

**Department of
Alcoholic Beverage Control**

INITIAL STATEMENT OF REASONS

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

PROPOSED AMENDMENTS TO TITLE 4: SECTIONS 163, 166, 168, 168.3, AND 170.

PROBLEM STATEMENT AND PURPOSE

The Legislature enacted the Responsible Beverage Service Training Program Act of 2017 (RBSTPA), codified as Business and Professions Code §§ 25680-25686. The RBSTPA requires the Department of Alcoholic Beverage Control (ABC) to develop, implement, and administer a curriculum for a statewide RBS program and promulgate regulations specifically addressing the approval of training providers on or before January 1, 2020.¹ ABC is also granted general authority to adopt rules necessary for the administration of the RBSTPA.²

The RBSTPA regulations, found in Title 4 California Code of Regulations sections 160-173, became effective on May 20, 2020. Although the statewide RBS program was initially supposed to begin on July 1, 2021, the passing of Assembly Bill 82, on June 29, 2020, extended the date for this requirement to July 1, 2022.

Since the adoption of the initial regulations, ABC has approved training providers who are currently offering training and alcohol servers have begun the certification process prior to the institution of the legal mandate in July 2022. These proposed amendments are intended to address issues ABC, training providers, and alcohol servers have experienced in the new program, and to fix grammatical and legal errors in the initial construction.

BENEFITS

By addressing issues to the new statewide RBS program at this early juncture, ABC will be able to create a more efficient program for all who must comply with portions of the law and regulations. These proposed amendments and changes will increase the clarity of portions of the curriculum and policies to ensure a fair and equitable management of the statewide RBS program by ABC.

AUTHORITY

The RBSTPA grants ABC regulatory authority and mandated promulgation of regulations, setting standards for the mandatory RBS training course curriculum,³ accreditation agency and training provider approval standards,⁴ and any other rules ABC determines are necessary for the administration of the

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

² Business and Profession Code § 25685(b)

³ Business and Professions Code § 25681(a)

⁴ Business and Professions Code § 25681(b)

RBSTPA.⁵ This regulatory package further refines and makes complete the regulatory needs to implement the statewide RBS program mandated by statute.

NECESSITY

The specific purpose for each proposed amended section or subsection is as follows:

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.”⁶ 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 (e) of the regulation 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 obvious intoxication in their patrons. This subsection was amended for a grammatical change necessary for increased clarity.

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.”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 (i) of the regulation requires training providers to present hiring practices for alcohol servers and includes four subdivisions regarding age standards, certification under the RBSTPA, 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 cannot be an alcohol server by age, and what records need to be kept.

Subparagraph (2) of this section was amended to better conform with the law as stated in Business and Professions code 25663. This amendment was necessary because under current California law, an employee who is at least 18 years of age may pour an alcoholic beverage if it is incidental to food service and a part of their job duties.

Section 168 defines the process and criteria for ABC to approve a training provider under the RBSTPA.⁸ This section is necessary to advise training providers about what they are required to submit to ABC for approval and what ABC will use to approve or deny their application.

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

⁵ Business and Professions Code § 25685(b)

⁶ Business and Professions Code § 25680(c)(2)

⁷ Business and Professions Code § 25680(c)(5)

⁸ Business and Professions Code § 25681(b)(1)

Subdivision (a)(12) was added to this subsection to require training provider applicants who wish to obtain approval for an RBS training course in a language other than English to provide an English translation of all elements of their program for ABC's approval. This subdivision is necessary to streamline the RBS training course approval process facilitated by ABC. In the process of approving non-English RBS training courses, ABC has had conflicts with training provider applicants over the translation and meaning of non-English materials due to the nature of translations being subjective. These conflicts have led to long wait times for approval and inefficient use of resources for all parties. This subdivision establishes that RBS training providers bear the burden to ensure any non-English program is conveying the principles within the RBSTPA regulations to alcohol servers of the approved program as was conveyed in the English translation provided to ABC. It is necessary for ABC to receive a certification that an ABC training provider asserts their translation of their non-English training program to be a true English translation to ensure non-English training courses comply with the RBSTPA regulations. In addition, if training providers must provide their own English translation for approval of non-English programs, ABC staff will be able to approve of these programs quickly and efficiently using the supplied correct English translation to aid in the certification of non-English speaking alcohol servers under the legal mandate.

