



Department's responses to all issues raised by the public written comments can be found in the Responses to Public Comment section of the rulemaking record.

### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC HEARING ON THE PROPOSED REGULATIONS HELD ON OCTOBER 11, 2019.**

The Department received 6 separate comments from persons who attended the public hearing on the proposed regulations held on October 11, 2019. Each comment the Department received is included in its entirety in the public hearing transcript in the rulemaking record. The Department's responses to all issues raised in the public hearing can be found in the Responses to Public Comment section of the rulemaking record.

### **ALTERNATIVES DETERMINATION**

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. A detailed discussion of the alternatives researched by the Department can be found within the Department's Standard Regulatory Impact Assessment attached to this rulemaking record.

The only other alternative that was presented by commenters to the Department to lessen the economic burden upon private persons was the administration of the alcohol server certification exam by training providers. This alternative was explored in depth prior to the Department's notice of the proposed regulations and rejected. The reasons for this rejection are outlined within the Department's Standard Regulatory Impact Assessment attached to this rulemaking record.

### **LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school districts.

### **ADDITIONAL DOCUMENTS OR INFORMATION IN THE RULEMAKING FILE**

The Department of Alcoholic Beverage Control did not add any other documents or information to the rulemaking file beyond the studies included in the original notice issued on August 9, 2019.

**STATEMENT OF MAILING NOTICE**  
**(Sections 160-173 of Title 4 of the**  
**California Code of Regulations)**

The Department of Alcoholic Beverage Control has complied with the provisions of Government Code section 11346.4, subdivision (a) (1) through (4). Regarding the mailing of the notice of proposed regulatory action. The notice was mailed and posted on the Department's website on August 9, 2019, over 45 days prior to the close of the public comment period and the public hearing, which was held on October 11, 2019.

Dated: \_\_\_\_\_

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Robert de Ruyter  
Assistant General Counsel

**STATEMENT OF MAILING NOTICE OF EXTENSION OF PUBLIC WRITTEN  
COMMENT PERIOD AND SCHEDULING OF PUBLIC HEARING**

**(Sections 160-173 of Title 4 of the  
California Code of Regulations)**

The Department of Alcoholic Beverage Control has complied with the provisions of Government Code section 11346.4, subdivision (a) (1) through (4). Regarding the mailing of the notice of the extension of the public written comment period and a scheduling of the public hearing regarding proposed regulatory action. The notice was mailed and posted on the Department's website on September 24, 2019. The Department issued this notice to address an untimely request for public hearing received on September 20, 2019, and extended the public written comment period to October 11, 2019, to ensure members of the public had enough time to comment and prepare for the requested public hearing.

Dated: \_\_\_\_\_

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Robert de Ruyter  
Assistant General Counsel

**STATEMENT OF 15-DAY NOTICE OF  
AVAILABILITY OF MODIFIED TEXT  
(Sections 160-173 of Title 4 of the  
California Code of Regulations)**

On October 18, 2019, the Department of Alcoholic Beverage Control mailed and posted to its website the modified text of regulations, notice of the public comment period, and an addendum to the Initial Statement of Reasons for the necessity of the modifications made to the proposed text. The document package was sent to those persons specified in subsections (a) (1) through (4) of Section 44 of Title 1 of the California Code of Regulations. The public comment period for the modified text was from October 18, 2019, through November 4, 2019.

Dated: \_\_\_\_\_

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Robert de Ruyter  
Assistant General Counsel

**Department of  
Alcoholic Beverage Control**

**ADDENDUM TO FINAL STATEMENT OF REASONS**

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

PROPOSED ADOPTIONS TO TITLE 4:	SECTIONS 160, 161, 162, 163, 164, 165, 166, 167, 168, 168.1, 168.2, 168.3, 169, 170, 171, 172, and 173.
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**UPDATE OF INITIAL STATEMENT OF REASONS**

The Department wishes to make clear and address the necessity for Section 169(e)(2) as the Department received another comment on this section in its second modification comment period as follows:

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 is necessary for all persons employed at the licensed premises where the violation occurred because the affirmative defense is for the first sixty days from initial employment, not the first sixty days of initial employment as an alcohol server or manager. It is common for ABC licensees to rely on other employees outside the normal alcohol server staff to serve alcohol for events or when a licensed premises is busy. These fill in alcohol servers are employees or contractors of the licensee and are required by law to be certified prior to serving alcohol for consumption, even if it is not a normal part of their job duties. The Department is requiring a licensee attempting to use the statutory affirmative defense to ensure the violating employee was not otherwise employed at the licensed premises prior to their employment as a dedicated alcohol server. 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 sixty days of initial employment. This standard does not create a "guilty until proven innocent" standard as it is used as an affirmative defense. An affirmative defense is asserted at a hearing only after the department has proven that the violation exists. If the violation is not proven at hearing, the licensee need not enter these records into evidence because it does not need to assert the statutory affirmative defense. Additionally, the affirmative defense evidentiary standard does not change the rights of the department to ask for licensee records found in statute under Business and Professions Code section 25753.

Other than the above clarification on necessity, the Department has no changes to the Initial Statement of Reasons noticed on August 9, 2019, except for the Addendum to the Initial Statement of Reasons noticed on October 18, 2019, and the Second Addendum to the Initial

Statement of Reasons noticed on February 19, 2020. These documents can be found attached to the initial statement of reasons within the rulemaking record.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND MODIFIED TEXT NOTICE PERIOD OF FEBRUARY 19, 2020, THROUGH MARCH 6, 2020.**

The Department received 2 written comments from the public during the second modified text written comment period from February 19, 2020, through March 6, 2020. Each comment the Department received is included in its entirety in the Public Comment section of the rulemaking record. The Department's responses to all issues raised by the public written comments can be found in the Responses to Public Comment section of the rulemaking record.

**ADDITIONAL DOCUMENTS OR INFORMATION IN THE RULEMAKING FILE**

The Department of Alcoholic Beverage Control did not add any other documents or information to the rulemaking file beyond the studies included in the original notice issued on August 9, 2019. All additional documents added during the modification periods were addendums to the Initial Statement of Reasons, changes to the proposed text of regulations, or notice documents themselves. None of these documents changes the studies relied upon from the initial notice issued on August 9, 2019.

**STATEMENT OF 15-DAY NOTICE OF  
AVAILABILITY OF SECOND MODIFIED TEXT  
(Sections 160-173 of Title 4 of the  
California Code of Regulations)**

On February 19, 2020, the Department of Alcoholic Beverage Control mailed and posted to its website the second modified text of regulations, notice of the public comment period, and a second addendum to the Initial Statement of Reasons for the necessity of the modifications made to the proposed text. The document package was sent to those persons specified in subsections (a) (1) through (4) of Section 44 of Title 1 of the California Code of Regulations. The public comment period for the modified text was from February 19, 2020, through March 6, 2020.

Dated: \_\_\_\_\_

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Robert de Ruyter  
Assistant General Counsel