

BENEFITS

By establishing a uniform and standard education requirement for all alcohol servers, the legislature sought to improve the likelihood that an alcohol server will intervene before a customer who has overused alcohol endangers the public. It is estimated that this regulatory package will be able to reduce those costs by 10% by 2024, saving the California economy \$3.5 billion per year while increasing public health and safety for all Californians.

AUTHORITY

The RBSTPA grants ABC regulatory authority and mandated promulgation of regulations by January 1, 2020, setting standards for the mandatory RBS training course curriculum,⁴ accreditation agency and training provider approval standards,⁵ and any other rules ABC determines are necessary for the administration of the RBSTPA.⁶

NECESSITY

The specific purpose for each proposed section is as follows:

Section 160: *Subsection (a)* of the proposed rule establishes the authority for the regulations and sets forth the intent of the department in drafting the regulations for the RBSTPA. This provision is necessary to establish the interpretive basis for the language used throughout the regulatory action.

Subsection (b) defines terms used in the regulations and makes clear terms used in Business and Professions Code §§ 25680 – 25686 and the proposed regulations that were not previously defined in Business and Professions Code § 25680. Each of the definitions are necessary to ensure interpretations of language used in the RBSTPA and accompanying regulations are uniform and enforceable.

Subdivision (b)(1) of the proposed rule is necessary for a uniform acronym for the department to be used throughout the regulations package.

Subdivision (b)(2) of the proposed rule is necessary to have a single term to encompass all ABC license types within the three-tier system, whether manufacturer, distributor, or retailer, that have privileges to allow their owner to serve alcoholic beverages for consumption on an ABC licensed premises to the public.

Subdivision (b)(3) of the proposed rule is necessary to refer to owners of one of the ABC on-premises licenses types who must ensure their employees comply with the RBSTPA.

Subdivision (b)(4) of the proposed rule is necessary to establish where the service of alcohol for consumption under the RBSTPA occurs.

Subdivision (b)(5) of the proposed rule is necessary to define an actor within the RBSTPA that will be subject to the statute and regulatory action.

⁴ Business and Professions Code § 25681(a)

⁵ Business and Professions Code § 25681(b)

⁶ Business and Professions Code § 25685(b)

Subdivision (b)(6) of the proposed rule is necessary to define a term for the exam mentioned in the RBSTPA as a requirement for alcohol servers to be certified under the program.

Subdivision (b)(7) of the proposed rule is necessary to help all parties understand the triggering date found in the RBSTPA to know if the licensee's affirmative defense to not having a current employee certified within the statutory 60-day period applies.

Subdivision (b)(8) of the proposed rule is necessary to define interactivity elements so that training providers will know how to create their RBS training courses, and to ensure the department can reject RBS training courses that do not help alcohol servers learn to refuse service to minors and obviously intoxicated patrons.

Subdivision (b)(9) of the proposed rule is necessary to refine the definition of what actions constitute managing or supervising an alcohol server to allow ABC licensees to understand who is expected to be certified under the RBSTPA. It also specifically excludes distributors who give trainings to ABC licensee employees to market or distribute a product for sale. The exception is necessary because this activity is not within the intent of the statute of reducing the harm to public safety through limiting alcoholic beverage service to minors and obviously intoxicated patrons.

Subdivision (b)(10) of the proposed rule is necessary for certified alcohol servers and one-day non-profit licensees to understand what is expected of their named person or persons during the service of alcohol for consumption during their one-day special event to ensure the responsible service of alcoholic beverages.

Subdivision (b)(11) of the proposed rule is necessary to create a term for the database of RBSTPA certificates that ABC is creating for use in validating alcohol server certifications by ABC licensees, training providers, the department, and law enforcement agencies.

Subdivision (b)(12) 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.

Subdivision (b)(13) of the proposed rule is necessary for a uniform acronym for "responsible beverage service" to be used throughout the regulations package.

Subdivision (b)(14) of the proposed rule is necessary for a uniform definition for someone who gives an RBS training course to alcohol servers to be used throughout the regulations package.

Subdivision (b)(15) of the proposed rule is necessary to refine the definition of what actions constitute "serving alcohol for consumption" at an ABC licensed premises to allow ABC licensees to understand who is expected to be certified under the RBSTPA. ABC determined that the four actions described in the rule capture all aspects of direct alcohol service, and therefore finds it necessary to require anybody engaging in these activities to complete RBS training.

Section 161 defines the general requirements for all RBS training courses to be approved by the department or an accreditation agency.

Subsection (a) of the proposed rule requires that training providers present, at a minimum, the topics and information contained in California Code of Regulations Title 4 §§162 -166 to alcohol servers in their RBS training course. This provision is necessary to establish what topics and information (i.e. those described in rules 162-166) must be incorporated into an authorized RBS training course prior to approval by the department or accreditation agency to ensure that the training adequately prepares an alcohol server to responsibly serve alcohol and meets the statutory requirements of the RBSTPA.

Subsection (b) requires that interactivity elements must occur, at a minimum, for each of the five major curriculum topics in Business and Professions code § 25680(c). This is necessary to ensure alcohol servers taking the training course engage with the course content so that they better understand and retain the information being provided, and eventually put their knowledge into practice by acting responsibly when serving alcohol.

Subsection (c) requires that training providers provide handouts, electronic files, or transcripts of training course content to alcohol servers. This is necessary to give alcohol servers the opportunity to review the topics and information learned during the training course over the following three years that their certification is valid. The availability of such information will enhance the likelihood that servers will continue to practice responsible beverage service after being certified.

Section 162 defines the topics to be covered in an approved RBS training course for the statutory required topic “the social impact of alcohol.”⁷ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

Subsection (a) of the proposed rule requires that training providers present information on the positive impact of alcohol sales on a community. This is necessary because alcohol servers should be aware that the impacts of alcohol sales in a community can have some positive effects such as increased economy and tax revenue.

Subsection (b) of the proposed rule requires that training providers present the negative impact of alcohol sales on a community. This is necessary to help alcohol servers understand the moral and ethical obligation to refuse service to minors and obviously intoxicated patrons.

Subsection (c) of the proposed rule requires that training providers present specific types of costs to the community due to the overuse of alcoholic beverages, included in subdivisions (c)(1) through (c)(4) and all subparagraphs therein. This section is necessary to help alcohol servers learn and understand the specific harms the overuse of alcohol can have on their community and people within that community. All topics described were determined by the department to be relevant to an alcohol servers complete understanding of such harm and are necessary for servers to comprehend the full potential impact of alcohol service that enables overuse.

Subsection (d) of the proposed rule requires that training providers present to the alcohol server their responsibility to be the gatekeeper and that their refusal to serve minors and obviously intoxicated patrons can avoid the costs of the overuse of alcohol. This is necessary to teach the alcohol servers the importance of changing their behavior through implementation of the information learned in an RBS training course.

⁷ Business and Professions Code § 25680(c)(1)

Section 163 defines the topics to be covered in an approved RBS training course for the statutory required topic “the impact of alcohol on the body.”⁸ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

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

Subsection (b) of the proposed rule requires that training providers present how alcohol impairs driving through specific symptoms of intoxication required to be taught in subdivision (1) – (4). This subsection is necessary to teach alcohol servers why alcohol impaired driving is dangerous and leads to the negative community outcomes taught in section 162.

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

Subsection (d) of the proposed rule requires that training providers present specific potential signs of intoxication for alcohol servers to recognize. These specific signs are broken up into four subdivisions; physical reactions, physical appearance, lowering of inhibitions, and loss of judgement, each with sub paragraphs for specific signs and symptoms. This subsection is necessary because it will inform alcohol servers how to detect obviously intoxicated persons and help them recognize patrons prior to that stage to prevent a patron from becoming obviously intoxicated.

Subsection (e) of the proposed rule requires that training providers present five factors; the amount and speed of consumption of alcohol, binge drinking, alcohol tolerance, medications or recreational and illegal drugs, and altitude, that can affect the severity of intoxication in a person each in its own subdivision and subparagraphs where needed. This subsection is necessary for alcohol servers to understand other factors that can lead to a rapid onset of being obviously intoxicated in their patrons.

Section 164 defines the topics to be covered in an approved RBS training course for the statutory required topic “state laws and regulations relating to alcoholic beverage control, including laws and regulations related to driving under the influence.”⁹ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

⁸ Business and Professions Code § 25680(c)(2)

⁹ Business and Professions Code § 25680(c)(3)

Subsection (a) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25682 to alcohol servers. This subsection is necessary to help alcohol servers and their managers understand the statute that requires them to become certified under the RBSTPA, the requirements of the affirmative defense, and how nonprofit organizations with temporary daily licenses have different requirements for certifying persons to serve alcoholic beverages.

Subsection (b) of the proposed rule requires that training providers present the information contained in Title 4 California Code of Regulations § 160(b). This subsection is necessary so alcohol servers must learn the definition which control the RBSTPA and its accompanying regulations.

