

**Department of
Alcoholic Beverage Control**

SECOND ADDENDUM TO INITIAL STATEMENT OF REASONS

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

SECOND PROPOSED MODIFICATIONS OF ADOPTIONS TO TITLE 4:

SECTIONS 160(b)(7), 160(b)(10), 160(b)(11), 160(b)(13), 160(b)(16), 160(b)(18), 166(l), 166(m), 167(a), 167(a)(1) – (a)(10), 167(a)(12), 167(b)(4) 167(d), 167(g), 167(h), 168, 168(a), 168(a)(1)-(a)(8), 168(a)(12), 168(a)(13), 168(b), 168(b)(1), 168(b)(3), 168(b)(4), 168.1(b)(1)-(b)(9), 168.2, 163(a), 169, 169(a), 169(c), 169(e), 169(g), 171 and 172.

NECESSITY

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

Authority and Reference: Each proposed section was given a citation to the section authorizing the department to enact that regulation and the provisions referenced within the section.

The department added these lists of authority and references in order to comply with the procedural requirements of Government Code section 11346.2(a)(2).

Section 160: *Subdivision (b)(7)* of the proposed rule is necessary to define the term “data security protocols” that are required to be provided by department approved training providers for servers and customers by Business and Professions Code section 25681(b)(1)(D), and required for accreditation agencies by California Code of Regulations Title 4 section 167(b)(6) in this regulatory package.

The department added this definition to clarify language used within the regulatory package and ensure the public is aware that data security protocols are software designed to prevent unauthorized persons from accessing private data in an electronic system.

Subdivision (b)(10) of the proposed rule is necessary to refine the definition of what actions constitute managing or supervising an alcohol server. This definition ensures ABC licensees understand who is expected to be certified under the Responsible Beverage Service Training Program Act of 2017 (RBSTPA). The definition specifically excludes distributors who give trainings to ABC licensee employees to market or distribute a product for sale. The exception is necessary because this activity is not within the intent of the statute of reducing the harm to public safety through limiting alcoholic beverage service to minors and obviously intoxicated patrons.

The department modified this definition to make clear it was defining the actions of persons, and not the persons themselves to comply with standards of construction and grammar.

Subdivision (b)(11) of the proposed rule is necessary for certified alcohol servers and one-day nonprofit organization licensees to understand where it is expected the named certified person or persons be located during the service of alcohol during a one-day special event to ensure the responsible service of alcoholic beverages to those attending the event.

The department modified this definition to comply with standards of construction and grammar. Additional requirements for actions of a certified alcohol server onsite at an event pursuant to Business and Professions Code section 25682(c) are now found in section 169(g).

Subdivision (b)(13) of the proposed rule is necessary so that accreditation agencies and training providers know which individuals within their organization must meet the regulatory standards for department approval to act under the RBSTPA.

The department clarified this definition to ensure there is no ambiguity for who this definition applies to within the structure of an applicant to be either a training provider or an accreditation agency. The department is using similar standards to the ones statutorily put in place for all ABC licenses as outlined in Business and Professions Code sections 23405, 23405.1, and 23405.2. The intent of this subdivision has not changed through this modification, only the specific language used for clarity.

Subdivision (b)(16) of the proposed rule is necessary to provide an acronym to use to reference the Responsible Beverage Service Training Program Act of 2017 in the regulatory package.

The department added this definition to clarify language used within the regulatory package.

Subdivision (b)(18) of the proposed rule is necessary to define the way a fingerprinting record submitted to the department must be certified in order to be valid. These certifications ensure that the department receives the correct fingerprint record of the person it purports to be. Valid fingerprinting records of owners and officers are integral to the approval of both accreditation agencies and training providers under the regulatory package to ensure all involved have good moral character. These fingerprint records allow the department to both confirm the correct criminal history information has been disclosed in the application process for a specific individual, and for the department to be informed if an individual is arrested or convicted for a crime in the future. Once approved by the department these entities are ABC licensees by law and they must meet the same standards of conduct required by statute for all ABC licensees. It is necessary that the department maintain flexibility in the type of verified fingerprints that it can receive because fingerprinting services and options vary from state to state.

