subsection of the proposed regulations meets the purpose of the implementation, administration, and enforcement of the RBSTPA as outlined by the Legislature.

This comment does not require a change to the current regulatory package.

Comment Summary: Section II.A. Some proposed regulations exceed the purpose of the Act (Comment 12 Attachment, pages 5-6)

The commenter states that the curriculum should only be focused on preventing sales to minors and to observe intoxication to prevent sales to intoxicated persons to prevent drunk driving. The commenter also states that the curriculum is so extensive as to make passing the required exam too difficult. The commenter also suggests that the regulations would not allow training providers to update their curriculum over time as the science of alcohol consumption evolves.

CA Dept of Alcoholic Beverage Control Response:

The Department is under the obligation to follow the five mandatory curriculum topics set by the legislature in executing its legislative delegation of authority. Each of these five mandatory topics correspond to sections 162-166. The Department's proposed mandatory curriculum is limited to the topics laid out by the Legislature in the RBSTPA.

The Department worked with stakeholders to determine what is meant by each of the five required topics in an RBS training course context through dozens of meetings, exchanges of ideas, and curriculum 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,

Response to Comment 12 cont.

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.

The Department recognizes the large amount of information included in the curriculum and has therefore required all training providers to provide handouts in the language the course is given, set the pass rate a 70%, allowed the exam to be untimed, and does not exclude alcohol servers from using any notes they want when taking the exam. In addition, the regulatory package allows three attempts in order to complete the exam and receive a certification. The Department consciously chose to allow alcohol servers the ability to take the exam and pass within the parameters in section 170 to ensure the certification exam would not be the barrier to alcohol server certification regardless of education level or native language.

The Department also recognizes that the science of alcohol consumption is changing. California alcohol law is also constantly changing. The Department recognizes that changes to the curriculum will need to occur over time and will regulate those changes in the future by consulting with educational experts as it has done in preparing this regulatory action. The Department included section 168.3 to ensure future modifications to RBS training courses and the RBSTPA required curriculum would be required of approved training providers as needed by both science and law.

This comment does not require a change to the current regulatory package.

Comment Summary: Section II.B. (Comment 12 Attachment, pages 6-7)

The commenter objects to the Department's detail in curriculum in section 163 "impact of alcohol on the body." The commenter states that this medical information is irrelevant to serving alcohol and is outside the intent of the legislature.

CA Dept of Alcoholic Beverage Control Response:

The Department has explained the reasoning for every section of the regulatory package in its Initial Statement of Reasons and refers the commenter to that document. The medical information of the impact of alcohol on the body was specifically mandated as a curriculum topic by the Legislature in Business and Professions Code section 25680(c)(2). As discussed above the Department understands the extensive curriculum mandated by the legislature and has regulated the certification exam accordingly using dozens of stakeholder meetings and pulling from current RBS training courses used within the state to determine mandatory curriculum content. This comment does not require a change to the current regulatory package.

Response to Comment 12 cont.

Comment Summary: Section III. The proposed regulations must be “reasonably necessary.” (Comment 12 Attachment, pages 8-9)

CA Dept of Alcoholic Beverage Control Response:

The Department has explained the reasoning for every section of the regulatory package in its Initial Statement of Reasons and refers the commenter to that document. The Department has addressed the commenters concerns regarding the curriculum and the difficulty of the certification exam in its pervious section of its response to comment 12.

This comment does not require a change to the current regulatory package.

Comment Summary: Section IV.A. Server/Employees have broad federal & state privacy rights. (Comment 12 Attachment, pages 9-10)

The commenter states that the Department is exceeding the scope of its legislative delegation of authority by creating the Department’s certificate database for record keeping of alcohol servers who have received their alcohol server certification from a training provider. The commenter suggests this database is in violation of the alcohol server’s privacy rights.

CA Dept of Alcoholic Beverage Control Response:

The Department’s Certificate Database

The Department worked through its many stakeholder meetings to provide a statewide RBS training program that worked for the Department, law enforcement, alcohol servers, training providers, and the ABC on-premises licensees. Stakeholders repeatedly stated that a paper certificate system was not desired because they often lead to records being fraudulent, lost, or unrecoverable. The Department through input from its stakeholders decided an electronic certificate system was appropriate. To reduce costs, the Department centralized the creation digital record keeping processes rather than require every training provider and ABC on-premise license to pay for the creation of their own. This is not outside the scope of the department’s legislative delegation of authority because it will serve the dual purpose of both easing the record keeping required by the statute for all involved and ease the economic costs of the Department’s implementation of the RBSTPA.

Economic Impact

The economic impact upon small business ABC on-premises licenses is estimated to be about \$1000, or about \$100 per employee at an average of 10 alcohol servers per small business. However only \$30 of the \$1000 is paying for the Department’s implementation of the its online certificate database through

Response to Comment 12 cont.

the exam fee charged to alcohol servers. The rest of the burden is statutorily required under the administration of the RBSTPA and is based on RBS training courses, about \$20- 25 per server, and wages for employee time spent taking the course \$70-80. (See the Department's Standard Regulatory Impact Assessment for a more detailed explanation as discussed above.)

Employee Privacy

In order to enforce the RBSTPA, as directed by the Legislature, the Department must receive records that an alcohol server is certified and confirm the alcohol server's identity. The Department's Certificate Database will be a closed private database that will not be disclosed to the public. It will only be used by training providers to confirm the alcohol server attended a training, allow the server to take the certification exam, allow an ABC on-premises licensee, law enforcement and the Department to confirm an alcohol server is fully certified as required by law. It will be protected by firewalls, passwords, and modern security technology as required by statute. The Department does not believe the collection of alcohol server data that it has a right to demand at any time a violation of that person's privacy rights. However, to better protect the private information of alcohol servers in the Department's database, the requirement was changed to the last four characters in a personal identifying number in the Department's modifications noticed on October 18, 2019.

Comment Summary: Section V. Conclusion (Comment 12 Attachment, page 10)

Commenter restates concerns laid out in previous sections that the Department previously responded to in its Response to Comment 12.

This comment does not require a change to the current regulatory package.

Extension of 45 Day Comment Period

Comments: 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 35, 37, 38, 39, 43, 44, 47, 48, 49, 51, 57, 58, 60, 61, 65, 69, 70, 71, 72

Comments Summary:

These comments are for requests for extension of the 45-day comment period.

CA Dept of Alcoholic Beverage Control Response:

The Department refers the commenter to the Notice of the Extension of the Written Comment Period and Public Hearing.

This comment does not require a change to the current regulatory package.

Difficulty of Exam

Comments: 17, 23, 39, 66, 113, 123, 128, 130, Speaker 6

Comments Summary:

These comments are questioning the difficulty of the exam

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes the large amount of information included in the proposed minimum mandatory curriculum and has therefore required all training providers to provide handouts in the language the course is given, set the pass rate at 70%, and allowed the exam to be untimed. The current proposed regulations do not exclude alcohol servers from using notes or handouts from the RBS training program. In addition, the regulatory package allows three attempts in order to complete the exam and receive a certification. The Department consciously chose to allow alcohol servers the ability to take the exam and pass within the parameters in section 170 to ensure the certification exam would not be the barrier to alcohol server certification regardless of education level or native language.

This comment does not require a change to the current regulatory package.

Record Keeping

Comments: 17, Speaker 1, Speaker 6

Comments Summary:

These comments discuss the creation of paperwork and record keeping required by the RBSTPA.

CA Dept of Alcoholic Beverage Control Response:

The record keeping burden was placed upon every training provider and every ABC on-premise license by the Legislature. These records must be kept and be available on demand by the Department or Law Enforcement whenever a licensed premises is exercising its license privileges.

In its stakeholder meetings, the Department received requests from all stakeholders that the Department create a more secure certificate system than one that relies upon paper certificates. It was also requested that the Department ease the burden on licensees and training providers for the burden of digital recordkeeping required by a digital certificate system.

If the Department did not have a centralized online certificate database, a digital certificate system would require each training provider and ABC on-premises licensee to create an electronic system for their recordkeeping. The Department worked with its stakeholders to develop one centralized system to easily confirm training and keep all required records while minimizing the economic impact of implementation. This lessened the record keeping burden upon ABC on-premises licensees which already were facing statutory burdens for paying their employees for their time and training costs which the Department could not change through regulation.

This comment does not require a change to the current regulatory package.

Request for Public Hearing

Comments: 18, 21

Comments Summary:

These comments are for requests for a Public Hearing.

CA Dept of Alcoholic Beverage Control Response:

The Department refers the commenter to the Notice of the Extension of the Written Comment Period and Public Hearing.

This comment does not require a change to the current regulatory package.

Server Database and Privacy

Comments: 23, 39, 41, 44, 45, 46, 48, 52, 53, 55, 59, 64, 67, 81, 84, 86, 89, 90, 91, 92, 96, 103, 113, 115, 116, 117, 124, 125, 127, 128, 129, 131, Speaker 2, Speaker 5

Comments Summary:

These comments are questioning the Department's creation of its online certificate database, and privacy concerns regarding keeping alcohol server personal information in that database.

CA Dept of Alcoholic Beverage Control Response:

The Department worked with its stakeholders through dozens of stakeholder meetings to provide a system that worked for the Department, law enforcement, alcohol servers, training providers, and the ABC on-premises licensees. Stakeholders repeatedly stated that a paper certificate system was not desired because they often lead to records being fraudulent, lost, or unrecoverable. The Department, using input from its stakeholders, decided an electronic tracking system was appropriate. To reduce costs of implementation, the Department centralized the creation of an online certificate database rather than require every training provider and every ABC on-premise licensee to pay for the creation of their own. This will lessen the burden of recordkeeping and reduce time needed to comply for training providers and most importantly the ABC on-premises licensee which already bear most the economic burden under the Legislature's implementation of the RBSTPA. This is not outside the scope of the Department's legislative delegation of authority because it will serve the dual purpose of both easing the burden of record keeping required by the statute for all involved and help facilitate the Department's implementation of the RBSTPA.