Subsection (c) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25683 to alcohol servers. This subsection is necessary to help alcohol servers and their managers know that if a person is not certified under the RBSTPA, they may not serve alcoholic beverages for consumption at an ABC licensed premises.

Subsection (d) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25684 to alcohol servers. This subsection is necessary to inform alcohol servers and their managers that an alcohol server's failure to be certified is an administrative violation against the ABC on-premises license.

Subsection (e) of the proposed rule requires a training provider to present three different categories of crimes in California; infractions, misdemeanors, and felonies. Subdivisions (1) – (3) requires the definition and penalties for each category to be taught in an RBS training course. This subsection is necessary to help alcohol servers and their managers understand the way crimes and criminal liabilities are classified as they learn the various areas of the law that correspond to the service of alcoholic beverage for consumption.

Subsection (f) of the proposed rule requires a training provider to present the types of liability for ABC licensees, their employees, and contractors. This is separated into three subdivisions; criminal liability, administrative liability, and civil liability. Each subdivision is broken down into appropriate sub paragraphs to require the training provider to teach how these differing liabilities are adjudicated and punished in general. This subsection is necessary to help alcohol servers and their managers understand all the ways licensees, alcohol servers, and their managers may be liable for the overuse of alcohol due to their service of a minor or obviously intoxicated patron.

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

Subdivision (g)(1) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25658(a), (c), (d) to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the service of an alcoholic beverage to a minor.

Subdivision (g)(2) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25665 to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the presence of a minor in ABC licensed premises.

Subdivision (g)(3) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25602(a) to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the service of an alcoholic beverage to any habitual or common drunkard or to an obviously intoxicated person.

Subdivision (g)(4) of the proposed rule requires that training providers present the information contained in Penal Code § 647(f) to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding public intoxication.

Subdivision (g)(5) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25663(a), (c) to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the required age of alcohol servers employed at an ABC licensed premises.

Subdivision (g)(6) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 24200.5(a) to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the sale of illegal drugs at an ABC licensed premises.

Subdivision (g)(7) of the proposed rule requires that training providers present the information contained in Vehicle Code § 23152(a), (b), (g) to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding driving under the influence of alcohol.

Subdivision (g)(8) of the proposed rule requires that training providers present the information contained in Business and Professions Code §§ 25631-25632 to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the service of alcohol during prohibited hours, or when the premises is closed.

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

Subdivision (g)(10) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25621.5 to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the sale of cannabis at an ABC licensed premises.

Subdivision (g)(11) of the proposed rule requires that training providers present the information contained in Title 17 California Code of Regulations § 40300 to alcohol servers. This subdivision is necessary to be included in the RBS training course so that alcohol servers and their managers understand the law regarding the prohibition of certain cannabis products including alcoholic beverages.

Subsection (h) of the proposed rule requires a training provider to present information regarding how alcoholic beverages are regulated in California, including two subdivisions regarding how state and local law enforcement enforce alcohol laws and the role of the department in that enforcement. This section is necessary so alcohol servers are aware of how the department and various law enforcement agencies regulate and enforce the statutes and regulations.

Subsection (i) of the proposed rule requires a training provider to present the role of local law enforcement. This is broken up into three subdivisions; they are required to enforce alcohol related laws, they are required to inform the department of any violations, arrests, or calls for service at an ABC licensed premises, and the inspection rights of any sworn peace officer. This section is necessary so alcohol servers are aware of how local law enforcement works with the department to enforce its laws and regulations and the inspection rights sworn peace officers have at an ABC licensed premises.

Subsection (j) of the proposed rule requires a training provider to present that local jurisdictions may also have additional laws, ordinances, or provisions that can apply to an ABC licensed premises. This section is necessary so alcohol servers are aware that they should seek out and learn their local laws, ordinances, and provisions to remain in compliance with all applicable laws.

Section 165 defines the topics to be covered in an approved RBS training course for the statutory required topic “intervention techniques to prevent the service or sale of alcoholic beverages to underage persons or intoxicated persons.”¹⁰ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

Subsection (a) of the proposed rule requires a training provider to present why checking an identification (ID) of a patron prior to service of alcohol is important. Subdivision (1) requires the information of the minimum age to both purchase and consume alcohol in California, and subdivision (2) requires the information about the affirmative defense available to ABC licensees and alcohol server who are proven to have served a minor in reliance on a diligent inspection of a patron’s ID. This subsection is necessary to inform alcohol servers of the reasons checking ID is important prior to serving alcoholic beverages for consumption.

Subsection (b) of the proposed rule requires a training provider to present the three characteristics of a valid ID under the law. This subsection is necessary to provide alcohol servers with the knowledge of what constitutes an acceptable ID for age verification.

Subsection (c) of the proposed rule requires a training provider to present the information contained in Business and Professions Code § 25660 about the legally acceptable ID’s under California law to alcohol servers. This subsection is necessary to provide alcohol servers with the knowledge of the types of acceptable IDs for age verification.

Subsection (d) of the proposed rule requires a training provider to present at least five examples of unacceptable IDs for the age verification process to alcohol servers. This subsection is necessary to provide alcohol servers with the knowledge of what constitutes an unacceptable ID for age verification.

¹⁰ Business and Professions Code § 25680(c)(4)

Subsection (e) of the proposed rule requires a training provider to present the elements of a California Real ID card to alcohol servers. This subsection is necessary to provide alcohol servers the knowledge and skills to recognize a valid California Real ID.

Subsection (f) of the proposed rule requires a training provider to present the elements of a California Federal Non-Compliant ID card to alcohol servers. This subsection is necessary to provide alcohol servers the knowledge and skills to recognize a valid California Federal Non-Compliant ID.

Subsection (g) of the proposed rule requires a training provider to present six common indicators of a false ID card to alcohol servers. This subsection is necessary to provide alcohol servers the knowledge to recognize and reject a false ID.

Subsection (h) of the proposed rule requires a training provider to present seven common techniques for checking an ID to alcohol servers. This subsection is necessary to provide alcohol servers the skills to do a diligent inspection of ID as required for an affirmative defense to serving an alcoholic beverage to a minor if a reasonable reliance of an ID is presented.

Subsection (i) of the proposed rule requires that training providers present the information contained in Business and Professions Code § 25659 to alcohol servers. This section details the right of an alcohol server to refuse service and the process for seizing and delivering a false ID to a law enforcement agency. This subsection is necessary for alcohol servers to understand their rights to check ID and seize a false ID being used to obtain alcoholic beverages illegally.

Subsection (j) of the proposed rule requires training providers to present to alcohol servers how to avoid service to obviously intoxicated patrons when serving alcoholic beverages. This section is necessary to build upon the signs of intoxication in Section 163 to help alcohol servers know when to refuse service and recognize a patron who is obviously intoxicated.

Subsection (k) of the proposed rule requires training providers to present to an alcohol server the five main reasons to refuse service to a patron. This subsection is necessary to teach alcohol servers the common instances to refuse service to patrons to avoid the overuse of alcohol.

Subsection (l) of the proposed rule requires training providers to present to alcohol servers at least eight skills to use in refusing service to a patron. This subsection is necessary to teach alcohol servers the skills to refuse service to avoid the overuse of alcohol.

Subsection (m) of the proposed rule requires training providers to present three types of common medication, recreational, or illegal drugs in each subdivision; depressants, stimulants, and hallucinogenics. The training provider must provide a definition, examples, and signs for the alcohol server to observe to see if patrons are under the influence of substances other than alcohol. This subsection is necessary to teach alcohol servers basic knowledge of how to identify patrons under the influence of other substances and when refuse service of alcoholic beverages.

Section 166 defines the topics to be covered in an approved RBS training course for the statutory required topic “the development of management policies that support the prevention of service or sale of alcoholic beverages to underage persons or intoxicated persons.”¹¹ This section is necessary to define

¹¹ Business and Professions Code § 25680(c)(5)

the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

Subsection (a) of the proposed rule requires training providers to present the ABC licensee's duty to ensure policies are created by managers for their alcohol servers to guide employees in serving alcohol. The four subdivisions clarify the consequences of breach of the licensee's duty; risk of administrative violations, recommended penalties for confirmed administrative violations, aggravating and mitigating factors for penalties, and the ability of licensees to petition for a payment in compromise of a suspension of license. This subsection is necessary to help alcohol servers and managers understand the consequences to the ABC licensed premises if effective policies are not created or followed.

Subsection (b) of the proposed rule requires training providers to present the benefits of having policies for the service of alcohol for consumption to the public. Four subdivisions; uniformity of business practices, ensure a safe and comfortable space for patrons, reduce risk of criminal, civil, and administrative liability, and increased profitability must all be presented. This subsection is necessary to help alcohol servers and managers understand why policies concerning service of alcohol for consumption are important and beneficial to all who work at the ABC licensed premises.