The department added this definition to make clear the requirements for valid fingerprint records of officers and owners submitted to the department with applications for accreditation agencies and training providers found in Sections 167(a)(12)(A), and 168.2.

Section 166: *Subsection (l)* of the proposed rule requires training providers to present at a minimum three common tactics used by minors when seeking alcoholic beverage service. This subsection is necessary to help alcohol servers and their managers recognize minors and ensure that they are properly checked for ID prior to alcohol service.

The department corrected a typo that incorrectly labeled this section as a second subsection (b) in the updated regulation full text to ensure this subsection was correctly labeled.

Subsection (m) of the proposed rule requires training providers to present at a minimum four (4) common standard hospitality policies to implement in an ABC licensed premises. This subsection is necessary to help alcohol servers and their managers understand these policies work together to not only stop the overuse of alcohol but increase profitability of an ABC licenses premises.

The department corrected a typo that incorrectly labeled this section as a second subsection (c) in the updated regulation full text to ensure this subsection was correctly labeled.

Section 167: *Subdivision (a)* of the proposed rule states the thirteen required elements of an application for a review of an accreditation agency by the department. This subsection is necessary to inform accreditation agencies of content to submit to be approved as an accreditation agency by the department.

The department modified this subsection to make clear that all information and items listed must be included to be a valid application to be approved as an accreditation agency.

Subdivisions (a)(1)-(a)(8) of the proposed rule requires accreditation agencies to submit various contact information for the department records and the investigation into the qualification of the accreditation agency. These subdivisions are necessary, so the department can monitor and enforce the standards of the RBSTPA if the accreditation agency is approved and contact the accreditation agency quickly and efficiently.

The department modified these subdivisions to clarify the information needed by the department to conduct its investigation to approve an accreditation agency under the standards both in statute and the proposed regulation.

Subdivision (a)(9) requires the accreditation agency to list all arrests and convictions for every owner and officer as defined by the regulatory package. This subdivision is necessary for the department to evaluate whether the applicant has the proper character and integrity to accredit training providers. Such evaluation will ensure the integrity of the certification system for the RBSTPA and that all approved training providers meet the standards set forth in the statute and the regulations. This standard repeats the statutory requirements for review of all existing ABC licensees laid out by the legislature and is necessary to keep the departments treatment of all ABC licensees uniform.

The department modified this subdivision to make it clear that every owner and officer of the applicant business entity must report to the department a list of all arrests and convictions of crimes when applying to become an authorized accreditation agency.

Subdivision (a)(10) requires the applicant, each owner and officer, to explain and attest how they comply with all the criteria found in § 167(b). This subdivision is necessary for the department to evaluate and confirm the applicant's qualifications, speed up the approval process, and to ensure if the department discovers false information in an accreditation agency application it can deny or revoke the accreditation agency approval.

The department modified this subdivision to ensure clarity and understanding for all applicant requirements to apply to be approved as an accreditation agency under the regulatory package.

Subdivision (a)(12) requires the accreditation agency to submit fingerprint records of all owners and officers to the department that have been verified to their authenticity either by an electronic fingerprinting service like Live Scan, or a governmental body, or a notary. The department will then use the fingerprint records to both confirm by background check the list of arrests and convictions submitted by the applicant and continually monitor owners and officers for any future arrests or convictions. It also makes the applicant responsible for all fees associated with verifying the owner's or officer's submitted criminal history by background check using the valid fingerprint record. This subdivision is necessary to both confirm the applicant has included all past criminal history of each owner and officer and allow the department to be informed if any future criminal charges are brought against an owner and officer of an accreditation agency. Additionally, it is necessary that the department maintain flexibility in the type of verified fingerprints that it can accept because fingerprinting services and options vary from state to

state and country to country. This requirement allows the department to deny or revoke the approvals of accreditation agencies with owners or officers who do not meet honesty and integrity standards needed to protect the integrity of the department's online certification system.