In order to enforce the RBSTPA, as directed by the Legislature, the Department must receive records that an alcohol server is certified and confirm the alcohol server's identity to enforce compliance. The Department's online certificate database will be a closed private database that will not be disclosed to the public, it will also remove the need for alcohol servers to give their private information to training providers. The database will only be used by training providers to confirm the alcohol server attended a training, allow the server to take the certification exam, allow an ABC on-premises licensee, law enforcement and the Department to confirm an alcohol server is fully certified as required by law. It will be protected by firewalls, passwords, and modern security technology as required by statute. The Department does not believe the collection of alcohol server data that the Department has a right to demand is a violation of an alcohol server's privacy rights due to the mandate created by the Legislature.

An alcohol server's private information is required to be kept by multiple entities under all other proposed solutions for examination and certification, both the employer and a training provider. The question is not if it is a constitutional privacy concern to have an alcohol server's private information under the implementation of the RBSTPA, but to whom and what specific information is required to prove identity in the certification process. Other databases kept by employers or training providers will

Server Database and Privacy cont.

be subject to the same security concerns regarding this private information. The Department's online certificate database was created to ensure alcohol server private information remains private.

In order to limit the impact upon alcohol servers in a potential breach of the Department's digital security, the Department has modified the requirement to require only the last four characters of a personal identifying number in its modifications noticed on October 18, 2019.

Regulations Create New Duties or Change Existing Duties of Licensees and Their Employees When in the Service of Alcohol for Consumption

Comments: 23, 39, 48, 62, 64, 67, 91, 96, 97, 101, 113, 114, 118, 122, 124, 130, 131, Speaker 4, Speaker 5

Comments Summary:

These comments suggest the proposed mandatory curriculum will change the way law concerning the service of alcohol for consumption is enforced under other Business and Profession Code and Penal Code statutes.

CA Dept of Alcoholic Beverage Control Response:

The mandatory curriculum of the RBSTPA does not change any other law or interpret the enforcement of any law outside the RBSTPA under the statutes put in place by the Legislature. While the mandatory curriculum does include information regarding standard recommended practices for checking ID's, spotting and recognizing illegal drug use, a disorderly house, or other alcohol licensed premises laws, it does not create new duties or change any obligation in current law for ABC licensees or alcohol servers.

An additional emphasis of this language to ensure interpretation of the regulations outlining the mandatory curriculum for RBS training courses do not create new duties or modify existing duties placed upon ABC licensees elsewhere in law was added to section 161 in the department's modifications noticed on October 18, 2019.

Necessity of the Regulations

Comment: 26, 106, 113, Speaker 2

Comment Summary:

These comments suggest the Department has not demonstrated the need for its proposed regulations.

CA Dept of Alcoholic Beverage Control Response:

The Initial Statement of Reasons outlines the necessity of each individual section of the proposed regulatory action. The regulatory action must address each of the required curriculum topics for the creation of a mandatory curriculum, establish rules a procedure for authorizations to accreditation agencies and training providers, outline record keeping procedures for ABC licensees and alcohol servers, and establish due process and penalty procedures for violations of statute or regulatory rules. The stakeholder meetings addressed the best practices for the process and procedure for implementing, administering, and enforcing the RBSTPA to ensure the execution of the RBSTPA mandates would have as little impact as possible upon the stakeholders' practices. Each section and subsection were drafted to provide certainty to stakeholders and ensure all parties are aware of their obligations under the new program. Each section and subsection are necessary to properly implement the Legislature's desired program effectively and efficiently as outlined individually in the Initial Statement of Reasons.

Economic Impact

Comments: 28, 36, 43, 44, 47, 60, 62, 67, 68, 76, 81, 86, 89, 90, 91, 97, 100, 127, 128, 129, 132, Speaker 2, Speaker 3, Speaker 5

Comments Summary:

These comments question the economic impact of the proposed regulations.

CA Dept of Alcoholic Beverage Control Response:

The Initial Statement of Reasons for this regulatory package includes the Standard Regulatory Impact Assessment outlining the economic impact and how the Department sought to reduce the economic impact of the statute on stakeholders as much as possible. To summarize, 97% of the economic impact of this statute's implementation on ABC on-premises licensees is an impact created by statute due to the need to pay for their employees' time to take an RBS training course and reimburse them for costs of the RBS training course. These costs were outside the scope of the Department's legislative delegation of authority to change.

The economic impact upon small business ABC on-premises licenses is estimated to be \$1000, or about \$100 per employee at an average of 10 alcohol servers per small business. However only \$30 of the total yearly cost is paying for the Department's implementation of its online certificate database through the exam fee charged to alcohol servers. The rest of the burden is statutorily required under the administration of the RBSTPA and is based on RBS training courses, about \$20- 25 per server, and wages for time spent taking the course \$70-80. (For a more detailed discussion of all economic impacts of the implementation of the RBSTPA, see the Department's Standard Regulatory Impact Assessment as discussed above.)

This comment does not require a change to the current regulatory package.

Exclusion from AB 1221 Requirements

Comment: 29

Comment Summary:

The Commenter stated that, “We are generally NOT *servicing* people alcoholic beverages to drink, but to *acquaint the tasters with the characteristics of the wine or wines tasted*. In the case where we sell glasses of wine to certain individuals, and bottles for picnics, it should not be our responsibility to manage another adult's personal behavior once they leave our tasting room, other than not serving or selling alcoholic beverages to anyone who *appears* intoxicated, or is under the legal drinking age.”

The Commenter requested that “all wine grower licensee’s should be excluded from this Act.” In the alternative the Commenter requested an exemption for wineries that produce less than 50,000 cases of wine.

CA Dept of Alcoholic Beverage Control Response:

The attachment to this comment is a copy of Business and Professions Code section 23358, which controls the privileges for licensed winegrowers. Business and Professions Code section 23358(a)(3) is “Sell wine to consumers for consumption on the premises.” This is specifically an action that the Legislature included for the implementation of the RBSTPA for an ABC on-premises licensee’s alcohol servers. Excluding all wine grower’s licensees, or an exemption for wineries producing less than 50,000 cases, would be exceeding the Department’s legislative delegation of authority.

This comment does not require a change to the current regulatory package.

Response to Comment 34 and 93, CA Restaurant Association

Change the word “provide” to “make available” in Section 161(c)

CA Dept of Alcoholic Beverage Control Response:

The Department is consciously placing the burden upon training providers to ensure the materials required are provided to alcohol servers during every RBS training course whether online or in-person. The term “provide” in this instance and “make available” is a distinction of making a customer look for it or not. The Department chose the term “provide” because the training provider is required to both make materials available and instruct the alcohol server how to locate and use them. This comment does not require a change to the current regulatory package.

Deletion of Section 163(a)(4)(C)

CA Dept of Alcoholic Beverage Control Response:

The function of 163(a)(4)(C) is to explain alcohol’s effect on the body’s blood sugar levels due to the liver metabolizing alcohol rather than performing its normal functions. The actions of the liver in 163(2)(A)-(D) describe the metabolization of alcohol. This element as one of three major effects on the body when intoxicated has been a longstanding part of the Department’s Licensee Education on Alcohol and Drugs (LEAD) program. The Department chose each section of the mandatory curriculum with care to both educate alcohol servers and test their knowledge and understanding of the information contained in an RBS training course. This comment does not require a change to the current regulatory package.

Adding “may include but are not limited or inclusive to the items below:” to Section 163(b), (d)(1), (d)(2), (d)(3), (d)(4), 165(h) and 165(m).

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that many existing training providers have lists of symptoms, actions, and standard practices like those found in Sections 163 and 165. The Department is mandating a specific list to be included in every RBS training course because the certification exam will be created using those lists. This will ensure alcohol servers will not encounter an exam question that was not taught by an approved training provider. The training provider is free to add additional examples to their list if they choose. This comment does not require a change to the current regulatory package.

Response to Comment 34 and 93 cont.

Defining the Content for all laws found in Section 164.

CA Dept of Alcoholic Beverage Control Response:

The Department does not expect each training provider to go in depth into each law to the point of potential fine/penalty/criminal charge during the instruction of its RBS training course either in-person or online. These elements can be addressed in handout materials that are required under Section 161 to be compliant with Departmental review. However, because the test is open book and untimed, there could be questions on the certification exam on any elements of the laws cited. This comment does not require a change to the current regulatory package.

Inclusion of Information in Section 166 on the Certification Exam

CA Dept of Alcoholic Beverage Control Response:

The Legislature included in Business and Professions Code section 25680(c)(5) the material for “The development of management policies that support the prevention of service or sale of alcoholic beverages to underage persons or intoxicated patrons” as a mandated part of all approved RBS training courses. The exam of an RBS training course should include all mandatory topics presented by the Legislature. Removing one of those topics from testing to be outside the scope of the Department’s legislative delegation of authority. This comment does not require a change to the current regulatory package.

Deletion of Section 168.2

CA Dept of Alcoholic Beverage Control Response:

The Commenter provided no accompanying rationale for this deletion. Please see the Initial Statement of Reasons for why this section is necessary to determine training providers have given the Department the correct information regarding their criminal history. As ABC licensees under Business and Professions Code section 23009, training providers with the authorization of the Department should comply with the moral turpitude standards set by the Department for all ABC licensees. This comment does not require a change to the current regulatory package.

Response to Comment 34 and 93 cont.