Subsection (c) of the proposed rule requires training providers to present guidelines of three important policies to address alcohol service for consumption at every ABC licensed premises. This subsection is necessary to help alcohol servers and managers know what situations policies should address.

Subsection (d) of the proposed rule requires training providers to present four general guidelines for the creation of any policy at an ABC licensed premises. This subsection is necessary to help alcohol servers and managers the best standard practices to create, maintain, and implement policies in their ABC licensed premises.

Subsection (e) of the proposed rule requires training providers to present eleven critical RBS policy elements to be addressed by the ABC licensee, their employees and contractors. This subsection is necessary to help alcohol servers and managers recognize all areas of service standardized policies should cover.

Subsection (f) of the proposed rule requires training providers to present at a minimum seven uses for an incident log in communicating through various shifts at an ABC licensed premises. This subsection is necessary to help alcohol servers and managers know how and when to use an incident log to increase uniformity and enforcement of the policies in place.

Subsection (g) of the proposed rule requires training providers to outline three ways policies should address an ABC licensed premises' interaction with law enforcement. This subsection is necessary to help alcohol servers and managers understand how policies should dictate and inform interactions with law enforcement.

Subsection (h) of the proposed rule requires training providers to present information about discriminatory practices at an ABC licensed premises, including the classifications in California Civil Code § 51.6 and information contained in Business and Professions Code § 125.6. This subsection is necessary to help alcohol servers and managers understand how to avoid discrimination in any way through their drink specials, refusals of service, or interactions with patrons.

Subsection (i) of the proposed rule requires training providers to present hiring practices for alcohol servers and includes four subdivisions regarding age standards, certification under the RBSTPA, and employment and payroll records needed for the affirmative defense in the RBSTPA. This subsection is necessary to help alcohol servers and managers know who can and can't be an alcohol server by age, and what records need to be kept.

Subsection (j) of the proposed rule requires training providers to present at a minimum nine good hospitality practices and policies to be implemented at an ABC licensed premises. This subsection is necessary to help alcohol servers and managers have examples of what good practices consist of and techniques to maximize their profitability and service in the proper manner.

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

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.

Subsection (m) of the proposed rule requires training providers to present at a minimum 4 four 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.

Section 167 defines the process, criteria, and fees for ABC to approve, review, and renew an accreditation agency under the RBSTPA. This section is necessary to advise accreditation agencies about what they need to submit to the department for approval and what the department will use to approve or deny their application.

Subsection (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.

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

Subdivision (a)(9) requires the accreditation agency to list any arrests or convictions for crimes of moral turpitude by their owners or officers. 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.

Subdivision (a)(10) requires the accreditation agency to explain and attest how the company complies with all the criteria found in § 167(d). 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.

Subdivision (a)(11) requires the accreditation agency to explain its process and standards for approval of training providers and RBS training courses. This subdivision is necessary for the department to ensure all approved training providers are compliant with the standards in the RBSTPA and the regulations regardless of where they are approved.

Subdivision (a)(12) requires the accreditation agency to submit fingerprints 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 like a notary. It also alleviates the department of all fees associated with validating the owner's or officer's criminal history by fingerprint. This subdivision is necessary to allow the department to be informed if any future criminal charges are brought against an owner or officer of an accreditation agency. 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 accreditation agency has provided correct information regarding its owners and officers' criminal history and 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.

Subdivision (a)(13) requires the accreditation agency to submit the required initial review fee. This subdivision is necessary for the department to recover its costs of approving the accreditation agency. Without these fees the department would not be able to administer the implementation of the RBSTPA.

Subsection (b) of the proposed rule states the seven criteria that must be met by an accreditation agency to obtain approval from the department. This subsection is necessary to inform potential accreditation agencies of the standards set by the department and to allow the department to deny the application of accreditation agencies who do not comply with those standards.

Subdivision (b)(1) of the proposed rule requires accreditation agency owners and officers, director, employees, and agents to have no affiliation with any ABC licensee. This subdivision is necessary because ABC licensees can become approved training providers, and there should be no incentive for an accreditation agency to accredit an affiliated ABC licensee as a training provider without following the statutory and regulatory standards.

Subdivision (b)(2) of the proposed rule requires accreditation agency owners or officers to have no affiliation with any training provider. This subdivision is necessary because there should be no incentive for an accreditation agency to accredit an affiliated training provider without following the statutory and regulatory standards.

Subdivision (b)(3) of the proposed rule requires an accreditation agency, its owners, and officers to not be approved as training providers. This rule is necessary because the accreditation agency should not be both a gatekeeper to the training provider market and a participant in that market at the same time. The department also plans to cease offering approved RBS training courses under the RBSTPA because the department will act as an accreditation body.

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 technology of training providers but is not able to support that technology's use by training providers

Subdivision (b)(5) of the proposed rule requires an accreditation agency to use the same standards for authorizing training providers required of the department. This subdivision is necessary to ensure all authorized training providers give qualified, lawful, and consistent RBS training courses regardless of where they receive their accreditation.

Subdivision (b)(6) of the proposed rule requires an accreditation agency to maintain strict data security in its system to accredit training providers. This subdivision is necessary to ensure private information given to the accreditation agency by a training provider during the accreditation process is protected and not stolen.

Subdivision (b)(7) of the proposed rule requires an accreditation agency owner or officer to have no past convictions for crimes of moral turpitude similar to ABC license holders under Business and Professions Code §24200(d). This subdivision is necessary to maintain the integrity of the RBSTPA approval and certification system by ensuring no bad actors can become a part of the system.

Subsection (c) of the proposed rule requires an accreditation agency to respond to the department within sixty days of a request for more information during the application process. This subsection grants the department the ability to consider applications abandoned if an accreditation applicant does not respond within the period. This subsection is necessary to both ensure only qualified accreditation agencies receive approval and avoid unnecessary costs to the department associated with keeping applications open for processing for an extended period of time.

Subsection (d) of the proposed rule requires accreditation agencies to maintain proper contact information with the department and notes that correspondence from the department with the contact listed on file will be deemed effective once sent. This subsection is necessary to provide the department with 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.

Subsection (e) of the proposed rule requires accreditation agencies to maintain a list of owners and officers. This subsection is necessary to allow the department to oversee and monitor the implementation of the RBSTPA over time and enforce accreditation agency's compliance with the approval criteria and record keeping. It is also necessary to ensure that changes in ownership after department approval are not made to circumvent the requirement described in subsection (b)(7).

Subsection (f) of the proposed rule requires accreditation agencies to use the policies and procedures it submitted to the department under California Code of Regulations Title 4 §167(a)(11) when approving training providers and RBS training courses. This rule is necessary to require accreditation agencies to use the standards submitted and approved by the department when exercising its authorization to

approve training providers or RBS training courses. This ensures uniformity in approved training providers and RBS training courses regardless of where they get their approval.

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.

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.

Subsection (i) of the proposed rule requires the accreditation agency to submit records of approvals to the department through its online certification system. This section is necessary to ensure all accreditation information about approved training providers is in an electronic format that can be used by the department for the oversight of the RBSTPA.

Subsection (j) of the proposed rule outlines nine reasons that the department can take disciplinary action against an accreditation agency for violating the RBSTPA or the proposed regulations.¹² This subsection is necessary to inform an accreditation agency of administrative actions that could be taken against them and give the power to the department to suspend or revoke approval for misconduct by an accreditation agency. Each of the nine reasons for disciplinary action are necessary because they are either an accreditation agency not meeting the standards of approval set forth in the regulatory action, or an action of fraud or dishonesty on behalf of the accreditation agency. The department must be able to deny or revoke approval of an accreditation agency that does not meet the appropriate standards or commits acts of fraud or dishonesty to ensure the online certificate system remains valid.

Subsection (k) of the proposed rule informs accreditation agencies of their due process rights that are similar to an ABC licensee's under statutory definition and establishes the use of the due process rights of ABC licensees currently in place under Business and Professions Code Division 9 Chapters 6 – 8 if an accreditation agency wishes to challenge a departmental decision. This subsection is necessary to establish the due process rights and procedure for an accreditation agency in dealing with departmental decisions of denial, suspension, or revocation of an approval.

¹² Business and Professions Code § 25681(a)(2) and § 25685(b)

Subsection (l) of the proposed rule requires an accreditation agency to renew their approval annually. This subsection is necessary to establish how long a departmental approval for an accreditation agency lasts.

Subsection (l)(1) – (7) These subdivisions set the procedure, penalties, and requirements for an accreditation agency to seek its annual renewal with the department. These subdivisions are necessary to establish a process by which accreditation agencies seek renewal and clarify that the same standards the department uses for initial approval will apply during the annual renewal process. The department used a modified form of Business and professions Code § 24048 on the annual renewal of ABC licenses to create the rules and procedures for the accreditation agency annual renewals. The department determined that the same procedures, penalties, and requirements of renewals set forth by the legislature for ABC licensees would be appropriate to apply to an approved accreditation agency.