The department clarified the purpose for an owner and officer to submit a verified fingerprint record, what actions the department will take with that verified fingerprint record to perform a background check of every owner and officer, and that the applicant is responsible for paying for any fees associated with the background check to review and validate the owner and officer lists of criminal history using the verified fingerprint records submitted to the department.

Subdivision (b)(4) of the proposed rule requires an accreditation agency to provide technical support to training providers it accredits for any technology or systems it will require training providers to use to submit materials. This rule is necessary because accreditation agencies are required to create their own policies and procedures implementing standards set forth in this regulatory package for approving training providers. Accreditation agencies must be able to give technical support to training providers, so they can be approved within the accreditation agency's system and the department must be able to deny approval to an accreditation agency who is requiring the use of and electronic system by training providers but is not able to support that technology's use by training providers seeking accreditation.

The department added subparagraph (A) to notify the public what "technical support" means in the context of accreditation agencies being required to provide service, help, and advice to training providers seeking accreditation within an accreditation agency's electronic system if one is used. This subparagraph is necessary to inform potential accreditation agencies and the public of the technical support requirement created by the department in this subdivision.

Subsection (d) of the proposed rule requires accreditation agencies to notify the department if their contact information changes after they have been approved and mandates that correspondence from the department sent to the accreditation contact listed on file will be deemed effective for required notice purposes. This subsection is necessary to ensure the department has the current contact information for an accreditation agency to effectuate monitoring and enforcement of any accreditation agency. This subsection is also necessary to clarify the department's notice responsibilities when communicating with an approved accreditation agency.

The department modified this section to clarify that a change in the primary contact information given during the application process for accreditation agencies requires notification to the department.

Subsection (g) of the proposed rule requires an accreditation agency to inform the department of any training provider accreditations within five business days. This subsection is necessary to ensure a training provider attempting to register with the department's approved training provider list can be confirmed by the accreditation agency prior to being placed on the list by the department. This ensures all training providers on the approved list have been verified by an accreditation agency and have met the proper standards to be approved. The department determined that five business days is a reasonable amount of time for an accreditation agency to notify the department of a training provider approval because submitting the requisite records through the online certification system may take some time. Setting the five-day deadline also ensures that an approved training provider does not have to wait for an unreasonable amount of time before it can begin offering trainings after initial approval.

The department modified this section to ensure any potential accreditation agency and the public are aware of what constitutes the notice required to the department within five business days from the date of an accreditation being given to a training provider.

Subsection (h) of the proposed rule requires an accreditation agency to provide a record of all information of the accreditation process for each accredited training provider. It also defines what information must be included within the electronic record. This subsection is necessary to allow the department to have information for all approved training providers for monitoring and enforcement of the program, as well as a review process of the accreditation agency approval process. This information is necessary for the department to ensure the integrity of the RBSTPA implementation remains high and gives the department information if the accreditation agency fails to meet the standards of the statute or regulations in accrediting training providers.

The department clarified this section to ensure an accreditation agency provides a complete list of all crimes for every owner and officer of a training provider to the department after they accredit a training provider. The department separated out the six different kinds of required documents into sub paragraphs to make it easier to monitor compliance for both accreditation agencies, department staff, and the public.

Section 168 defines the process and criteria for ABC to approve a training provider under the RBSTPA.¹ This section is necessary to advise training providers about what they need to submit to the department for approval and what the department will use to approve or deny their application.

The title was changed to better reflect this this section covers the training provider approval process through the department, and not through accreditation agencies.

Subsection (a) of the proposed rule states the fourteen required elements of an application for a review of a training provider by the department. This subsection is necessary to inform training providers of content to submit to be approved as a training provider by the department.

The department modified this subsection to make clear that all information items must be included to be considered a complete training provider application, not just information about the items.