Subdivision (a)(14) was amended to make the subsection grammatically correct by inserting the word "and" at the end of the subdivision. This amendment is necessary to increase clarity and understanding of the RBSTPA regulations.

Subdivision (a)(15) was amended to change the referenced section of Title 4 of the California Code of Regulations as changed in the proposed regulatory action. This amendment is necessary to increase clarity and understanding of the RBSTPA regulations.

Subsection (d) was added to this section to lay out the process, deadlines, and requirements for an approved training provider that has a change in their ownership structure or executive officers. Within 30 days of the change, an approved training provider must notify ABC and provide the updated business information that is required pursuant to California Code of Regulations Title 4 §168(a)(1)-(8). 30 days is a reasonable amount of time for approved training providers to notify ABC of any ownership or other leadership change. ABC has similar requirements for all licensees to ensure the individual or entity granted authority by ABC approvals or licensure is properly documented and publicly available. ABC must be timely notified of the change to keep records up-to-date and avoid confusion by ABC, alcohol servers, ABC licensees, and the public when participating in an approved RBS training course. It is necessary ABC have the current information specified in California Code of Regulations Title 4 §168(a)(1)-(8) for and enforcement purposes and to ensure the smooth and efficient implementation of the RBSTPA. The training provider must also provide an ownership or officer investigation fee as specified pursuant to California Code of Regulations Title 4 § 168.3(m)(3). This subsection was necessary to set a timeline within which an approved training provider must notify ABC of any ownership or officer changes. This subsection was also necessary to establish the necessary fee for ABC's investigation of the changes in ownership or executive officers involved with an approved training provider to ensure they continue to comply with all requirements of the RBSTPA regulations.

Subdivision (d)(1) was added to this section to provide the basis for an action taken by ABC after discovering an approved training provider has not informed ABC of a change in ownership or officers prior to the 30-day deadline established in this subsection. This subdivision is a necessary to tie the penalty for noncompliance already established in California Code of Regulations Title 4 § 168.3(g)(5) to the deadline that has been added to ensure compliance. Prior to this change, a training provider could be

subject to denial, revocation, or suspension of their approval for failure to notify ABC of a change in ownership or officers, but they did not have a 30-day period with which to comply making it subject to penalty if they did not immediately notify ABC of these actions. This provides training providers with a reasonable timeframe to comply with this requirement.

Section 168.3 requires all training providers to keep their submitted contact information and lists of their owners and officers current in ABC'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.⁹ 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 regulations.¹⁰ The section defines the modification process for approved RBS training courses, and the ABC fees for training provider approval, review, and renewal.¹¹ This rule is necessary to ensure an approved training provider is aware of how to engage with ABC to receive modifications, administrative actions, or the fees required for those interactions if any.

Subsection (d) requires approved training providers to immediately give a notice of completion to any alcohol server that finishes their RBS training course by email or handout. The notice must include, the name of the alcohol server, the name of training provider, the date of completion, and a direction to the alcohol server to complete their certification by taking ABC's alcohol server certification exam. This section is necessary to aid ABC in documenting when an alcohol server completes an approved training course and ensures a training provider is complying with in California Code of Regulations Title 4 § 168.3(e). While most approved training providers have had no trouble in meeting this requirement of notifying ABC upon completion of a training, some are not complying. ABC needs the alcohol server to have proof of course completion prior to taking any action against a training provider that does not comply in a timely manner pursuant to California Code of Regulations Title 4 § 168.3(g)(8). In addition, this subsection is necessary to remind alcohol servers that they have not been certified at the conclusion of an approved training course, but they must also take and pass ABC's alcohol server certification exam prior to being certified under the mandate.