Subsection (m) of the proposed rule establishes two non-refundable fees for the department to recover the costs of approving and monitoring accreditation agencies. This subsection is necessary for the department to recover its costs of approving and monitoring an accreditation agency. The initial review fee was set using an estimated 24-hour review by an Associate Governmental Program Analyst (AGPA), and a 3-hour review by a supervising agent or staff services manager 1 to complete, see table below. The annual renewal fee was set using an estimated 6-hour review by an AGPA, and a 1-hour review by a supervising agent or staff services manager 1 to complete, see table below. Without these fees the department would not be able to administer the implementation of the RBSTPA.

Wage determination per position	Associate Governmental Program Analyst	Staff Services Manager 1	Supervising Agent
Estimated monthly salary	\$6,228	\$7,351	\$9849
Estimated daily salary	\$283	\$334	\$448
Estimated hourly salary	\$35	\$42	\$56
Estimated hours for accreditation agency initial approval	24	3	3
Estimated cost of initial approval	\$840	\$126	\$168
Estimated total cost of initial review by supervisor type		\$966	\$1,006
Estimated hours for accreditation agency annual renewal	6	1	1
Estimated cost of annual renewal	\$210	\$42	\$56
Estimated total cost of annual renewal by supervisor type		\$252	\$266

Section 168 defines the process and criteria for ABC to approve a training provider under the RBSTPA.¹³ 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.

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.

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.

Subdivision (a)(9) of the proposed rule requires training providers to submit a copy of their proposed RBS training course materials along with a tabulated record of how their proposed RBS training course complies with the minimum standard curriculum required by the RBSTPA and its regulations. This subdivision is necessary to ensure all approved training providers are using an approved RBS training course that meets the statutory and regulatory standards of the RBSTPA.

Subdivision (a)(10) requires the training provider to explain, provide, and attest to the interactivity elements used within its RBS training course as required by California Code of Regulations Title 4 §161 (b). This subdivision is necessary for the department to be able to ensure the training alcohol servers receive from training providers will help to change behavior and curb harm related to the overuse of alcohol.

Subdivision (a)(11) of the proposed rule requires training providers to submit the required handouts, electronic files, or transcripts the training provider will give to alcohol servers that supplement their RBS training course. This subdivision is necessary to ensure all approved training providers are providing the required material to alcohol servers that complete an RBS training course as required by California Code of Regulations Title 4 §161 (c).

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.

Subdivision (a)(13) requires the training provider to list any arrests for crimes of moral turpitude by their owners or officers. This subdivision is necessary for department to 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.

Subdivision (a)(14) requires the training provider to submit the required initial review fee forth in California Code of Regulations Title 4 § 168.3(l)(1). This subdivision is necessary for the department to recover its costs of approving the training provider. Without these fees the department would not be able to fund the implementation of the RBSTPA.

¹³ Business and Professions Code § 25681(b)(1)

Subsection (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.

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.

Subdivision (b)(2) of the proposed rule requires a training provider's proposed RBS training course to comply with the minimum standard curriculum outlined in §§ 161 -166 and be approved by the department or an accreditation agency prior to their use in training alcohol servers. This subdivision is necessary to require all training providers to meet the statutory and regulatory standards of the RBSTPA for their RBS training courses that have been set to change the behavior of alcohol servers throughout California and curb harm related to the overuse of alcohol throughout the state.

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.

Subdivision (b)(4) of the proposed rule requires training providers to give technical support required in Business and Professions Code § 25681 (b)(1)(C) for alcohol servers to complete their RBS training course. This subdivision is necessary for the department to ensure all training providers are able to provide the statutorily required technical support for alcohol servers.

Subdivision (b)(5) of the proposed rule requires training providers to have data security for private information it receives as required by Business and Professions Code § 25681 (b)(1)(D). This subdivision is necessary for the department to ensure all training providers have the statutorily required security for alcohol server private information.

Subdivision (b)(6) of the proposed rule requires a training provider owner or officer to have no past convictions for crimes of moral turpitude similar to ABC license holders under Business and Professions Code §24200(d). This subdivision is necessary to keep the integrity of the RBSTPA certification system by ensuring no bad actors can become a part of the system.

Subsection (c) of the proposed rule requires a training provider to respond to the department within sixty days of a request for more information during the application process. This subsection grants the department the ability to consider applications abandoned if a training provider applicant does not respond within the period. This subsection is necessary to both ensure only qualified accreditation agencies receive approval and avoid unnecessary costs to the department associated with keeping applications open for processing for an extended period.

Section 168.1 defines the process for accredited training providers to register with ABC after approval by an accreditation agency.¹⁴

Subsection (a) of the proposed rule exempts accredited training providers from the departmental fee for initial review if its RBS training course. This subsection is necessary to ensure training providers understand they are exempt from an initial review fee if they are approved by an accreditation agency rather than by the department.

Subsection (b) of the proposed rule requires registering training providers 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 training provider.

Subsection (c) of the proposed rule requires training providers to register with the department prior to beginning the fingerprinting process for their owners and officers. This subsection is necessary to ensure the correct fingerprints submitted to the department are attributed to the correct training provider.

Section 168.2 defines the need for all training providers to provide fingerprints to the department for enforcement purposes prior to being placed on the approved training provider list accessible by alcohol servers.¹⁵ The fingerprints must be verified as to identity by either a governmental body, such as a notary, or an electronic fingerprinting service like Live Scan. In addition, this section removed responsibility for payment of the review or validation of an owner or officer's criminal history. This rule allows the department to be informed if any future criminal charges brought against an owner or officer of a training provider. 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 officers' criminal history and allows the department to deny or revoke the approvals of training providers with owners or officers who do not meet honesty and integrity standards needed to protect the integrity of the department's online certification system.

Section 168.3 requires all training providers to keep their submitted contact information and lists of their owners and officers current in the department's online certification system. It also defines the process for a training provider to certify an alcohol server has completed an approved RBS training course.¹⁶ This section defines ABC's review of training provider performance, and disciplinary actions ABC can take against a training provider for violating the RBSTPA or the proposed regulations.¹⁷ The section defines the modification process for approved RBS training courses, and the ABC fees for training provider approval, review, and renewal.¹⁸ This rule is necessary to ensure any approved training provider is aware of how to engage with the department to receive modifications, in administrative actions, and the fees required for those interactions if any.

Subsection (a) of the proposed rule requires training providers to maintain proper and current contact information with the department and notes that correspondence from the department with to the contact

¹⁴ Business and Professions Code § 25681(a)(3)

¹⁵ Business and Professions Code § 25685(b)

¹⁶ Business and Professions Code § 25681(d)

¹⁷ Business and Professions Code § 25681(b)(2)

¹⁸ Business and Professions Code § 25681(b)(2) and § 25685(b)

information on file will be deemed effective once sent. 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.

Subsection (b) of the proposed rule requires training providers to maintain a list of owners and officers. This subsection is necessary to allow the department to oversee and monitor the implementation of the RBSTPA over time and enforce training provider's compliance with the approval criteria and record keeping. It is also necessary to ensure that changes in ownership after department approval are not made to circumvent the requirement described in section 168(b)(6).

Subsection (c) of the proposed rule requires training providers to use one of its approved RBS training courses on file with the department when it provides training to alcohol servers under the RBSTPA. This subsection is necessary to ensure all alcohol servers complete an RBS training course that meets the minimum standards prior to taking the alcohol server certification exam.

Subsection (d) of the proposed rule requires a training provider to notify the department of an alcohol servers' completion of an approved RBS training course within 24 hours within the department's online certification system. This subsection also requires the department to grant the alcohol server access to the alcohol server certification exam within the department's online certification system after being notified of their completion of an approved RBS training course. This subsection is necessary to ensure alcohol servers have timely access to the alcohol server certification exam and triggers the 30-day period alcohol servers have to take and pass the alcohol server certification exam.

Subsection (e) of the proposed rule requires the department to review the effectiveness of training providers and their RBS training courses through the collection and analysis of data collected during the administration of the alcohol server certification exam. It also requires the department to share the data pertaining to a training provider's students with training providers. This subsection is necessary to inform training providers that the department's data collection during the administration of the exam will be analyzed and used to monitor training provider performance. It is also necessary to allow training providers access to their relevant data that is being collected to allow them to improve their RBS training courses.

Subsection (f) of the proposed rule outlines ten reasons that the department can take disciplinary action against a training provider for violating the RBSTPA or the proposed regulations.¹⁹ This subsection is necessary to inform a training provider of administrative actions that could be taken against them and give the power to the department to suspend or revoke approval for misconduct by a training provider. Each of the ten reasons for disciplinary action are necessary because they are either a training provider not meeting the standards of approval set forth in the RBSTPA or the regulatory action, or an action of fraud or dishonesty on behalf of the training provider. The department must be able to deny or revoke approval of a training provider that does not meet the appropriate standards or commits acts of fraud or dishonesty to ensure the online certificate system remains valid.