Subdivisions (a)(1)-(a)(8) of the proposed rule requires training providers to submit various contact information for the department records. These subdivisions are necessary for the department to monitor and enforce the standards of the RBSTPA and contact the training provider.

The department modified these subdivisions to clarify the information needed by the department to conduct its investigation to approve a training provider under the standards both in statute and the proposed regulation.

Subdivision (a)(12) requires the training provider to explain and attest that the company complies with each of the criteria found in § 168(b). This subdivision is necessary for the department to speed the approval process and to ensure that the applicant complies with all approval criteria. This also provides the department the ability to deny or revoke the training provider approval if it discovers false information in a training provider application.

The department modified this subdivision to ensure clarity and understanding for all applicant requirements to apply to be approved as a training provider by the department under the regulatory package.

Subdivision (a)(13) requires the training provider to list all arrests and convictions for their owners and officers. This subdivision is necessary for the department to evaluate whether the applicant has the proper character and integrity to certify alcohol servers. This evaluation will ensure the integrity of the certification system for the RBSTPA and that all certified alcohol servers meet the standards set forth in

¹ Business and Professions Code § 25681(b)(1)

the statute and the regulations. This standard repeats the statutory requirements for review of all existing ABC licensees laid out by the legislature and is necessary to keep the department's treatment of all ABC licensees uniform.

The department modified this subdivision to make it clear that all owners and officers of the applicant business entity must report to the department a list of all arrests and convictions when applying to become an authorized training provider.

Subdivision (b) of the proposed rule states the six criteria that must be met by a training provider to receive approval from the department. This subsection is necessary to inform potential training providers of the standards set by the department and for the department to deny the application of training providers who do not comply with those standards.

The department modified this section to clarify that these were the standards used by the department in approving training providers under the RBSTPA.

Subdivision (b)(1) of the proposed rule requires training providers to meet the standard set in Business and Professions Code § 25681 (b)(1)(A). This subdivision is necessary to interpret and define the criteria imposed by the legislature upon training providers for approval and focusing it upon the creation of the RBS training course. This subdivision informs the training provider how the four criteria set by the legislature will be applied by the department in the approval process.

The department modified this subdivision to make it clear that an applicant must have a person with a background and expertise in alcohol, training, hospitality, and psychology involved in the creation of their RBS training course as required by statute. The modification describes the field of alcohol as one related to alcohol service to provide the scope of the legislative requirement for departmental review. The modification makes clear that one person need not have all the required background and expertise and multiple people may be involved in the creation of the RBS training program totaling the required experience and background. The modification makes clear how a training provider will demonstrate background and expertise to the department in its written statement required under §168 (a)(12).

Subdivision (b)(3) of the proposed rule requires training providers to keep records of all alcohol server certifications issued and allows the required records found in Business and Professions Code § 25681 (b)(1)(B) to be kept in the department's online certification system. This subdivision is necessary for the department to ensure all training providers are keeping the statutorily required records.

The department modified this section to correct a typo for clarity and construction standards by inserting the word "the" where it had been left out.

Subdivision (b)(4) of the proposed rule requires a training provider to provide technical support to people it trains for any technology or systems it will require to either complete the training to access the required additional curriculum materials. This rule is necessary because training providers are required to create their own RBS training program using the standards set forth in this regulatory package. Training providers must be able to give technical support to alcohol servers, so they can be certified under the RBSTPA and the department must be able to deny approval to a training provider who is requiring the use of an electronic system to take its RBS course or access the required additional curriculum materials but is not able to support that technology's use by alcohol servers seeking certification. The Legislature required this of training providers approved by the department under Business and Professions Code section 2568(b)(1)(B).

The department added subparagraph (A) to notify the public what "technical support" means in the context of training providers being required to providing service, help, and advice alcohol servers

seeking certification under the RBSTPA. This subparagraph is necessary to inform potential training providers and the public of the technical support requirement created by the department in this subdivision to clarify the legislative requirement for departmental approval in Business and Professions Code section 2568(b)(1)(B).