Comment Summary:

Request to define timely in Section 168.3(f)(8)

CA Dept of Alcoholic Beverage Control Response:

The Regulatory Action provides a definition in 168.3 (d) "A training provider must notify the department using the online certification system within 24 hours of an alcohol server's completion of an approved RBS training course." This comment does not require a change to the current regulatory package.

Notice of Regulatory Action

Comments: 35, 66, 68, 69, 70, 76, 100

Comment Summary:

Questions regarding how stakeholders were notified and how the new mandate was introduced to public

CA Dept of Alcoholic Beverage Control Response:

Throughout the Department's regulatory process, and prior to the promulgation of the proposed regulations, the Department held more than two dozen public stakeholder meetings throughout the state to ensure the regulatory package for the RBSTPA meets the needs of stakeholders while following the intent of the Department's legislative delegation of authority in Business and Professions Code section 25680-25686. The Department attempted to notify all stakeholders through news releases, mass email lists, publications, social media, and through industry channels. The Department widely publicized its proposed regulatory action to ensure as many stakeholders were involved in the creation of the RBSTPA regulations as possible. The Department held stakeholder meetings in multiple locations throughout the state in September 2018, February 2019, and June 2019, to facilitate the creation of the current regulatory action. Each of these was individually noticed through the Department's public mailing list, social media, and press releases.

This comment does not require a change to the current regulatory package.

What Employees Need Certification

Comment: 36, 105, 110, 121, 122

Comment Summary:

This comment requests clarification of which employees of an ABC licensed premises must be certified.

CA Dept of Alcoholic Beverage Control Response:

The Legislature required all alcohol servers to receive a certification if they served alcohol for consumption on the premises of an ABC licensed premises regardless of position or title with the licensee. The Department clarified which employees are “serving alcohol beverages for consumption” in its definition. Anyone who does any of the following in the process of serving an alcoholic drink for consumption by a patron will be required to receive an alcohol server certification:

- 1) Check a patron’s ID to ensure they are over 21;
- 2) Take an alcoholic drink order from a patron;
- 3) Pour an alcoholic drink; and
- 4) Deliver an alcoholic drink to a patron.

This comment does not require a change to the current regulatory package.

On- Premises Locations

Comments: 36, 43, 81, 110

Comments Summary:

These comments question if the law applies to any type of on-premises consumption and if the new law can be limited to only apply to new licensees rather than those already in existence.

CA Dept of Alcoholic Beverage Control Response:

The Legislature applied the same standard for any service of alcohol to be consumed at an ABC licensed premises by a patron. It is outside the Department's legislative delegation of authority to grant additional exemptions beyond clarifying that ABC licensees who are giving small samples to other ABC licensees for marketing or distribution purposes were not considered to be serving alcohol for consumption on an ABC licensed premises since no consumers are involved. The only exception given by the Legislature was for non-profits who obtain a temporary daily on-sale or off-sale license found in Business and Professions Code section 25682(c).

The Department recognizes that many in the industry have previously been trained either by the Department's LEAD program or private companies like TIPS. These trainings occurred prior to the new regulatory standards that the legislature imposed, even if that program is later approved by the Department through the implementation of the RBSTPA, completion of an approved RBS training course and the passing of the certification exam will be required to be in compliance with the new law going into effect on July 1, 2021. The Legislature included no "grandfather" clause for those previously trained or operating, and the Department could not create this type of exception without a legislative delegation of authority. This comment does not require a change to the current regulatory package.

This comment does not require a change to the current regulatory package.

Language Requirement

Comments: 40, 41, 42, 45, 46, 51, 52, 53, 55, 56, 59, 81, 88

Comments Summary:

These comments question the language requirement of English for the training or exam.

CA Dept of Alcoholic Beverage Control Response:

The Department has never suggested or implied that the mandatory RBS training courses or alcohol server certification exam will only be available in English. The RBSTPA requires that both RBS training courses and the certification exam be available in both English and Spanish. The Department will work with authorized training providers to ensure the RBS training course is offered in as many languages as possible. The Department also plans to offer the alcohol server certification exam in many additional languages so alcohol servers can take the alcohol server certification exam in their native language. In addition, if the alcohol server certification exam is not available in a person's native language, the exam will be untimed and a translator, while not provided by the department, is not precluded from being used to pass the certification exam if needed.

This comment does not require a change to the current regulatory package.

Cost of Training and/or Exam

Comments: 41, 45, 46, 52, 53, 55, 88, 132

Comments Summary:

These comments request the training and exam to be free.

CA Dept of Alcoholic Beverage Control Response:

The Department is not able to prepare and train a million servers throughout the state and the Legislature did not want to put current training providers throughout the state out of business. Therefore, Legislature required the Department to authorize third-party training providers, either itself or through an accreditation agency in Business and Professions Code section 25681. It is outside the scope of the Department's legislative delegation of authority to mandate a specific cost upon private third parties offering RBS training courses under this regulatory scheme.

The Legislature also authorized the Department to charge fees necessary to cover its reasonable costs for administering the program in Business and Professions Code section 25685(b). The Legislature specifically authorized the to charge up to a \$5 fee for the administration of the alcohol server certification exam, the Department is only charging a \$3 fee. The Legislature also authorized the Department to charge up to a \$15 fee for providing an approved RBS training course. The Department anticipates being the only entity able to authorize training providers to participate in the RBS training course market. Thus, it is not appropriate for the Department to participate in the market while also being the only gatekeeper. The Department also believes that current employees of ABC on-premises licensees will be required by law to be reimbursed by their employer for this training course both for their cost and time in taking the training course. It is outside the scope of the Department's legislative delegation of authority to change the burden upon ABC on-premises licensees if they must reimburse their employees under current law.

This comment does not require a change to the current regulatory package.

Response to Comments 50, 108, 115, Wine & Spirits Wholesalers of California

Comment Summary:

The Commenter requested a change in language in Section 160(b)(9) for in the “Manages or Supervises” Definition.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that alcohol distributors using their licensed privileges to provide alcohol to the public through its employees would like to be excluded from this regulation. However, to exclude this group would be outside the scope of the Department’s legislative delegation of authority. Thus, if an ABC licensed distributor has alcohol servers under the definition in Business and Professions Code section 25680(a), anyone at the ABC licensed distributor who directly hires, oversees alcohol servers employed by the ABC licensed distributor, or trains alcohol servers regarding policies for serving alcohol for consumption must also be certified under the statutory construction laid out by the Legislature.

The exception in Section 160(b)(9) is for employees of ABC licensed distributors who are training the employees of another separate ABC licensee for marketing or distribution purposes and is narrowly tailored because in this instance there is no alcohol consumption by the general public. The Department explained in its Initial Statement of Reasons, that the Department excluded activity where there is no service to the public from the “service of alcohol for consumption” definition in Section 160(b)(15). To extend the narrowly tailored exception to include all managers of alcohol servers at all non-retail ABC licensees, which would not only include distributors but all manufacturers as well, would be inappropriate and outside the scope of the Department’s legislative delegation of authority.

This comment does not require a change to the current regulatory package.

Comment Summary:

The commenter requested an addition to Section 173 in the assignment of other alcohol-server related offenses for non-retail ABC licensees.

CA Dept of Alcoholic Beverage Control Response:

Under the Business and Professions Code section 25686, the Legislature specifically stated that the RBSTPA, and by extension this regulatory package, “shall not be construed to expand the existing duties of a licensee in connection with the sale and service of alcohol.” There is no need to add the exclusion requested as the regulatory package penalties only refer to a violation of the RBSTPA under Business and Professions code section 25683.

Response to Comment 51, W. Blake Gray

1) Has the comment deadline been extended? If so, until when?

CA Dept of Alcoholic Beverage Control Response:

The Department refers the commenter to its reasoning in Notice of the Extension of the Written Comment Period and Notice of Scheduled Public Hearing on October 11, 2019, dated September 24, 2019. This comment does not require a change to the current regulatory package.

2) Can a former convict serve alcohol?

CA Dept of Alcoholic Beverage Control Response:

There is nothing in the RBSTPA, or the Department's regulatory action that suggests a former convict will be excluded from being certified as an alcohol server under the RBSTPA. This comment does not require a change to the current regulatory package.

3) If a former convict needs to be rehabilitated to get a server license (as you indicated on the phone), what would being rehabilitated require?

CA Dept of Alcoholic Beverage Control Response:

There is nothing in the RBSTPA, or the Department's regulatory action that suggests a former convict will be excluded from being certified as an alcohol server under the RBSTPA. This comment does not require a change to the current regulatory package.

4) Will there be provisions to allow people to take the test in a language other than English?

CA Dept of Alcoholic Beverage Control Response:

The Department has never suggested or implied that the mandatory RBS training courses or alcohol server certification exam will only be available in English. The RBSTPA requires that both RBS training courses and the certification exam be available in both English and Spanish. The Department will work with authorized training providers to ensure the RBS training course is offered in as many languages as possible. The Department also plans to offer the alcohol server certification exam in many additional languages so alcohol servers can take the certification exam in their native language. In addition, if the

Response to Comment 51 cont.

alcohol server certification exam is not available in a person's native language, the exam will be untimed and a translator, while not provided by the department, is not precluded from being used to pass the certification exam if needed. This comment does not require a change to the current regulatory package.

5) Who was consulted in designing these proposed regulations?

CA Dept of Alcoholic Beverage Control Response:

The Department refers the commenter to its reasoning in Notice of the Extension of the Written Comment Period and Notice of Scheduled Public Hearing on October 11, 2019, dated September 24, 2019. This comment does not require a change to the current regulatory package.

6) Why are questions about drugs such as stimulants being considered as part of the test?