Subsection (g) of the proposed rule outlines the procedure for the department to require the modification of all approved RBS training courses due to a change in referenced law or after a rulemaking action to change the minimum standard curriculum. This subsection is necessary to allow the department to require training providers to modify approved RBS training courses by updating the mandatory

¹⁹ Business and Professions Code § 25681(a)(2) and § 25685(b)

curriculum if there is a change to a referenced law in the proposed rulemaking, or future rulemaking actions modifying the mandatory curriculum. This is necessary to ensure all approved training providers are using an approved RBS training course that is reflective of the current law.

Subdivision (g)(1) of the proposed rule establishes the need of the department to require all training providers to modify their approved RBS training courses. This subdivision is necessary to establish the only instances the department can mandate required changes, when a referenced law changes, or by the department's rulemaking action modifying the required curriculum.

Subdivision (g)(2)-(3) of the proposed rule specifies the time a training provider has to respond to the department's request and provide an estimate of how long it will take for the training provider to make the mandated change, and that if the training provider does not respond their approval is deemed withdrawn. These subdivisions grant the department the ability to consider approvals withdrawn if a training provider applicant does not respond within the period. These subdivisions are necessary to both ensure only qualified training providers and RBS training courses retain approval after a mandatory modification and avoid unnecessary costs to the department associated with keeping modification requests open for an extended period.

Subdivision (g)(4) of the proposed rule requires a training provider to complete any mandatory changes to their RBS training course within a reasonable time and submit a record of all changes to the department for approval. This subdivision is necessary to both ensure only qualified training providers and RBS training courses retain approval after a mandatory modification and avoid unnecessary costs to the department associated with keeping modification requests open for an extended period.

Subdivision (g)(5) of the proposed rule requires the department to review mandatory modification requests without charging a review fee. This subdivision is necessary to exempt training providers from paying any additional fees to comply with a mandatory modification request of the department. The department did not want to force a training provider to pay additional fees when it required modifications to RBS training courses. These reviews will be funded out of the standard annual review fees paid to the department.

Subdivision (g)(6) of the proposed rule requires the department to apply the same standards of approval to modification reviews as it does to initial reviews. This subdivision is necessary to set the standard by which the department reviews and approves a mandatory modification request. The department determined that the standards of review should be the same for mandatory modification requests as the initial review.

Subdivision (g)(7) of the proposed rule requires the training provider to wait for departmental approval prior to using the new modified RBS training course. This subdivision is necessary to ensure only departmental approved RBS training courses are being delivered to alcohol servers for their certification and that the training received remains comparable throughout the state.

Subsection (h) of the proposed rule outlines the procedure for a training provider to modify their approved RBS training course without departmental mandate. This subsection is necessary for that training providers can update their RBS training programs to innovate and better their teaching methods and delivery. The department desired to incentivize continual updates to allow training providers to better their programs through innovation.

Subdivision (h)(1) of the proposed rule allows a training provider to seek a modification approval from either the department or an approved accreditation agency. This subdivision is necessary to establish that a training provider may seek a modification approval from either the department or an accreditation agency when innovating their RBS training course to make it better.

Subdivision (h)(2) of the proposed rule requires a training provider seeking a modification of their training course to submit a detailed change log of all changes it made to its previously approved RBS training course to either the department or an accreditation agency when seeking modification approval. This subdivision is necessary to ensure the training provider's modification meets the statutory and regulatory standards of the RBSTPA. The department determined that in order to keep costs low and speed up the modification approval process it would require a change log so that time and effort for approval can be used effectively.

Subdivision (h)(3) of the proposed rule requires the department to determine if the requested modification constitutes a substantial change and notify the training provider of its decision in writing. This subdivision is necessary to establish when a substantial change determination is made and ensure the department notifies the training provider of its decision prior to the modification request approval. The department determined this determination was necessary to fund extensive modification requests but allow most modification requests to be paid for through the annual fees paid for by training providers.

Subdivision (h)(4) of the proposed rule establishes the fee a training provider must pay in order to receive approval for a substantial change in their approved RBS training course. This subdivision is necessary to fund the review and approval of a major change to a training provider's RBS training course that would be similar to the hours involved in an initial review, see table for initial reviews in the necessity section for §168.3(l) below. The department determined that a substantial change approval review would take the same average work hours as an initial review and determined the same fee would be appropriate based on that estimate.

Subdivision (h)(5) of the proposed rule establishes the standards of a substantial change review by the department as a change that requires the department to review most of the approved RBS training course to reapprove its suitability. It also gives two examples of what could constitute a substantial change; a 50% or more change of submitted content, or a translation into a new language. This subdivision is necessary to allow training providers to know how the department will determine what is a substantial change and require a fee for the modification approval process. The department made this determination due to how many hours of staff time a review will take if a modification is of this size. In addition, a training provider might be attempting to create a new course under the guise of a "modification request." The department wished to incentivize innovation through making most modification not require an additional fee, but to fund the implementation of the RBSTPA, substantial changes will need to have an additional fee attached to their approval by the department.

Subdivision (h)(6) of the proposed rule requires the department to perform a modification request without any additional fees unless it is determined to be substantial change. This subdivision is necessary to incentivize small incremental changes by training providers to make their RBS training programs better over time.

Subdivision (h)(7) of the proposed rule requires the department or accreditation agency to use the same standards of approval for a modification request as used in an initial review. This subdivision is

necessary to set the standard of review for a modification request. The department could not determine any reason to use a different standard for modification requests than for the standards used during the initial review.

Subdivision (h)(8) of the proposed rule requires the training provider to wait for departmental or accreditation agency approval prior to using the new modified RBS training course. This subdivision is necessary to ensure only departmental approved RBS training courses are being delivered to alcohol servers for their certification and that the training received remains comparable throughout the state.

Subsection (i) of the proposed rule outlines the procedure for a training provider to have an additional RBS training course approved by the department. This rule is necessary to allow training providers to have multiple approved RBS training courses at the same time, especially in multiple languages.

Subdivision (i)(1) of the proposed rule requires a training provider to submit and itemized and tabulated record for a proposed RBS training course for approval to either the department or an accreditation agency. This subdivision is necessary to establish the same standards for a proposed RBS training course submitted after approval as one that is submitted by the training provider during its initial approval process.

Subdivision (i)(2) of the proposed rule establishes the fee the department imposes for the initial review of a proposed RBS training course submitted by a previously approved training provider. This rule is necessary to establish the fee required and fund ABC's implementation of the RBSTPA. The department determined that a review of a proposed training course would average the similar number of hours to the hours determined to be used in an initial review of a training provider and RBS training course, see table for initial reviews in the necessity section for §168.3(l) below. The department determined that a additional RBS training course approval review would take the same average work hours as an initial review and determined the same fee would be appropriate based on that estimate.

Subdivision (i)(3) of the proposed rule requires the department or accreditation agency to use the same standards of approval for a modification request as used in an initial review. This subdivision is necessary to set the standard of review for a modification request. The department could not determine any reason to use a different standard for modification requests than for the standards used during the initial review.

Subsection (j) of the proposed rule informs training providers of their rights as an ABC licensee under statutory definition and establishes the use of the due process rights of ABC licensees currently in place under Business and Professions Code Division 9 chapters 6-8 if a training provider wishes to challenge a departmental decision. This subsection is necessary to establish the due process rights and procedure for a training provider in dealing with departmental decisions of denial, suspension, or revocation.

Subsection (k) of the proposed rule requires a training provider to renew their approval annually. the proposed rule requires an accreditation agency to renew their approval annually. This subsection is necessary to establish how long a departmental or accreditation agency approval for a training provider lasts.

Subsection (k)(1) – (9) These subdivisions set the procedure, penalties, and requirements for a training provider to seek its annual renewal with the department. These subdivisions are necessary to establish a process by which training providers seek renewal and clarify that the same standards the department

uses for initial approval will apply during the annual renewal process. The department used a modified form of Business and professions Code § 24048 on the annual renewal of ABC licenses to create the rules and procedures for the training provider annual renewals. The department determined that the same procedures, penalties, and requirements of renewals set forth by the legislature for ABC licensees would be appropriate to apply to an approved training provider.

Subsection (l) of the proposed rule establishes two non-refundable fees for the department to recover the costs of approving and monitoring training providers. This subsection is necessary for the department to recover its costs of approving the training provider. The initial review fee was set using an estimated 24-hour review by an AGPA, and a 3-hour review by a supervising agent or staff services manager 1 to complete, see table below. The annual renewal fee was set using an estimated 6-hours on average used for reviewing requested modifications by an AGPA, and an estimated 1-hour review by a supervising agent or staff services manager 1 to review requested modifications, see table below. Without these fees the department would not be able to fund the implementation of the RBSTPA.