Section 168.1 *Subsection (b)(1)-(b)(9)* of the proposed rule requires registering training providers who are seeking approval from accreditation agencies to submit their various contact information for the department records. This subsection is necessary for the department to verify that the training provider has been approved by an accreditation agency, and to also monitor and enforce the standards of the RBSTPA and maintain contact with the accredited training provider.

The department modified these subdivisions to clarify the information needed by the department to register an accredited training provider under the standards both in statute and the proposed regulation. The department added subdivision (b)(9) in order to make it clear that all training providers whether approved by the department or accredited by an accreditation agency must submit lists of owner and officer arrests and convictions to the department whether directly or through an accreditation agency.

Section 168.2 defines the need for all training providers to provide valid fingerprint records of every owner and officer to the department for enforcement purposes prior to being placed on the approved training provider list accessible by alcohol servers.² The fingerprint record must be certified that it is a correct fingerprint of the owner and officer by either a governmental body, a notary, or an electronic fingerprinting service like Live Scan at the time the fingerprint is recorded. The department will then use the valid fingerprint record to perform a background check to confirm the criminal history information provided in the application or registration process by training providers. In addition, this section requires applicants to pay for background checks to review and validate an owner and officer's criminal history. This rule allows the department to be informed if any future criminal charges brought against an owner and officer of a training provider so the department may take enforcement action if needed. Additionally, it is necessary that the department maintain flexibility in the type of verified fingerprints that it can receive because fingerprinting services and options vary from state to state. This requirement allows the department to confirm that the training provider has provided correct information regarding its owners and officer's criminal history and allows the department to deny, suspend, or revoke the approvals of training providers with owners and officers who do not meet honesty and integrity standards needed to protect the integrity of the department's online certification system.

The department clarified the purpose for an owner and officer to submit a verified fingerprint record, what actions the department will take with that verified fingerprint record and that the applicant is responsible for paying for any fees associated with the review or validation of criminal history using the verified fingerprint record submitted to the department.

Section 168.3 *Subsection (a)* of the proposed rule requires all training providers, whether approved by the department or accredited by an accreditation agency, to maintain proper and current contact information with the department and mandates that correspondence from the department to a training provider using the contact information on file will be deemed effective for all requirements of notice and service of process. This subsection is necessary to provide the department with current contact information for a training provider to effectuate monitoring and enforcement of any training provider.

² Business and Professions Code § 25685(b)

The department modified this section to clarify the contact information maintenance requirement for training providers applies to the information required to be given during the application or registration process.

Section 169 defines how an ABC licensee will verify that the alcohol servers have been certified.³ This section also defines records required for an ABC on-premises licensee to prove an affirmative defense against an action under the RBSTPA.⁴ This section also includes duties a designated person who is certified must perform on behalf of a nonprofit organization with a temporary daily license. This rule is necessary so ABC licensees will understand what is required of them by the RBSTPA.

The department modified the title to better reflect that it represents duties placed upon ABC licensees generally under the regulatory package for the RBSTPA.

Subsection (a) of the proposed rule outlines the only way an ABC licensee can confirm the validity of one of their employee's alcohol server certifications. Although the validation of server certifications is not required by statute, an ABC licensee will not know they are in compliance with the requirement that all alcohol servers be trained without a validation process. This subsection is necessary because the alcohol server certification system will not include paper certificates or other forms of valid proof. This was done to decrease fraud by employees copying or creating fraudulent certificates to give to ABC on-premises licensees to prove certification without taking an approved RBS training course or passing the alcohol server certification exam. The only way ABC licensees can be sure their employee's purported certification is valid is to check within the department's online certification system.

The department modified this section to clarify that the department is not creating a new mandate upon ABC licensees to validate every alcohol server certification with this subsection, but only outlining the only way an alcohol server certification may be validated.

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

The department modified this section to clarify that only alcohol server certifications validated and recorded by an ABC licensee will trigger automatic notifications within the department's online certification system.