Subsection (g) of the regulation outlines ten reasons that ABC can take disciplinary action against a training provider for violating the RBSTPA or the proposed regulations.¹² This subsection is necessary to inform a training provider of administrative actions that could be taken against them and give the power to ABC 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 regulation, or an action of fraud or dishonesty on behalf of the training provider. ABC 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 and the content being conveyed through training is relevant and accurate according to the mandated teaching curriculum.

Subdivision (g)(5) was amended to clarify that ABC could act against an approved training provider pursuant to California Code of Regulations Title 4 § 168.3(g) for failing to notify ABC of a change in either its owners or its officers, and not just when both have changed. This amendment is a necessary grammatical change to align the subdivision with ABC's original intent of the subdivision.

⁹ Business and Professions Code § 25681(d)

¹⁰ Business and Professions Code § 25681(b)(2)

¹¹ Business and Professions Code § 25681(b)(2) and § 25685(b)

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

Subdivision (g)(8) was amended for clarity, reference, and grammar. The amendment was necessary to provide clarity to approved training providers within the section authorizing ABC to act for failure to meet the requirements pursuant to California Code of Regulations Title 4 § 168.3(e).

Subdivision (g)(9) was amended to change the referenced section of Title 4 of the California Code of Regulations as changed in the proposed regulatory action. This amendment is necessary to increase clarity and understanding of the RBSTPA regulations.

Subsection (i) of the regulation outlines the procedure for a training provider to modify their approved RBS training course on their own, without departmental mandate. This subsection is necessary to allow training providers flexibility to update and innovate their RBS training programs and to improve their teaching methods. ABC desired to incentivize continual updates to allow training providers to improve their programs through innovation.

Subdivision (i)(4) was amended to change the referenced section of Title 4 of the California Code of Regulations as changed in the proposed regulatory action. This amendment is necessary to increase clarity and understanding of the RBSTPA regulations

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

Subdivision (j)(2) was amended to change the referenced section of Title 4 of the California Code of Regulations as changed in the proposed regulatory action. This amendment is necessary to increase clarity and understanding of the RBSTPA regulations.

Subsection (l)(1) – (9) These subdivisions set the procedure, penalties, and requirements for a training provider to seek its annual renewal with ABC. These subdivisions are necessary to establish a process by which training providers seek renewal and clarify that the same standards ABC uses for initial approval will apply during the annual renewal process. ABC 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. ABC 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. These subsections were amended to change referenced sections of Title 4 of the California Code of Regulations as changed in the proposed regulatory action. This amendment is necessary to increase clarity and understanding of the RBSTPA regulations

Subsection (m) of the regulation establishes non-refundable fees for ABC to recover the costs of approving and monitoring training providers. This subsection is necessary for ABC to recover its costs of approving the training provider.

Subsection (m)(2) was amended to make the subsection grammatically correct by inserting the word “and” at the end of the subdivision. This amendment is necessary to increase clarity and understanding of the RBSTPA regulations.

Subsection (m)(3) was added to this section to establish a fee to recover costs of an approved RBS training provider transferring their approval due to a change of ownership or corporate officers pursuant

to Title 4 of the California Code of Regulations section 168 (d). This subsection is necessary for ABC to recover the reasonable costs of another background investigation. The \$250 fee was calculated using the estimated average hourly salaries of ABC staff for the estimated hours for completing this type of investigation.

Section 170 defines how ABC will craft the alcohol server certification exam, how alcohol servers will register with ABC to view approved training providers, how to receive their alcohol server certifications, 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.¹³ This rule is necessary so that alcohol servers will know how they must interact with ABC to receive their certification as required by the RBSTPA.

Subsection (c) of the regulation establishes a non-refundable \$3 fee for ABC to recover the costs of preparing and administering the exam and certification database. This subsection is necessary for ABC to recover its costs of implementing the RBSTPA not recovered by the accreditation agency and training provider fees. This fee is anticipated to change over time based on department estimates of future costs of monitoring and implementing the program. The first change is anticipated to be in fiscal year 2023-24 if actual costs and revenue are below estimates. Without these fees ABC would not be able to successfully oversee the implementation of the mandated RBSTPA program.