Wage determination per position	Associate Governmental Program Analyst	Staff Services Manager 1	Supervising Agent
Estimated monthly salary	\$6,228	\$7,351	\$9849
Estimated daily salary	\$283	\$334	\$448
Estimated hourly salary	\$35	\$42	\$56
Estimated hours for training provider initial review	24	3	3
Estimated cost of initial review	\$840	\$126	\$168
Estimated total cost of initial review by supervisor type		\$966	\$1,006
Estimated hours for annual review of training provider modifications	6	1	1
Estimated cost of annual modifications review	\$210	\$42	\$56
Estimated total cost of annual modification review by supervisor type		\$252	\$266

Section 169 defines how an ABC on-premises licensee will verify that the alcohol servers in their employ have been certified.²⁰ This section also defines records required for an ABC on-premises licensee to prove an affirmative defense against an action under the RBSTPA.²¹ This rule is necessary so ABC on-premises licensees will understand what is required of them by the RBSTPA.

Subsection (a) of the proposed rule requires ABC on-premises licensees to establish the validity of their employee certifications within the department's online certification system. 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 licensees can be sure their employee's certification is valid is to check within the department's online certification system.

Subsection (b) of the proposed rule allows an ABC on-premises licensee to maintain all required records under the RBSTPA within the department's online system. When an ABC on-premises licensee checks the validation of an employee, the system will automatically track and confirm the validation was checked. This will create a record within the department's online certificate system of all validations made by the ABC on-premises licensee automatically, this section alleviates the need for duplicative records to be kept outside that system. This subsection is necessary, so an ABC on-premises licensee is not required to keep a set of records outside the department's online system but may choose to do so.

Subsection (c) of the proposed rule allows an ABC on-premises licensee to request automatic notifications from the department's online certification system for employed alcohol servers prior to expiration but removes any duty from the department to notify an ABC on-premises licensee prior to an expiration of a certification. When an ABC on-premises licensee checks the validation of an employee, the system will prompt the ABC on-premises licensee to be notified 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 sent to ABC on-premises licensees because the licensees will control when and how the notifications are given in the system.

Subsection (d) of the proposed rule requires an ABC on-premises licensee is required to ensure alcohol servers are recertified prior to the expiration of their alcohol server certification. This subsection is necessary to inform ABC on-premises licensees of their duty to ensure all employed alcohol servers remain certified throughout their employment to comply with Business and Professions code § 25683.

Subsection (e) of the proposed rule requires an ABC on-premises licensee to provide two sets of records in order to use the affirmative defense found in Business and Professions Code § 25682 (b)(2) that an uncertified alcohol server is within 60 days of their initial employment. This subsection is necessary for the department or other law enforcement agency to determine if the ABC on-premise license was not required to have their alcohol server certified under the safe harbor found in B&P 25682 (b)(2).

Subsection (f) of the proposed rule specifies that the affirmative defense found in Business and Professions Code § 25682 (b)(2) is only available at the initial employment of an alcohol server and not for certification renewals. This subsection is necessary to enforce the continued certification of

²⁰ Business and Professions Code § 25682(b)(1)

²¹ Business and Professions Code § 25682(b)(2)

alcohol servers as mandated under the RBSTPA and inform the ABC on-premises licensees of their duty to ensure their employees maintain an alcohol server certification while employed.

Section 170 defines how the department will craft the alcohol server certification exam, and how alcohol servers will register with ABC to receive their alcohol server certifications, be advised of approved training providers, describes the administration and fee for the alcohol server certification exam, explains the pass rate for the alcohol server certification exam and by what method the records of alcohol server certifications will be kept.²² This rule is necessary so that alcohol servers will know how they must interact with the department to receive their certification as required by the RBSTPA.

Subsection (a) of the proposed rule requires the department to prepare the alcohol server certification exam using the same standard curriculum required to be present in every approved RBS training course. This subsection is necessary so that training providers and alcohol servers will know what topics and information is needed to pass the alcohol server certification exam.

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

Alcohol Server Fee Analysis	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Estimated annual costs of RBSTPA implementation	\$561,000	\$1,268,211	\$1,217,479	\$888,883	\$661,721	\$661,721
Cumulative costs of implementation	\$561,000	\$1,829,211	\$3,046,690	\$3,935,573	\$4,597,294	\$5,259,015
Estimated number of training providers			75	75	75	75
Total revenue \$1,000 initial review fees			\$75,000			
Total revenue \$250 renewal fees				\$18,705	\$18,705	\$18,705

²² Business and Professions Code § 25685(b)

Estimated Servers Trained			1,000,000	211,000	228,765	742,529
Total revenue \$3 exam fees			\$3,000,000	\$633,000	\$686,295	\$2,227,587
Estimated Annual Revenue	\$0	\$0	\$3,075,000	\$651,750	\$705,045	\$2,246,331
Cumulative revenue of program	\$0	\$0	\$3,075,000	\$3,726,750	\$4,431,795	\$6,678,132
Total Cumulative Sum of Costs and Benefits	-\$561,000	-\$1,829,211	\$28,310	-\$208,823	-\$165,499	\$1,419,117

Subsection (c) of the proposed rule establishes a non-refundable \$3 fee for the department to recover the costs of preparing and administering the exam and certification database. This subsection is necessary for the department to recover its costs of implementing the RBSTPA not recovered by the accreditation agency and training provider fees. See the table above for estimates to costs of implementing the department’s online certification system and the estimated revenue needed to become revenue neutral by fiscal year 2023-2024. This fee is anticipated to change over time based on department estimates of future costs of monitoring and implementing the program. The first change anticipated to be in fiscal year 2023-24 if actual costs and revenue match below estimates. Without these fees the department would not be able to the implementation of the RBSTPA

Subsection (d) of the proposed rule requires the department to only administer the alcohol server certification exam to alcohol servers who have completed an approved RBS training course. This rule is necessary to ensure alcohol servers do not have access to the alcohol server certification exam without completing the required training course as mandated in statute.

Subsection (e) of the proposed rule requires the alcohol server certification exam to test the same standard curriculum required to be present in every approved RBS training course. This subsection is necessary so that training providers and alcohol servers will know what topics and information is needed to pass the alcohol server certification exam.

Subsection (f) of the proposed rule requires the alcohol server certification exam pass rate to be set at 70 percent. This subsection is necessary to ensure that alcohol servers have learned and retained the majority of information conveyed in an approved RBS training course, which furthers the intent of the RBSTPA.

Subsection (g) of the proposed rule sets a 30-day period wherein an alcohol server can attempt to pass the alcohol server certification exam three times. This subsection is necessary to establish the testing procedure, and how many attempts at passing the exam an alcohol server has upon completing an RBS training course. The 30-day period is necessary to help the ABC on-premise licensee be aware of a server who has not been able to receive their certification within the 60-day grace period allowed by statute. Additionally, the department determined a 30-day period to complete the alcohol server

certification exam was appropriate prior to requiring the alcohol server to retake an approved RBS training course due to the need within the statute to perform both tasks within a reasonable period to be certified. The department determined through stakeholder engagement that the number of attempts for the exam without having to retake the course should be three. This number was determined as the right number of attempts to allow for an alcohol server to learn from mistakes while still creating a sense of urgency to pass within the 30-day period. The department determined that these standards will allow for all levels of education and knowledge time to learn and pass the test, especially since the department has established no time limit or limit on the use of materials provided by training providers during the alcohol sever certification exam.

Subsection (h) of the proposed rule requires the department to provide the results of an alcohol server certification exam to the training provider who provided the associated RBS training course. Upon a successful score, the training provider then issues the valid alcohol server certification as specified in Business and Professions Code § 25681(d). This subdivision is necessary to inform alcohol servers and training providers how the conditions for the issuance of an alcohol server certification will be met under the RBSTPA.

Subsection (i) of the proposed rule requires an alcohol server who has not successfully passed the alcohol server certification exam within thirty days, or three attempts, to retake another RBS training course and pay an additional \$3 fee to the department to regain access to the alcohol server certification exam. This rule is necessary to ensure all alcohol servers who are certified have completed an approved RBS training course and passed the alcohol server certification exam sufficiently close in time to meet the standards set in the statute. The department determined that if it did not require an additional fee to reregister to take the exam a second time after failure, an alcohol server would not take the RBS training course or certification exam seriously enough to change their behavior after taking it. It also incentivizes the alcohol server to pass within the first 30-day period within the first three attempts and learn the required material to do so rather than pay the additional fee. In addition, the \$3.00 fee is set to control the department's storage of data and information in its online certificate database. The additional testing data will be required to be paid for, and justifies the fee being charged a second time to an alcohol server who does not pass the initial time.

Subsection (j) of the proposed rule requires the department to keep alcohol server certification records within its online certification system. This rule is necessary to ensure ABC on-premises licensees, training providers, alcohol servers, and local law enforcement agencies all have access to every alcohol server certification on record at the department for monitoring and enforcement purposes.