CA Dept of Alcoholic Beverage Control Response:

The Department is under the obligation to follow the five mandatory curriculum topics set by the legislature in executing its legislative delegation of authority. Each of these five mandatory topics correspond to sections 162-166. The Department limited the curriculum to the legislatively mandated topics. The Department has the curriculum it has prepared due to the topics laid out by the Legislature in the RBSTPA. In addition, the statutory requirement for alcohol servers to refuse service to obviously intoxicated persons are for any type of intoxication, not just intoxication by alcohol. Thus, alcohol servers should know how to identify all types of intoxication. This comment does not require a change to the current regulatory package.

7) Did the legislature specifically require that ABC maintain a database of restaurant employees and others who have passed this test?

CA Dept of Alcoholic Beverage Control Response:

The Legislature required the Department to create, implement, and enforce the RBSTPA. The Department is creating the database to implement, administer, and enforce the RBSTPA. The

Response to Comment 51 cont.

Department worked with stakeholders through its many stakeholder meetings to provide a system that worked for the Department, law enforcement, alcohol servers, training providers, and the on-sale licensees. Stakeholders repeatedly stated that a paper certificate system was not desired because they often lead to records being fraudulent, lost, or unrecoverable. The Department through input from its stakeholders decided an electronic tracking system was appropriate and, to reduce costs, centralized its creation rather than require every training provider and ABC on-premise license to pay for the creation of their own. This is not outside the scope of ABC's legislative delegation of authority because it will serve the dual purpose of both easing the record keeping required by the statute for all involved, but also ease the Department's implementation of the RBSTPA. This comment does not require a change to the current regulatory package.

Fingerprinting

Comment: 54

Comment Summary:

The Commenter objected to the fingerprinting required of approved training providers in Section 168.2.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that there is some burden upon potential training providers under the RBSTPA to provide fingerprints of owners and officers of their company. However, this is limited by Section 160(b)(12) that states that owners with less than a 10 percent interest in the corporation need not submit fingerprints. As stated in the Department's Initial Statement of Reasons, the fingerprinting requirement has been placed upon training providers because they will be ABC licensees under Business and Professions Code section 23009.

The Department has always been required by statute to ensure its licensees meet moral turpitude qualifications. As with current ABC licensees, while this requirement is enforced with each application or license, if a named person has already submitted fingerprints to the Department the Department does not ask them to duplicate the process and uses the prior submission. This is a longstanding internal process for the Department, while it does not remove the requirement to submit fingerprints for every license, the Department recognizes the prior submission as valid and applies it to further applications. Thus, there is no need to exclude existing licensee from this requirement since if it is the same corporate structure duplicative fingerprints would not need to be provided to the Department. However, if a new partner or owner is involved in the training provider application, they will need to submit theirs. For this reason, the Department requires every application for an ABC license to acknowledge the fingerprint requirement because the Department does not mandate or regulate the corporate structure of ABC licensees.

There is no legal or factual basis for the Department to specifically exclude law firms from this requirement. This would be outside the scope of the Department's legislative delegation of authority and would constitute special treatment for law firms that would be unfair to other businesses wanting to be training providers. This comment does not require a change to the current regulatory package.

This comment does not require a change to the current regulatory package.

Response to Comment 74, Hinman & Carmichael

Note Speaker 2 and Speaker 5 incorporated this comment into their comments at hearing and restated many of the same issues.

A More Simplified RBS Regulations and Curriculum (Page 1-2)

Commenter requests the Department simplify the curriculum and submitted a version of the regulations to be discussed in an attachment.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes the need for plain language and succinct rulemaking. The Department has repeatedly engaged stakeholders to make the regulatory action as minimal and unobtrusive as possible while still implementing all the necessary elements of the RBSTPA as outlined by the Legislature. The regulatory action must address each of the required curriculum topics for the creation of a mandatory curriculum, establish rules and procedures for authorization of accreditation agencies and training providers, outline record keeping procedures for ABC licensees and training providers, and establish due process and penalty procedures for violations of statute or regulatory rules. The Department does not have the power to remove aspects of the regulatory package that are integral to its creation, implementation, and enforcement.

The Department is under the obligation to follow the five mandatory curriculum topics set by the legislature in executing its legislative delegation of authority. Each of these five mandatory topics correspond to sections 162-166. The Department's proposed mandatory curriculum is limited to the topics laid out by the Legislature in the RBSTPA. The Department worked with stakeholders to determine 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 existing 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. The Department will respond further to individual suggestions in the attachment.

This comment does not require a change to the current regulatory package.

Reducing the Economic Impact on Small Business and Potential Servers (Page 2)

Commenter requests the regulations be simplified to reduce the economic impact upon small business and potential servers.

Response to Comment 74 cont.***CA Dept of Alcoholic Beverage Control Response:***

The Initial Statement of Reasons includes the Standard Regulatory Impact Assessment outlining the economic impact of the implementation of the RBSTPA and the proposed regulations. It also states how the Department sought to reduce the economic impact of the statute as much as possible. To summarize, the burden and economic impact of this statute on ABC on-premises licensees is an impact created by statute due to the need to pay for their employees' time to take the training and reimburse them for costs of the training itself. These costs were outside the scope of the Department's legislative delegation of authority to change.

The economic impact upon small business ABC on-premises licenses is estimated to be \$1000, or about \$100 per employee at an average of 10 alcohol servers per small business. However only \$30 of the total yearly cost is paying for the Department's implementation of the Certificate Database through the exam fee charged to alcohol servers at \$3 per server for administration of the online exam. The Legislature specifically authorized the Department to charge up to \$5 for the administration of the alcohol server certification exam, and the Department has been able to pay for the system by charging \$3 per fee. The rest of the burden is statutorily required under the administration of the RBSTPA and is based on the mandatory RBS training courses, about \$20- 25 per server, and wages for time spent taking the course \$70-80. (See the Department's Standard Regulatory Impact Assessment as discussed above.)

This comment does not require a change to the current regulatory package.

Server Exams Should Be Administered by the Trainer and Server Certificate Records Should Be Kept by the Trainers, the Server, and Employers Only. (Page 2-3)

Commenter requests the Department's proposed online database not be created, the department rely upon training providers, servers, and ABC on-premises licensees for record keeping only.

CA Dept of Alcoholic Beverage Control Response:

The Department worked with stakeholders through its many stakeholder meetings to provide a system that worked for the Department, law enforcement, alcohol servers, training providers, and the ABC on-sale licensees. Stakeholders repeatedly stated that a paper certificate system was not desired because they often lead to records being fraudulent, lost, or unrecoverable. The Department through input from its stakeholders decided an electronic tracking system was appropriate and to reduce costs centralized its creation rather than require every training provider and ABC on-premise license to pay for the creation of their own. This is not outside the scope of ABC's legislative delegation of authority because it will serve the dual purpose of both easing the record keeping required by the statute for all involved, but also ease the Department's implementation of the RBSTPA.

Response to Comment 74 cont.

The creation of the department's online database is a minimal part of the total economic impact of this regulatory package. The alternative presented by the commenter was outlined in the Department's Standard Regulatory Impact Assessment and did not provide the anticipated benefits of this solution. (See the Department's Standard Regulatory Impact Assessment as discussed above.) The commenter mischaracterizes the economic impact numbers presented in the Department's Notice and Financial Impact Statement as being entirely for the creation of the Department's online certificate database.

In order to enforce the RBSTPA, as directed by the legislature, the Department must receive records that an alcohol server is certified and confirm the alcohol server's identity. The Department's Certificate Database is a closed private database that will not be disclosed to the public. It will only be used by training providers to confirm the alcohol server attended a training, allow the server to take the certification exam, allow the ABC on-premises licensee, law enforcement and ABC to confirm their alcohol server are fully certified as required by law. It will be protected by firewall and pass word with modern security as required by statute. There is no safer way to keep records, and this way the Department can ensure alcohol server private information is secured in one place rather than in multiple costly databases created by training providers and ABC on-premises licensees for that purpose. To better protect the private information of persons registered in the department's online certificate database, the Department has modified the requirements for only the last four characters of a personal identifying number in its modifications noticed on October 18, 2019.

The New Regulations Must Conform to the Straightforward intent of the Act and Should Not Contain Unnecessary Rules That Impede Reasonable Implementation of the Act. (Page 3-4)

Commenter states that the Department has enlarged the act though excessive regulation, detailed definitions, and an extensive curriculum.

CA Dept of Alcoholic Beverage Control Response:

The Department is under the obligation to follow the five mandatory curriculum topics set by the legislature in executing its legislative delegation of authority. Each of these five mandatory topics correspond to sections 162-166. The Department's proposed mandatory curriculum is limited to the topics laid out by the Legislature in the RBSTPA.

The Department is required to establish a mandatory curriculum and regulate the standards by which it will approve or deny training providers applying to be authorized by the Department or an accreditation agency. Without regulating these specific and detailed standards, the Department would not be able to properly notice potential training providers of the standards they and their proposed RBS training course would need to meet for Departmental approval.

Response to Comment 74 cont.

The Department worked with stakeholders to determine what is meant by each of the five required topics in an RBS training course context through dozens of meetings, exchanges of ideas, and curriculum exchanges. Additionally, the Department reviewed multiple existing 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.

The Department recognizes the large amount of information included in the curriculum and has therefore required all training providers to provide handouts in the language the course is given, set the pass rate a 70%, allowed the exam to be untimed and does not exclude alcohol servers from using any notes they want. In addition, the regulatory package allows three attempts in order to complete the exam and receive a certification. The Department consciously chose to allow alcohol servers the ability to take the exam and pass within these parameters in section 170 to ensure the passage of the alcohol server certification exam would not be a barrier to employment as an alcohol server.

This comment does not require a change to the current regulatory package.