Subdivision (c)(1) was added to this section to ensure that an alcohol server who has paid their non-refundable fee either by credit card or check, and has completed the test, but then dishonors the payment, either through a bounced check or a complaint to their credit card company, would have their certification as an alcohol server in compliance with the RBSTPA suspended until ABC receives payment in full, including any fees or penalties associated with the dishonored payment. This subdivision is necessary to ensure ABC can recover its reasonable costs of monitoring and implementing the RBSTPA program as mandated by statute.

Subsection (f) was amended to clarify that the requirement to achieve 70% correct answers on the alcohol server certification exam is required for an alcohol server to receive an alcohol server certification. This amendment is necessary to avoid confusion and delete unnecessary language from the regulation.

Subsection (g) was amended to begin the 30-day deadline for exam completion from the date ABC is notified the alcohol server completed an approved alcohol server training course, rather than the date the alcohol server completes the course. When the training provider complies with their requirements pursuant to California Code of Regulations Title 4 § 168.3(e), this changes little. However, this amendment was necessary because if a training provider fails in their obligation to inform ABC an alcohol server has completed an approved RBS training course in a timely manner, the alcohol server is disadvantaged. ABC has encountered situations in which the training provider failed to notify ABC for the entirety of the 30-day period after the completion thereby denying the alcohol server the opportunity to take the alcohol server certification exam under the previous language. This change will ensure an alcohol server will be able to take the exam even if the approved training provider fails to meet its obligations pursuant to California Code of Regulations Title 4 § 168.3(e).

¹³ Business and Professions Code § 25685(b)

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

Articles

There are no articles that pertain to these proposed regulations.

Department and Appeals Board Decisions

There are no Department or Appeals Board decisions that affect these regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department of Alcoholic Beverage Control has determined that these amendments to the existing RBSTPA regulations have a negligible economic impact due to their being policy changes, explanations, or grammatical changes for clarity. The substantial fiscal impact of the RBSTPA that was addressed in past regulatory actions has not been changed by any of these amendments or additions, thus this proposed regulatory action has no measurable economic impact. The proposed amendments and additions will ensure the continued viability and success of the RBSTPA program that is set to be effective July 1, 2022, without changing the economic impact on anyone involved in the process. As a result, the Department does not anticipate the proposed amendments will create or eliminate jobs or businesses in California or expand existing businesses.

Furthermore, the proposed amendments will benefit the health and welfare of California residents by refining and fixing problems with the current implementation of the RBSTPA regulations previously made effective May 20, 2020. The results of these limited amendments should provide clarity to ABC licensees, alcohol servers, ABC staff, training providers, and the public. The only economic impact is the additional procedure and accompanying fee for an approved training provider to be sold or reorganized and keep its approval without duplicating the entire initial application process. This will be a cost savings for training providers who are sold or reorganize even though a new fee is created to recover ABC's cost of investigating to new owners or officers. There are no anticipated benefits to worker safety or the state's environment because these amendments do not relate to or impact worker safety issues or the environment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

ABC has made the determination that the adoption of these regulations will have negligible economic impact on current and prospective training providers and licensees because it fills in gaps of policy and streamlines the existing regulatory scheme already in effect. None of these amendments or additions add or remove costs of the program not already accounted for in past regulatory actions on the RBSTPA.

Based on the above, ABC determined that the proposed regulatory action will not have a significant statewide adverse economic impact to businesses statewide including the ability of California businesses to compete with businesses in other states.

ALTERNATIVES CONSIDERED FOR THE IMPLEMENTATION OF EMERGENCY DECISIONS BY THE DEPARTMENT

There is no economic impact through the proposed regulatory package, and there are no alternatives considered for their implementation.

REGULATORY MANDATES

This regulatory package creates no new duties or regulatory mandates for licensees, local governments, or ABC.