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

Subsection (l) of the proposed rule sets out the alcohol server certification renewal process. This subdivision is necessary to provide alcohol servers the process by which they can renew their alcohol server certification to remain in compliance with the RBSTPA at the end of the three-year certification period.

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.²³ 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. Without this rule, bad actors could continue to commit frauds on the system for months or years until an administrative action was final.

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.²⁴ 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.

Section 173 defines the penalty guideline for a ABC on-premises licensee violation of the RBSTPA, including aggravating and mitigating factors to be taken into account when an administrative law judge (ALJ) imposes a penalty.²⁵ This rule is necessary to guide administrative law judges in their penalty decisions for violations of the RBSTPA by ABC on-premises licensees and to ensure a fair and just application of penalty in similar circumstances throughout the state.

Subsection (a) of the proposed rule establishes a 10-day suspension as the standard guideline penalty for a violation of the RBSTPA. This subsection is necessary to inform ALJ's to what the department considers an appropriate penalty to be imposed for this violation. The department determined a 10-day suspension as appropriate by weighing current penalty guidelines for similar offenses. The offenses that the RBSTPA was designed to stop, such as sales to a minor, employment of minors, sales of consumption after hours, or constitute a range from 10-day to 15-day suspensions. The department determined that a 10-day suspension was appropriate based on the behavior exhibited to violate the RBSTPA, and the ability to pay and offer in compromise if that was the only offense found in a violation. The department met with stakeholders to discuss potential penalties, and it was agreed that a 10-day suspension was fair for the conduct.

Subsection (b) of the proposed rule establishes three factors for ALJ's to use to either aggravate or mitigate a penalty imposed upon an ABC licensee based on the totality of circumstances of any specific case. Each of the three factors could be used in either aggravation or mitigation depending on the facts in the case under decision. This subsection is necessary to guide the ALJ, the department, and the ABC licensee in what facts will be significant and important to address penalty within the argument presented at a hearing. Each of these aggravating and mitigating factors could raise or lower the penalty as appropriate. Such as a person working for a year without certification at an ABC licensed premises could aggravate the penalty, whereas if the alcohol server's certification expired one week prior to citation it could be a mitigating factor. ALJ's rely upon these factors to ensure that penalties are applied fairly and equitably across the vast amount of varying facts of each case brought before them.

²³ *Id.*

²⁴ Business and Professions Code § 25685(b)

²⁵ Business and Professions Code § 25684

Subsection (c) of the proposed rule specifically articulates that a penalty imposed for a violation of the RBSTPA is to be served consecutively with other alcohol related offenses. This subsection is necessary because ordinarily similar offenses found at the same time are served concurrently. The department determined that a violation of the RBSTPA was not a similar offense to other serving-related offenses such as sale to a minor or to an obviously intoxicated patron, or sales after hours. The department determined this was necessary to ensure that all ALJs, ABC licensees and their representation know that the department considers these separate offenses and thus they be served consecutively and not concurrently. The department met with stakeholders to discuss potential penalties, and it was agreed that this standard was fair for the conduct.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS RELIED UPON.

Economic Impact of the Proposed Regulations for the Implementation of the Responsible Beverage Service Training Program Act of 2017, Dept. of Alcoholic Beverage Control. (May 22, 2019)

2010 National and State Costs of Excessive Alcohol Consumption, Sacks JJ, Gonzales KR, Bouchery EE, Tomedi LE, Brewer RD. *Am J Prev Med.* 2015 Nov;49(5):e73-e79. doi: 10.1016/j.amepre.2015.05.031. Epub 2015 Oct 1.

Toomey et al., “Qualitative Assessment of Training Programs for Alcohol Servers and Establishment Managers,” *Public Health Reports*, Vol. 113 (March/April 1998)

Holder and Wagenaar, “Mandated Server Training and Reduced Alcohol-Involved Traffic Crashes: A Time Series Analysis of the Oregon Experience,” *Accident Analysis and Prevention*, Vol. 26, No. 1 (1994).

ALTERNATIVES CONSIDERED FOR THE IMPLEMENTATION OF THE RBSTPA

The RBSTPA required ABC to develop, implement, and administer a curriculum for an RBS training program on or before January 1, 2020.²⁶ Once standards are established by regulation, ABC will be tasked with auditing and enforcing administrative penalties for non-compliance with the regulations by ABC on-premises licensees and any approved accreditation agencies or training providers. Most of ABC’s regulatory costs are fixed due to the legislative mandate on the implementation of the RBSTPA. ABC is incurring costs to develop, implement, and administer the RBSTPA. In addition, the economic burdens upon ABC on-premises licensees and alcohol servers are unavoidable due to the statutory mandate. The alternatives considered were weighed to reduce the economic impact on the affected parties as much as possible while providing the anticipated benefits of the RBSTPA.

²⁶ Business and Professions Code § 25681(a)

ABC sought stakeholder input on how to lower the economic burden upon ABC on-premises licensees and alcohol servers during the RBSTPA implementation. With an estimated 1 million alcohol servers currently working in California, any costs per alcohol server trained will have a large impact on the California economy.

The alcohol server certification exam²⁷ is an area where the statute was otherwise silent. The solution presented by stakeholders and chosen by ABC was an online certificate system and exam to streamline the process and make it easy to comply with the statutory mandates for all alcohol servers and ABC on-premises licensees in California.

Below, three differing options that were considered by ABC for administering the alcohol server certification exam are discussed weighing the burdens upon ABC on-premises licensees, alcohol servers, and training providers versus the certainty the implementation of the RBSTPA would provide the anticipated benefits.

Proposed Solution – ABC administration of an online alcohol server certification exam

ABC determined it would need to have some sort of online database to make it feasible to enable ABC on-premises licensees to ensure alcohol servers have been certified under the RBSTPA. An online system would also limit alcohol server fraud in manufacturing fraudulent alcohol server certifications. In researching the online database system, ABC discovered providing a system including an ABC administered alcohol server certification exam would provide the best outcomes.

An online alcohol server certification exam would limit the burden on alcohol servers, have better accessibility statewide, and provide funds for a contractor, or ABC, to build ABC's database, online alcohol server certification exam, and provide support to users of the online certification system. An online alcohol server certification exam would remove fraud possibilities by training providers and be self-auditing through collection of exam data for specific questions and topics.

Data collection will allow ABC 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. Under the proposed solution, the alcohol server exam results would be immediately accessible to both the alcohol servers and ABC on-premises licensees seeking to confirm their employees' compliance. An online alcohol server certification exam would have the ability to randomly generate questions and greatly decrease the likelihood of alcohol servers memorizing answer keys and not truly understanding the required curriculum. For alcohol servers who do not pass the online RBS certification exam, immediate feedback could be given regarding the topics of questions they were unable to answer to increase their chances of passing on future attempts.

The ABC administered alcohol server certification exam option was chosen because it was shown to provide the largest economic and educational benefits with the least adverse economic impact upon alcohol servers, ABC on-premises licensees, and training providers.²⁸

²⁷ Business and Professions Code § 25681(d)

²⁸ For a detailed discussion and breakdown of various economic impacts of each alternative considered see ABC's Standard Regulatory Impact Assessment.

Alternative 1 – In-person proctoring for alcohol server certification exam

ABC examined the option of mandating the alcohol server certification exam for alcohol servers be formally proctored outside of an RBS training course with an exam created by ABC. ABC would create an exam by contracting with education and exam creation experts to ensure the veracity of the challenge exam. The proctoring option would ensure training providers teach the appropriate material and the alcohol server has learned the material with a low likelihood of fraud. Requiring the alcohol server certification exam to be proctored would allow accompanying regulations for the approval of the accreditation agency and training providers to be less costly as there would not be the need for costly extensive background checks for the training providers. This would decrease the costs associated with training provider approval by ABC for all parties involved. In addition, a proctored alcohol server certification exam could be used as a self-auditing tool so ABC would not need to allocate significant resources to audit the RBS training courses being provided after initial approvals.

However, in order to mandate in-person or online proctoring of the alcohol server certification exam, ABC would need to contract with other California entities, like California Community Colleges, other education groups, a private proctoring company, or multiple proctoring companies, to ensure the test is available to all 1,000,000 alcohol servers statewide. ABC would also need to allow the contracted test provider access to the ABC online certification system to ensure the alcohol server certification exams are matched to the correct alcohol server who received training. The stream of training and testing data would involve many areas where human error could cause increased ABC costs, confusion for law enforcement, and faulty ABC on-premises licensee records of employees' certifications.