Hinman & Carmichael's Proposed Revisions to the RBS Regulations (Page 4 and Attachments)

Commenter provided a full edit of the text of the Regulatory Action in effort to meet the goals of its comments above and explained the method used to make the proposed revisions.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes the effort and time the commenter put into preparing proposed revisions to the full text of regulatory language. The Department will address each section that has been modified individually below. Where applicable the Department will use the citations from the original text of the draft regulations and supplement with citations from the proposed text.

Section 160(a)

Commenter strikes out "department" and replaces with "California Alcoholic Beverage Commission"

Commenter strikes out, "ensure effective responsible beverage service training for servers and their managers to curb harm of the overuse of alcohol in California communities" and replaces with "provide training to individuals who serve alcohol to help (i) prevent serving alcohol to obviously intoxicated persons and (ii) avoid serving alcohol to minors."

Response to Comment 74 cont.

CA Dept of Alcoholic Beverage Control Response:

It is proper for the Department to refer to itself as such, and the Department of Alcoholic Beverage Control when in full form.

This proposed edit does not require a change to the current regulatory package.

The statute requires the Department to mandate RBS training to all alcohol servers over an array of topics with the intent to curb the harms of the overuse of alcohol, including alcohol's effect on the body, the creation of management policies, the social impact of alcohol, state laws governing the service of alcohol, and intervention techniques to prevent the service of alcohol to underage persons or intoxicated patrons. The commenter only focuses on one area of the Department's legislatively mandated curriculum in its edit.

This proposed edit does not require a change to the current regulatory package.

Section 160(b)(6)

Commenter adds "by the training provider" to the "alcohol server certification exam" definition.

CA Dept of Alcoholic Beverage Control Response:

The Department does not limit who gives the exam in the definition to better suit future updates of the associated regulations. The proposed edit would not be needed, even if the program was built around training providers administering the exam.

This proposed edit does not require a change to the current regulatory package.

Section 160(b)(7) – New proposed section not in original full text

Commenter inserts a definition for "alcohol server certification."

CA Dept of Alcoholic Beverage Control Response:

The proposed edit is duplicative of a statutory definition. The Department would be outside its legislative delegation authority to change statutory definitions and does not need to address them in the regulations in order to keep the regulatory package as simple and straightforward as possible.

This proposed edit does not require a change to the current regulatory package.

Response to Comment 74 cont.

Section 160(b)(8) – Section 160(b)(9) in proposed text

Commenter strikes “reasonably requires alcohol servers to be engaged in the training, demonstrate their knowledge of the curriculum, and develop an understanding of how to apply course material to their employment” and replaces it with “includes role-playing examples using video or online scenarios that demonstrate techniques for refusing service to intoxicated persons and responding to situations that commonly arise when serving alcohol.”

CA Dept of Alcoholic Beverage Control Response:

The Department took an expansive view of interactivity elements for the purposes of creating and implementing RBS training course standards. All stakeholders agreed that an RBS training course without interactivity was ineffective at teaching alcohol server skills and understanding. The Department did not want to limit interactivity elements to videos or online scenarios. Role-playing in an in-person class should be acceptable, as well as other forms of interactivity like knowledge checks, interactive examples, and skills challenges. The Department wanted to allow training providers the flexibility to innovate and make their interactivity elements better over time. The Department believes the proposed definition is more flexible than the proposed edit while facilitating the need for interactivity elements in proposed RBS training courses.

This proposed edit does not require a change to the current regulatory package.

Section 160(b)(10) – Removed from proposed text

Commenter removes the definition of onsite when applied to a nonprofit organization with a temporary daily on-sale license or a temporary daily off-sale license.

CA Dept of Alcoholic Beverage Control Response:

The Department included this definition because in its stakeholder meetings nonprofit groups who attended did not know what the term “onsite” meant in Section 25682(c), or how the Department would enforce the legislative requirement. Without this regulatory definition, the term “onsite” can have multiple legitimate meanings. The proposed definition is important for stakeholders to know what standard of actions a certified alcohol server required by statute for these events must do.

This proposed edit does not require a change to the current regulatory package.

Response to Comment 74 cont.

Section 160(b)(13) – Section 160(b)(12)

Commenter expands the definition of “RBS” meaning responsible beverage service and inserts the definition for RBS training course already found in statute.

CA Dept of Alcoholic Beverage Control Response:

The proposed edit is duplicative of a statutory definition. The Department would be outside its legislative delegation authority to change statutory definitions and does not need to address them in the regulations in order to keep the regulatory package as simple and straightforward as possible.

This proposed edit does not require a change to the current regulatory package.

Section 160(b)(14) – Section 160(b)(13)

Commenter changes the definition for “RBS trainer” and replaces it with a definition for “training provider” already found in statute.

CA Dept of Alcoholic Beverage Control Response:

The proposed edit is duplicative of a statutory definition. The Department would be outside its legislative delegation authority to change statutory definitions and does not need to address them in the regulations in order to keep the regulatory package as simple and straightforward as possible.

This proposed edit does not require a change to the current regulatory package.

Section 160(b)(15) – *Removed from proposed text*

Commenter removes the definition for “serving alcoholic beverages for consumption.”

CA Dept of Alcoholic Beverage Control Response:

The Department included this definition because in its stakeholder meetings many stakeholders questioned who qualified as an alcohol server under the statutory definition. The Department was informed that distributors worried it would include employees giving samples to other ABC-licensees, and some stakeholders tried to interpret the statutory definition applying to anyone giving an alcoholic beverage to any other person for consumption on an ABC licensed premises regardless of whether they were employed or not. The Department included this definition to elaborate on the intent of the Legislature to limit the over use of alcohol by patrons at ABC on-premises licensed locations. Without

Response to Comment 74 cont.

the definition the qualifications of alcohol server is vague and possibly more onerous upon ABC on-premises licensees than the definition included in the Department's regulatory action. This proposed edit does not require a change to the current regulatory package.

Section 161(a)

Commenter removes "at a minimum" changes section numbers due to new construction and adds, "The course shall be no longer than a total of 4 hours which also includes enough time for taking the final examination."

CA Dept of Alcoholic Beverage Control Response:

The Department created its curriculum standard as a "minimum" because that would allow training providers to tailor their courses with other material to meet their audience if desired. The Department also purposefully did not include any time requirements for RBS training courses to allow training providers to work within the curriculum framework and allow alcohol servers and ABC on-premises licensees to choose from RBS training courses of various lengths and depths.

This proposed edit does not require a change to the current regulatory package.

Section 161(b) – New proposed section not in original full text

Commenter includes a provision that the course must be available in all languages used in California described for election ballots.

CA Dept of Alcoholic Beverage Control Response:

This addition is outside the Department's legislative delegation of power to enforce. The Legislature determined that requiring the RBS training courses and exams in English and Spanish was enough for the implementation of the RBSTPA. The Department cannot force private industry to include additional languages for their RBS training courses. The Department will work with authorized training providers to ensure an approved RBS training course is offered in as many languages as possible. The Department is planning on administering the alcohol server certification exam due to the fact it can ensure more native languages for the exam are available. The Department has plans to implement the certification exam in many of languages spoken in California so alcohol servers can take the certification exam in their native language. In addition, if the alcohol server certification exam is not available in a person's native

Response to Comment 74 cont.

language, the exam will be untimed and a translator, while not provided by the department, is not precluded from being used to pass the certification exam if needed.

This proposed edit does not require a change to the current regulatory package.

Section 161(b) – Section 161(c)

Commenter removes, “Interactivity elements must occur, at a minimum, during an RBS training course portion for each of the five major curriculum topics in Business and Professions Code § 25680(c),” and replaces with, “The RBS training course must include interactivity element demonstrating how to identify intoxicated persons, check IDs for minors, and techniques for dealing with common problems that arise with customers drinking alcoholic beverages.”

CA Dept of Alcoholic Beverage Control Response:

The Department respectfully believes the commenter misinterprets the RBS training course requirements laid out by the Legislature in RBSTPA. The statute requires the Department to mandate RBS training to all alcohol servers over an array of topics with the intent to curb the harms of the overuse of alcohol, including alcohol's effect on the body, the creation of management policies, the social impact of alcohol, state laws governing the service of alcohol, and intervention techniques to prevent the service of alcohol to underage persons or intoxicated patrons. The commenter erroneously only focuses on two areas of the Department's legislatively mandated curriculum in its edit. The Department believes interactivity should at a minimum be used once in each of the legislatively mandated sections. This does not preclude training providers from providing more interactivity to their students.

This proposed edit does not require a change to the current regulatory package.

Section 161(c) - Section 161(d)

Commenter adds the word “either” to the requirement for training providers to provide handouts, electronic files, or transcripts detailing its RBS training course content.

CA Dept of Alcoholic Beverage Control Response:

This edit does not change the effect of the section as previously written.

This proposed edit does not require a change to the current regulatory package.

Response to Comment 74 cont.

Section 161 (e)-(g) - New proposed section not in original full text

In subsection (e), commenter mandates that a training provider provide the alcohol server certification exam at the end of an RBS training course. In subsection (f), commenter attempts to mandate the training provider issue a certification to alcohol servers who complete the course and pass the exam, and to keep certification records securely. In subsection (g), the commenter places a burden upon training providers to ensure alcohol servers are over 18.

CA Dept of Alcoholic Beverage Control Response:

The Department anticipates administering the certification exam through its online certificate database for a host of reasons found in the Initial Statements of Reasons, the Standard Regulatory Impact Assessment, and previous comment responses above.

Subsection (f) is required of training providers by the statute. The Department would be outside its legislative delegation authority to change this requirement and does not need to address them in the regulations in order to keep the regulatory package as simple and straightforward as possible.