Subsection (e) of the proposed rule requires an ABC on-premises licensee to provide two sets of records in an evidentiary hearing in order to assert the affirmative defense found in Business and Professions

³ Business and Professions Code § 25682(b)(1)

⁴ Business and Professions Code § 25682(b)(2)

Code § 25682 (b)(2) that an uncertified alcohol server is within 60 days of their initial employment. This subsection is necessary for an ABC Licensee to know what evidentiary records are required to be presented at a hearing in order to prove their affirmative defense that an uncertified person was within their first 60 days of employment. This section also informs Administrative Law Judges, the ABC Appeals Board, and other reviewing courts the minimum evidentiary standards an ABC Licensee must show in order to take advantage of the affirmative defense laid out by the Legislature. It is necessary to provide all records of the initial employment for the alcohol server is alleged to not be certified to establish the date the 60-day grace period begins. The six months of payroll records for all employees at the licensed premises are necessary to ensure that the records of the initial employment provided are truly the alcohol server's initial employment and that they had not been employed by the ABC licensee previously in any capacity. This complete six-month payroll record will ensure a licensee is unable to falsify records or modify existing records in a limited scope to show the alcohol server is within 60 days of initial employment.

The department modified subsection (e) to make clear the evidentiary standard was for proving the affirmative defense, not for submitting records to the department. The department already has the power to request these business records under Business and Professions Code section 25753 of the department needs to request them during an investigation into a violation of the RBSTPA.

The department modified subdivision (e)(2) to clarify the dates for the six months of payroll records preceding the date of the alleged violation and that the required payroll records are only for the employees of the licensed premises where the violation occurred. The Department also modified this section of the initial statement of reasons to better explain and clarify the necessity of requiring ABC Licensees to present the required records in a hearing if they wish to assert that an employee was within the 60-day grace period for initial employment.

Subsection (g) of the proposed rule is necessary for designated certified alcohol servers and one-day nonprofit organization licensees to understand what is expected of their named person or persons during the service of alcohol for consumption during their one-day temporary license event. These requirements help to ensure the responsible service of alcoholic beverages at these events while not overburdening nonprofit organizations. This subsection is necessary to ensure nonprofit organization temporary licensees comply with the intent of the statute by using their required person who has received training and alcohol server certification to pass on knowledge to volunteer alcohol servers and create policies for the service of alcohol during the event.

The department added this subsection to comply with the rules of construction and grammar that previously was required in the definition of "onsite" in section 160(b)(11).

Section 171 defines emergency situations requiring immediate departmental actions for misconduct by either an accreditation agency or a training provider and the procedure to be used by the department to address an emergency through administrative action.⁵ This rule is necessary to allow the department to take quick action and address the harms to public safety for non-compliant training providers or accreditation agencies by suspending or revoking their approval to participate in the RBSTPA program. Without this rule, bad actors could continue to commit frauds on the system for months or years until an administrative action was final.

The department modified this section to add subsection (c) to comply with the required elements of a regulation for authorizing administrative emergency decisions under Government Code Section 11460.20.

⁵ *Id.*

Section 172 defines how the location of a hearing is set under the administrative procedures for accreditation agencies and training providers approved under the RBSTPA.⁶ It also establishes that all other procedures are determined by Business and Professions Code § 24300 et seq. This rule is necessary to address the hearing location for administrative actions against an accreditation agency or a training provider. Ordinarily, accusation or denial proceedings under Business and Professions Code § 24300 are in the county where the licensed premises are located. However, both accreditation agencies and training providers have no premises attached to their approvals by the department. The department determined that due to an accreditation agency or training provider being statewide approvals, it should in its discretion determine the location of any hearing against those approvals based on the location and availability of the parties and witnesses needed at the hearing.

The department modified subsection (a) to clarify that this section applies to all training providers under the RBSTPA whether they are approved by the department or accredited by an accreditation agency. The department modified subsection (c) to clarify that it applies to hearings under this section to ensure there is no confusion in application.

⁶ Business and Professions Code § 25685(b)