The proctoring option would also cause a significant burden upon the alcohol servers ABC on-premises licensees. Paying for individual proctoring can cost as much as \$200 per test in rural averages \$100 per alcohol server certification exam. This heavy burden would be exacerbated if alcohol servers do not pass on the first attempt as each attempt at passing the alcohol server certification exam would require an additional proctoring fee. This figure does not include travel time and costs to and from a proctoring location. With an anticipated 1,000,000 alcohol servers being trained, this one additional cost would add over \$233 million to the initial fiscal impact of the RBSTPA regulations package in 2020 and 2021. This cost would then be repeated and spread over the next three years in 2022-2024 as the population of alcohol servers experienced turnover and certifications expired after three years.

ABC determined the fiscal impact and burden upon alcohol servers and ABC on-premises licensees under this alternative was too high to be reasonable and rejected this alternative for the administration of the alcohol server certification exam.

Alternative 2 – Training providers administering the alcohol server certification exam

Many of the existing RBS training courses include some sort of exam at the end of their course to ensure the students understand and comprehend the material. Due to the varied and fragmented rules in place in the various mandatory RBS jurisdictions in California, these RBS exams are all different and would most likely fail to comply with the legislative curriculum standards set by the RBSTPA. This would mean that training providers would also need to modify and create an alcohol server certification exam leading to another \$1000 - \$5000 of cost to each of the training providers in preparation of accreditation. ABC would also need to authorize each training provider's alcohol server certification exam under this option leading to minor increased costs of accreditation by \$100-\$200 per training provider. Additional startup costs and ABC review fees would add an additional estimated cost of \$390,000 to the costs estimated in 2020. These costs would raise the average cost of an RBS training course by \$3-\$5; this would provide no change to the costs and benefits to alcohol servers but shift the revenue for ABC to

recover costs from the administration of the alcohol server certification exam to the training providers. ABC would need to recover its costs of the program in some way from the training providers directly in years 2021 – 2024, like charging a per student fee of \$5. This shifting of costs and revenue does not affect the total estimates of the implementation of the RBSTPA.

Alternative 2 would also incentivize training providers to have the shortest and easiest exam under the ABC regulations. This would effectively lower the impact of the RBSTPA over time due to lack of change in alcohol server behavior due to ineffective RBS training courses. This would cause the ABC estimates of the benefits to the California economy to be much lower or even non-existent. The alcohol server certification exams would need to have static questions to allow the RBS Trainers the ability to correct them quickly. The alcohol server certification exam, grading, and uploading the information to an ABC database would increase the costs of an RBS training course by an estimated \$5. This would also create some incentive to publish the alcohol server certification exam questions and allow alcohol servers to memorize an answer key rather than learn the information.

Allowing training providers to administer the alcohol server certification exam at the end of their RBS training courses is the easiest way to execute them. This option would not place any additional burden upon alcohol servers or ABC on-premises licensees beyond paying for and attending the RBS training course and the additional time to take a written exam following the conclusion of an RBS training course. Training providers would be able to upload all information on their students to the ABC online certification system at one time for those who took the course and passed the exam.

However, when training providers administer the alcohol server certification exam, there is a greatly increased likelihood for fraud by both the alcohol servers and the training providers. ABC would need to allocate significant resources to audit individual RBS training courses to ensure the material being taught and the administrations of the alcohol server certification exam are being done as approved by ABC. Extensive ABC auditing would be the only way to ensure alcohol servers are being taught the correct curriculum and the anticipated benefits of the program are realized.

The RBSTPA regulations package would need to include alcohol server certification exam requirements to be met by the training providers. Examples include, being taken in pen, being corrected and graded by the RBS Trainers themselves, and graded tests being provided to ABC for auditing purposes.

Through giving training providers the power to individually certify and test their students, additional limits on approved training providers would also need to be imposed, such as no affiliation or employment with any ABC licensee. ABC would need a more extensive approval process for RBS Trainers on an individual basis, including background and affiliation checks. The extra steps for approval would raise the per trainer cost by \$100-\$200 and add an additional start-up cost of \$100,000 for the training providers in year 2020, and an ongoing cost of \$5,000 per year due to RBS Trainer turn over.

Under Alternative 2, the quality of the RBS training provided by implementation of the RBSTPA would suffer. Alcohol server certification exam creation would also be a big barrier to entry for the non-profit and options currently in the market that do not provide extensive testing in their current RBS training course. The increased enforcement costs for ABC personnel and law enforcement agencies to enforce the RBSTPA standards under this alternative would approach or even exceed the costs saved under this model in order to provide the benefits envisioned in the legislative intent for the RBSTPA.

The market pressures driving training providers accredited under this option would lead to faster and less-intensive RBS training courses and alcohol server certification exams as training providers seek

more market share. These market pressures have manifested themselves in other mandatory RBS jurisdictions and are seen as negating the positive economic impacts surrounding overconsumption of alcohol which goes against the Legislative intent of the RBSTPA. If the implementation of the RBSTPA does not provide at least a one percent reduction to the overuse of alcohol the benefits would not outweigh the considerable costs of implementing the RBSTPA in the California economy. ABC does not anticipate a five percent reduction in the overuse of alcohol under Alternative 2. For this reason, Alternative 2 was rejected by the ABC.

MANDATED USE OF ABC ONLINE CERTIFICATE SYSTEM

The creation and mandatory implementation of the department's online certification system will require ABC on-premises licensees, alcohol servers, training providers, law enforcement and the ABC to all use an online certification system to validate alcohol server certifications. The proposed alternative provides a more robust and secure system than a paper certificate system and allows all parties to keep records in a free online database to lower the economic burden on affected persons.

A prescriptive standard was explored for the reporting and record keeping mandates within the RBSTPA, but it was a larger economic burden to require each ABC on-premises licensee and training provider to create their own records keeping system. ABC anticipates that ABC on-premises licensees and training providers who already have an electronic system to track and report data will be able to automate their reporting through the ABC online certification system using most current technologies causing no change in their systems or burden upon them to replace their technology solutions.

**Department of
Alcoholic Beverage Control**

ADDENDUM TO INITIAL STATEMENT OF REASONS

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

PROPOSED MODIFICATIONS
OF ADOPTIONS TO TITLE 4:

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

NECESSITY

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

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

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

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

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

Section 163 defines the topics to be covered in an approved RBS training course for the statutory required topic “the impact of alcohol on the body.”²⁹ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

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

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

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

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

Section 164 defines the topics to be covered in an approved RBS training course for the statutory required topic “state laws and regulations relating to alcoholic beverage control, including laws and regulations related to driving under the influence.”³⁰ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

²⁹ Business and Professions Code § 25680(c)(2)

³⁰ Business and Professions Code § 25680(c)(3)

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

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

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

Section 166 defines the topics to be covered in an approved RBS training course for the statutory required topic “the development of management policies that support the prevention of service or sale of alcoholic beverages to underage persons or intoxicated persons.”³¹ This section is necessary to define the minimum standards of curriculum for a portion of an RBS training course for both creation and approval.

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

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

Section 168.3 Subsection (f) of the proposed rule outlines ten reasons that the department can take disciplinary action against a training provider for violating the RBSTPA or the proposed regulations.³² This subsection is necessary to inform a training provider of administrative actions that could be taken against them and give the power to the department to suspend or revoke approval for misconduct by a training provider. Each of the ten reasons for disciplinary action are necessary because they are either a training provider not meeting the standards of approval set forth in the RBSTPA or the regulatory action, or an action of fraud or dishonesty on behalf of the training provider. The department must be able to deny or revoke approval of a training provider that does not meet the appropriate standards or commits acts of fraud or dishonesty to ensure the online certificate system remains valid.

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

Section 169 defines how an ABC on-premises licensee will verify that the alcohol servers in their employ have been certified.³³ This section also defines records required for an ABC on-premises licensee to prove an affirmative defense against an action under the RBSTPA.³⁴ This rule is necessary so ABC on-premises licensees will understand what is required of them by the RBSTPA.

³¹ Business and Professions Code § 25680(c)(5)

³² Business and Professions Code § 25681(a)(2) and § 25685(b)

³³ Business and Professions Code § 25682(b)(1)

³⁴ Business and Professions Code § 25682(b)(2)

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

Section 170 defines how the department will craft the alcohol server certification exam, and how alcohol servers will register with ABC to receive their alcohol server certifications, be advised of approved training providers, describes the administration and fee for the alcohol server certification exam, explains the pass rate for the alcohol server certification exam and by what method the records of alcohol server certifications will be kept.³⁵ This rule is necessary so that alcohol servers will know how they must interact with the department to receive their certification as required by the RBSTPA.

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

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

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

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

³⁵ Business and Professions Code § 25685(b)

**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.³⁶ 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

³⁶ 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 departments 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 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.³⁷ 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 officers' 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.

³⁷ 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.³⁸ This section also defines records required for an ABC on-premises licensee to prove an affirmative defense against an action under the RBSTPA.³⁹ 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

³⁸ Business and Professions Code § 25682(b)(1)

³⁹ 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.⁴⁰ 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.

⁴⁰ *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.⁴¹ 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.

⁴¹ Business and Professions Code § 25685(b)