Subsection (g) is a new burden placed upon training providers. The statutory burden of monitoring the ages of alcohol servers is upon ABC licensees that employ them. To place new burdens on an affected party without legislative authority is outside the scope of the Department's legislative delegation of authority to impose. The Department does not wish to limit anyone from taking an approved RBS training course and becoming certified.

This proposed edit does not require a change to the current regulatory package.

Section 162 – Section 166

Commenter replaces all curriculum requirements laid out by the Department and replaces the curriculum with a new version of the five standard topics. The changes are extensive throughout the proposed curriculum often narrowly tailoring each required topic to only one aspect of the topic, for example for the social impact of alcohol, the commenter focuses only on negative social impacts of drunk driving and domestic violence.

CA Dept of Alcoholic Beverage Control Response:

The Department respectfully believes the commenter misinterprets the RBS training course requirements laid out by the Legislature in the RBSTPA. The Legislature directed the Department to include five curriculum topics as a requirement of RBS training course. The Department worked with stakeholders to determine what is meant by each of the five required topics in an RBS training course

Response to Comment 74 cont.

context through dozens of meetings, exchanges of ideas, and curriculum 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 to be used. Commenter's proposed curriculum does not meet the standards mandated by the Legislature for the required topics of an RBS training course.

This proposed edit does not require a change to the current regulatory package.

Section 167 – New proposed section not in original full text

Commenter outlines the procedure for a training provider administered exam.

CA Dept of Alcoholic Beverage Control Response:

The Department outlined its response to this proposed change in the commenter's explanation in the main body of its comment on why the Department chose the option to administer the exam. For a robust discussion of the alternatives considered by the Department on this issue please see the Department's Standard Regulatory Impact Assessment.

This proposed edit does not require a change to the current regulatory package.

Section 169 – Renumbered to Section 168

Commenter outlines the burdens upon the ABC on-premises licensee from the statute and modifies them to work if the Department was not using its online certificate Database.

CA Dept of Alcoholic Beverage Control Response:

The Department will need to implement Section 169 as written to govern its implementation of its online certificate database, the reasoning for implementing the Department's online certificate database has been discussed above.

This proposed edit does not require a change to the current regulatory package.

Response to Comment 74 cont.

Section 168(b)(6) – Section 170(b)(6)

Commenter adds a burden upon the department to establish a rehabilitation protocol for the approval of training providers.

CA Dept of Alcoholic Beverage Control Response

Currently the Department can suspend, revoke, or deny an issuance of an ABC license based on a moral turpitude definition found in under Business and Professions Code section 24200(d). The Department in its discretion has issued licenses in the past on a case by case basis based on an individual applicant's circumstances when it determines the applicant has been rehabilitated. The Department can continue to exercise this discretion in approving training providers without this addition to the regulatory action.

This proposed edit does not require a change to the current regulatory package.

Section 168.3 – Section 170.3

Commenter outlines the burdens upon a training provider and modifies them to work if the Department was not using its online certificate Database.

CA Dept of Alcoholic Beverage Control Response:

The Department will need to implement these subsections of Section 168.3 to govern its implementation of the online certificate database, the reasoning for implementing the Department's online certificate database has been discussed above.

This proposed edit does not require a change to the current regulatory package.

Section 170 – Removed by Commenter

The Commenter proposed an edit to remove Section 170.

CA Dept of Alcoholic Beverage Control Response

The Department will need to implement Section 170 to govern its implementation of its online certificate database, the reasoning for implementing the Department's online certificate database has been discussed above.

This proposed edit does not require a change to the current regulatory package.

Response to Comment 74 cont.

Section 171-173 – *Removed by Commenter*

The Commenter proposed to remove Section 171-173.

CA Dept of Alcoholic Beverage Control Response

The removal of Section 171-173 was not addressed in the commenter’s explanation of proposed edits. The Department relies upon the necessity section within its noticed Initial Statement of Reasons as to why each of these sections are necessary for the Department’s regulations package. The Department must lay out the procedure and penalties for violations of the RBSTPA in the regulatory action to provide order and uniformity in the enforcement of the RBSTPA.

This proposed edit does not require a change to the current regulatory package.

Response to Comment 75, Wine Institute

- I. **Narrow the definition of “manages and supervises” to “any person who oversees alcohol servers in the service of alcohol at an ABC licensed premise (Page 1-2)**

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes that the language included in the initial proposed regulations for this definition was more inclusive of people in the organizations of ABC on-premises licensees than the Department intended. The Department modified this definition to capture the correct “managers” referred to in the statute. Please see the changes to the regulatory action published on October 18, 2019.

- II. **Simplify curriculum requirements to allow training to be tailored to the type of premises where the alcohol server is employed. (Page 2-3)**

CA Dept of Alcoholic Beverage Control Response:

The Department is under the obligation to follow the five mandatory curriculum topics set by the legislature in executing its legislative delegation of authority. Each of these five mandatory topics correspond to sections 162-166. The Department’s proposed mandatory curriculum is limited to the topics laid out by the Legislature in the RBSTPA.

The Department is not excluding tailored training if the mandated curriculum is also included in that training.

This comment does not require a change to the regulatory action.

- III. **Narrow the curriculum requirements to avoid unnecessary training, confusion, and potentially burdensome duties and liability on alcohol servers and their employers (Page 3-6)**

CA Dept of Alcoholic Beverage Control Response:

The Legislature directed the Department to include five curriculum topics as a requirement for every approved RBS training course. The Department worked with stakeholders to determine what is meant by each of the five required topics in an RBS training course. The Department held dozens of meetings, encouraging exchanges of concepts, and content ideas. 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 to be used.

Response to Comment 75 cont.

The mandatory curriculum of the RBSTPA does not change any other law or interpret the enforcement of any law outside the RBSTPA as mandated by the Legislature in statute. While it does include information regarding standard practices of checking ID's, spotting and recognizing illegal drug use, a disorderly house, or other alcohol licensed premises laws, it does not change any obligation under current law. The Department made this limitation of enforcement clearer by adding a restatement of the limit on the extension or creation of duties for ABC licenses and alcohol servers in section 161 in the modifications to the regulatory action noticed on October 18, 2019.

IV. Preemption of local training requirements (Page 6)***CA Dept of Alcoholic Beverage Control Response:***

The Department recognizes the issue of local jurisdictions creating additional rules surrounding RBS within their jurisdiction as has occurred in the past. The Department recognizes there were many differing standards and programs for certifications throughout various local jurisdictions. The statewide mandatory RBS training program is meant to preempt all former local RBS training programs and provide a universal statewide system. The Department has worked with local jurisdictions who previously had their own standards to achieve a level of implementation and oversight that will ensure alcohol servers in those jurisdictions will only need to comply with the one state mandated program.

The Department does not have the ability within its legislative delegation of authority to preempt all local programs, only mandate that local jurisdictions not change how the state program works within it. Local jurisdictions will still be able to implement a separate program with different standards if they desire. However, it is the Department's understanding that most local jurisdictions are willing to continue to work with the Department to avoid a dual system as the commenter describes due to the confusion a dual certification system would create. This comment does not require a change to the regulatory action.

V. Concerns with Implementation of the Act (Page 7)***CA Dept of Alcoholic Beverage Control Response:***

The Department recognizes the short timeline for implementation of the RBSTPA set by the legislature. The Department has diligently worked to meet the deadlines set by the Legislature by promulgating this regulatory action and preparing our facilities and staff to implement the RBSTPA. The Department will exercise its discretion in enforcement of the RBSTPA and take in to account the newness of the program and the level of implementation when taking enforcement actions under the RBSTPA.

Response to Comment 75 cont.

Addendum to Comment

As an addendum to comments Wine Institute previously submitted, we respectfully recommend that the concept of a “standard drink” size for all poured alcoholic beverages be changed to use the term “alcoholic drink equivalent” used on the federal level to avoid confusion and to ensure alcohol servers understand the nature of alcoholic drinks being varied by alcohol by volume, or ABV, and not just alcohol type.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes the need to update its terminology of a “standard drink” in the mandatory curriculum to use the federally recognized “alcoholic drink equivalent” and base the measurement on alcohol by overall volume rather than standard drink volumes. The Department has changed the proposed regulatory text in response to this comment and submitted for a 15-day comment period on October 19, 2019.

Response to Comment 79 Alcohol Justice

- We remain concerned that the regulations as written leaves no leeway for local cities and counties to enact stricter RBS requirements, including in-person training, proctored testing, and curriculum emphases adapted to local conditions and challenges.

CA Dept of Alcoholic Beverage Control Response

The Department has no ability to change the standards enacted by the Legislature in the RBSTPA. The statewide mandatory RBS training program is meant to preempt all former local RBS training programs and provide a universal statewide system. The Department must comply with all elements enforced by the legislature and cannot allow local jurisdictions to change elements mandated by the Legislature within their jurisdiction for the statewide program. The Department has worked with local jurisdictions who previously had their own standards to achieve a level of implementation and oversight that will ensure alcohol servers in those jurisdictions will only need to comply with one state mandated program.

Local jurisdictions will still be able to implement a separate certification program with different standards if they desire. However, the Department hopes its oversight and implementation of the statewide program will make that unnecessary due to the high confusion and frustration a dual certification system could cause in a local jurisdiction where required.

This comment does not require a change to the regulatory action.

- We firmly maintain that community oversight is essential to maintaining a comprehensive RBS curriculum and effective training practices. With that in mind, we would like to re-emphasize our advice that ABC establish a standing advisory committee with members from the public health, public safety, and prevention sectors, as well as representatives of neighborhood groups and other noncommercial stakeholders in reducing alcohol harm.

CA Dept of Alcoholic Beverage Control Response

The Department will take the commenters recommendation under advisement, but this comment appears to be outside the scope of the Department's regulatory action for the RBSTPA. This comment does not require a change to the regulatory action.

- The conditions for suspending an accreditation agency do not take into account elevated rates of accreditation revocation, fraud, trainee test failure, or reported trainee violations of RBS procedures among the trainers accredited by that agency. Likewise, a pattern of trainee test

Response to Comment 79 cont.

failure or trainee violations of RBS procedures is not included as grounds to revoke a trainer's accreditation. A consistent pattern of trainees passing but with a low score (<90%) should also trigger a review of the trainee's curriculum and procedures.

CA Dept of Alcoholic Beverage Control Response:

The Department recognizes the need for oversight of both approved accreditation agencies and training providers. The Department has not set a regulatory threshold for student achievement because some training providers or accreditation agencies could be subject to lower success rates due to the alcohol server population they serve. The Department will work to improve its approved training providers through the collection of the exam data from students rather than removing an approval. The Department has outlined the reasons for approval revocation in the regulatory action for both groups to sufficiently remove any accreditation agency or training provider approval who commits fraud, fails to follow their regulatory obligations, or fails to keep records. This comment does not require a change to the regulatory action.

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- Without in-person proctoring, the possibility exists that RBS exams can be taken by someone other than the trainee being certified. Suspected fraud should be investigated, and confirmed fraud should result in permanent disqualification of the trainee from RBS certification. Test fraud should also result in scrutiny of the training organization. In the long term, if test fraud is occurring at more than a nominal level, ABC must move to in-person proctoring.

CA Dept of Alcoholic Beverage Control Response:

The Department will work hard to ensure fraud by the alcohol servers taking exams is nominal but moving to in-person proctoring is currently prohibitively expensive and far too high of an economic impact on ABC on-premises licensees and alcohol servers. The Department refers the commenter to its discussion of in-person proctoring in the Standardized Regulatory Impact Assessment. The Department can re-evaluate the expense and technology associated with test proctoring, either in-person or online, in the future.

This comment does not require a change to the regulatory action.

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- Training for servers and managers does not explicitly include de-escalation. While security is not the primary role of staff and management, they are nonetheless in danger and positioned to mitigate the harm from intoxicated and angry or upset patrons.

Response to Comment 79 cont.

CA Dept of Alcoholic Beverage Control Response:

The Department has included basics of de-escalation techniques under section 165 in its mandatory curriculum. A training provider is free to be more specific as the standard curriculum is only a minimum standard. The Department worked with stakeholders to determine what is meant by each of the five required topics in an RBS training course. The Department held dozens of meetings, encouraging exchanges of concepts, and content ideas. 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 abstracted 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 to be used.

This comment does not require a change to the regulatory action.

- Alcohol Justice suggests the following changes to sections of the regulations:
 - Section 162 (c) (4): homicide and suicide should be included as public health risks for excessive alcohol intake.

CA Dept of Alcoholic Beverage Control Response:

The Department has included “death” which includes the material requested to be added to the curriculum. If a training provider wishes to include the more specific requested language in their RBS training course, they are free to do so. This comment does not require a change to the regulatory action.

- Section 163 (b): add the potential for alcohol to dangerously exacerbate fatigue

CA Dept of Alcoholic Beverage Control Response:

The Department has included “reduction in concentration and coordination” which includes the material requested to be added to the curriculum. If a training provider wishes to include the more specific requested language in their RBS training course, they are free to do so. This comment does not require a change to the regulatory action.

Response to Comment 79 cont.

- Section 163 (e) (4): detail the specific effects of combining cannabinoids (especially THC) and alcohol

CA Dept of Alcoholic Beverage Control Response:

The Department has included the requested material under 163(e)(4) as written. If the training provider wishes to include the requested material in their RBS training course in more specificity, they are free to do so. This comment does not require a change to the regulatory action.

- Section 166 (k): standard beverage sizes need to be taught to servers as well. Emphasis needs to be made on servers' responsibility to know the ABV of the products they serve. Emphasize the potential for "craft beers," ciders, and other prepackaged drinks to come in larger serving sizes and higher ABVs. Emphasize the size of a standard pour of wine.

CA Dept of Alcoholic Beverage Control Response:

All topics within the curriculum will be taught to all alcohol servers under the definition in the RBSTPA. The Department has received many requests to better delineate and teach standard drink sizes in relation to an alcoholic beverages ABV. Please see the changes to the regulatory action published on October 18, 2019.

- Section 168: all trainer staff designing, administering, or reviewing the curriculum should be expected to pass the ABC certification exam with a score of at least 95%.

CA Dept of Alcoholic Beverage Control Response:

The Department does not have the legislative delegation of authority to regulate individual trainers. The Department is authorizing and reviewing every training provider's RBS training course as an entity. This review will be thorough and done according to the standards of the regulatory package. An additional requirement to pass the alcohol server certification exam by an individual trainer would not ensure the RBS training course is well taught or a trainer is effective at disseminating the mandated curriculum to alcohol servers. This comment does not require a change to the regulatory action.

Response to Comment 79 cont.

- Section 170 (f): the threshold for failure is too low. Servers should successfully answer at least 80% of questions.

CA Dept of Alcoholic Beverage Control Response:

The Department is concerned with the level of difficulty for alcohol servers to pass an exam based on the wide range of topics mandated by the Legislature for the implementation of the RBS training courses, especially if the exam is not available in their native language. The Department recognizes that the commenter wishes to ensure alcohol servers understand the material, and although this is commendable, the Department through its Stakeholder outreach has determined that a 70% pass rate is standard for this type of testing. This comment does not require a change to the regulatory action.

Local Law Enforcement Access to Database

Comment: 80

Comment Summary:

These comments request that local law enforcement agencies have access to the information within the Department's database for enforcement.

CA Dept of Alcoholic Beverage Control Response:

Local law enforcement will be able to use the Department's database to confirm compliance and identity of certified alcohol servers at local ABC on-premise licensed locations. This comment does not require a change to the current regulatory package.

Limits on Certification for Non-Employees or Managers

Comment: 80, 122

Comments Summary:

These comments request that anyone be allowed to be certified even if not yet employed by an ABC on-premises licensee or employees of ABC on-premises licensees whose normal duties do not require to be certified as an alcohol server.

CA Dept of Alcoholic Beverage Control Response:

The Department will allow anyone to register and be certified as an alcohol server under the current system outlined in the proposed regulatory package. This comment does not require a change to the current regulatory package.

Support for the Changes Outlined in Comment 74 and 112

Comment: 77, 82, 85, 87, 88, 89, 90, 92, 95, 98, 102, 103, 104, 107, 113, 119, 120, Speaker 2, Speaker 5

Comments Summary:

These comments all are showing support for the proposed edits submitted by Hinman & Carmichael in Comment #74,

CA Dept of Alcoholic Beverage Control Response:

The Department thanks commenter for their input in support of the attachment found in comment 74 and comment 112 prepared by Hinman & Carmichael LLP. The Department refers commenter to the responses prepared for that comment. This comment does not require a change to the current regulatory package.

Response to Comment 94

Comment Summary:

Commenter objects strenuously to the requirement that they show identification every time they purchase alcoholic beverages.

CA Dept of Alcoholic Beverage Control Response:

The Department has not created a requirement that a person purchasing alcoholic beverages show their ID for every purchase with its regulatory action for the RBSTPA. Under Business and Professions Code section 25686 the RBSTPA or its regulations cannot create any new duties or obligations on ABC licensees for the sale and service of alcoholic beverages. The Department would be outside its legislative delegation of authority to make a rule as commenter describes. This comment does not require a change to the current regulatory package.

Objection to the Creation of a Statewide Responsible Beverage Service Training Program

Comment: 99, 105, 106, 116, 119, 123, 125, 128, 132, 133

Comments Summary:

Commenter objects to the regulations package being implemented to require RBS training courses statewide for certification of alcohol servers.

CA Dept of Alcoholic Beverage Control Response:

The legislature has already mandated the implementation of the RBSTPA and the Department cannot change the intent of the legislature with its regulatory action. This includes creating the curriculum standards according to the five mandatory topics, creating a process and standard for authorizing accreditation agencies and training providers, and certifying alcohol servers statewide. Any changes to the core of this program as laid out by the Legislature would be outside the scope of the Department's legislative delegation of authority in implementing the RBSTPA. This comment does not require a change to the current regulatory package.

Comments Received After the Close of the Public Written Comment Periods

Comment: 102, 103, 104, 105, 106, 107, 108, 131, 132, 133

Comments Summary:

These comments all were received after October 11, 2019 at 5:00 p.m. and prior to the opening of the modifications written public comment period on October 18, 2019, or after November 4, 2019 at 12:00 p.m. These times were outside the public written comment periods for this regulatory package.

CA Dept of Alcoholic Beverage Control Response:

The Department thanks commenters for their input on the implementation of this regulatory package. The Department recognizes that these comments were after the close of the public written comment period but has included these comments for reference in the regulatory package. Each of these comments repeated questions already received by the Department and they will be added to the corresponding index and responses for ease of understanding.

Comments Received During the Public Written Comment Period for the Department's Proposed Modifications to the Regulations Package

Comment: 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130

Comments Summary:

These comments all were received during the public written comment period for the modifications to the noticed regulations from October 18, 2019 through 12:00 p.m. November 4, 2019.

CA Dept of Alcoholic Beverage Control Response:

The Department thanks commenters for their input on the implementation of this regulatory package. The Department recognizes that most of these comments did not address issues concerning the modifications noticed on October 18, 2019. This comment period was to seek comment and alternatives to the Departments proposed changes following the close of the initial written comment period and public hearing. Where these comments repeated questions already received by the Department and they will be added to the corresponding index and responses for ease of understanding. The Department has chosen to answer these comments as received even if they did not reference the modifications noticed on October 18, 2019.

Response to Comment 109

Comment Summary:

Commenter states that the definition for “onsite” in proposed section 106(b)(10) is unclear and over broad.

CA Dept of Alcoholic Beverage Control Response:

The Department thanks commenter for their input on the implementation of this regulatory package. The Department recognizes that this comment did not address issues concerning the modifications noticed on October 18, 2019, however the Department responds as follows. The definition for “onsite” only applies to the use in Business and Professions Code section 25682(c) as stated by the definition. This is necessary to inform non-profit event organizers, whom the Legislature specifically exempted from having all alcohol servers certified, of how to proceed with implementing the duties of the one person who is required to be certified for their events under the law. This definition has no effect on ABC on-premises licensees. This comment does not require a change to the current regulatory package.

Response to Comment 112 – Hinman and Carmichael

Comment Summary:

Commenter raises the following concerns:

- The proposed regulations include a detailed course curriculum and a database for the digital collection of alcohol server certifications that commenter states are beyond the scope of the Department’s legislative delegation of authority.
- The commenter states that the Department has not provided enough facts to support the need for the high economic impact projections on businesses.
- The commenter states that the change to specifically enforce that any regulatory standards within the curriculum would not create or expand the duties of ABC on-premises licensees or their employees would not be effective.

CA Dept of Alcoholic Beverage Control Response:

The Department thanks commenter for their input on the implementation of this regulatory package. The Department recognizes that this comment did not address issues concerning the modifications noticed on October 18, 2019, except for its final point, however the Department responds to the entire document as follows:

I. The Regulations Should be Modified to Adopt Less Costs to Business

The Initial Statement of Reasons for this regulatory package includes the Standard Regulatory Impact Assessment outlining the economic impact and how the Department sought to reduce the economic impact of the statute on stakeholders as much as possible. To summarize, 97% of the economic impact of this statute’s implementation on ABC on-premises licensees is an impact created by statute due to the need to pay for their employees’ time to take the training and reimburse them for costs of the training. These costs were outside the scope of the Department’s legislative delegation of authority to change.

The economic impact upon small business ABC on-premises licenses is estimated to be \$1000, or about \$100 per employee at an average of 10 alcohol servers per small business. However only \$30 of the total yearly cost is paying for the Department’s implementation of its online certificate database through the exam fee charged to alcohol servers. The rest of the burden is statutorily required under the administration of the RBSTPA and is based on RBS training courses, about \$20- 25 per server, and wages for time spent taking the course \$70-80. (For a more detailed discussion of all economic impacts of the implementation of the RBSTPA, see the Department’s Standard Regulatory Impact Assessment as discussed above.)

Response to Comment 112 cont.

II. The Proposed Regulations Must be Consistent with the Purpose of the Act

Purpose of the Act to the Curriculum Standards:

The Department is under the obligation to follow the five mandatory curriculum topics set by the legislature in executing its legislative delegation of authority. Each of these five mandatory topics correspond to sections 162-166. The Department's proposed mandatory curriculum is limited to the topics laid out by the Legislature in the RBSTPA. It is outside the Department's legislative delegation of authority to limit the curriculum to only "avoiding serving alcohol to intoxicated customers and/or minors to reduce drunk driving."

The Department is required to establish a mandatory curriculum and regulate the standards by which it will approve or deny training providers applying to be authorized by the Department or an accreditation agency. Without regulating these specific and detailed standards, the Department would not be able to properly notice potential training providers of the standards they and their proposed RBS training course would need to meet for approval.

The Department worked with stakeholders to determine 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 existing 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.

The Department recognizes the large amount of information included in the curriculum and has therefore required all training providers to provide handouts in the language the course is given, set the pass rate a 70%, allowed the exam to be untimed, and does not exclude alcohol servers from using any notes they want. In addition, the regulatory package allows three attempts in order to complete the exam and receive a certification. The Department consciously chose to allow alcohol servers the ability to take the exam and pass within these parameters in section 170 so the exam would not be a barrier to employment.

Commenter's Assertion Creates or Expands Duties upon an ABC Licensee:

The mandatory curriculum of the RBSTPA does not change any other law or interpret the enforcement of any law outside the RBSTPA under the statutes put in place by the Legislature. While the mandatory curriculum does include information regarding standard recommended practices currently being taught by RBS training providers for checking ID's, spotting and recognizing illegal drug use, a disorderly house, or other alcohol licensed premises laws, it does not change any obligation in current law for ABC licensees or alcohol servers.

Response to Comment 112 cont.

An additional emphasis of this language to ensure interpretation of the regulations outlining the mandatory curriculum for RBS training courses do not create new duties or modify existing duties placed upon ABC licensees elsewhere in law was added to section 161 in the department's modifications noticed on October 18, 2019.

Commenter refers to the Department's modification as a "disclaimer." The Department respectfully notes that the proposed regulatory language is not a contract, but legal language based upon a legislative delegation of authority to the Department that must be enforced as written. The current existing duties of ABC on-premise licensees and their employees found elsewhere in law are not changed by any standards taught in an approved RBS training course under this regulatory package.

III. The Regulations Impose Upon Alcohol Servers to Give Private Information to be Certified and there is a Danger if there is a Lack of Security in the Department's Database of Private Information.

The Department worked with its stakeholders through dozens of stakeholder meetings to provide a system that worked for the Department, law enforcement, alcohol servers, training providers, and the ABC on-premises licensees. Stakeholders repeatedly stated that a paper certificate system was not desired because they often lead to records being fraudulent, lost, or unrecoverable. The Department, using input from its stakeholders, decided an electronic tracking system was appropriate. To reduce costs of implementation, the Department centralized the creation of an online certificate database rather than require every training provider and every ABC on-premise licensee to pay for the creation of their own. This will lessen the burden of recordkeeping and reduce time needed to comply for training providers and most importantly the ABC on-premises licensee which bear the majority of the economic burden under the Legislature's implementation of the RBSTPA. This is not outside the scope of the Department's legislative delegation of authority because it will serve the dual purpose of both easing the burden of record keeping required by the statute for all involved and help facilitate the Department's implementation of the RBSTPA.

In order to enforce the RBSTPA, as directed by the legislature, the Department must receive records that an alcohol server is certified and confirm the alcohol server's identity to enforce compliance. The Department's online certificate database will be a closed private database that will not be disclosed to the public, it will also remove the need for alcohol servers to give their private information to training providers. The database will only be used by training providers to confirm the alcohol server attended a training, allow the server to take the certification exam, allow an ABC on-premises licensee, law enforcement and the Department to confirm an alcohol server is fully certified as required by law. It will be protected by firewalls, passwords, and modern security technology as required by statute. The Department does not believe the collection of alcohol server data that the Department has a right to demand is a violation of an alcohol server's privacy rights due to the mandate created by the Legislature.

Response to Comment 112 cont.

An alcohol server's private information is required to be kept by multiple entities under all other proposed solutions for examination and certification, both the employer and the training provider. The question is not if it is a constitutional privacy concern to have an alcohol server's private information under the implementation of the RBSTPA, but to whom and what specific information is required to prove identity in the certification process. Other databases kept by employers or training providers will be subject to the same security regarding this private information. To better protect the private information of alcohol server the Department's online certificate database was created to ensure alcohol server private information remains private. In order to limit the impact upon alcohol servers in a potential breach of Departmental digital security, the Department has modified the requirement to require only the last four characters of a personal identifying number in its modifications noticed on October 18, 2019.

V. Conclusion

Throughout the Department's regulatory process, and prior to the promulgation of the proposed regulations, the Department held more than two dozen public stakeholder meetings throughout the state to ensure the regulatory package for the Responsible Beverage Service Training Program Act of 2017 (RBSTPA) meets the needs of stakeholders while following the intent of the Department's legislative delegation of authority in Business and Professions Code section 25680-25686. The Department attempted to notify all stakeholders through news releases, mass email lists, publications, social media, and through industry channels. The Department widely publicized its proposed regulatory action to ensure as many stakeholders were involved in the creation of the RBSTPA regulations as possible. The Department held stakeholder meetings in multiple locations throughout the state in September 2018, February 2019, and June 2019, to facilitate the creation of the current regulatory action. Each of these was individually noticed through the Department's public mailing list, social media, and press release.

The Department has no control over articles written by news organizations and that is not the proper standard for the Department to be held to when providing notice of a regulatory action. The Department has no control over the amount of comments received by members of the public or stakeholders in its regulatory process and that is not the proper standard for the Department to be held to when providing notice of a regulatory action. The Department has met its statutory burden throughout the regulatory process as defined under the Administrative Procedure Act and enacted the proposed regulations within the legislative delegation of authority granted by statute.

Burden on Alcohol Server to Take an ABC Exam in Person

Comment: 114, 132

Comments Summary:

Commenters state that it would be a major burden upon Alcohol Servers to be required to take a test in person administered by the Department.

CA Dept of Alcoholic Beverage Control Response:

The Legislature mandated that the alcohol server certification exam be available both in person and online. The Department's administration of the alcohol server certification exam through its online database is anticipated to be accessible online to be taken at any time, anywhere with internet access, and through most electronic devices. The Department hopes this response alleviates the commenters' concern over the burden of traveling or scheduling the administration of the alcohol server certification exam.

Commenters from Public Hearing Scheduled on October 11, 2019

Comments: Speaker 1, Speaker 2, Speaker 3, Speaker 4, Speaker 5, Speaker 6

Comments Summary:

All speakers at the Public Hearing held by the Department on October 11, 2019, repeated comments that had previously been submitted to the department in the public written comment period. The Department thanks the speakers for attending and providing additional feedback on specific comments previously received. Each Speaker's comments will be indexed to the appropriate Department written responses.