



October 10, 2019

Via E-mail and Federal Express

Responsible Beverage Service Training Program
Department of Alcoholic Beverage Control
3927 Lennane Drive, Suite 100
Sacramento, CA 95834

Re: Supplemental Comments of Hinman & Carmichael LLP- Proposed Responsible Beverage Service Program Regulations

We filed detailed Comments on the ABC's proposed Responsible Beverage Server Training Program regulations on September 20, 2019 and hereby incorporate those Comments by reference.

As we said in our September 20 Comments, we support the goals of the Responsible Beverage Service Training Act of 2017 ("the Act") and the significant efforts of the Department of Alcoholic Beverage Control ("Department" or "ABC") to adopt regulations to implement the Act. However, because the Act affects millions of Californians employed in the alcoholic beverage industry, we were among several interested parties requesting an extension of time for additional Comment and a Public Hearing. We applaud the ABC for extending the Comment period and noticing the Public Hearing to be held October 11, 2019.

We have developed, and submit for consideration, an example of a shortened and simplified set of regulations. Our proposed regulations require all alcohol beverage servers to be adequately trained to help in achieving the goal of reducing the instances of both drunk driving and service of alcohol to minors; all without imposing unreasonable requirements on servers and/or the businesses affected.

A More Simplified RBS Regulations and Curriculum

A major concern of our September 20 Comments is that the curriculum-related regulations needed to be simplified to make passing the final examination relevant to the goals of the Act and less difficult than what it would be under the initial curriculum proposed by ABC.

Comparing the rigors of the ABC's proposed curriculum and exam for beverage servers with, for example, the Department of Motor Vehicles written driving exam, the prospects of the average beverage server passing are dim. Several reports on the pass rate for the DMV written test suggest that between 44 and 55% fail the first time. Driving is important and passing the driver's written exam is an important part of obtaining a driver's license. However, passing the beverage servers exam is critical to each person's employment and livelihood.

The State Administrative Manual (“SAM”), and relevant case law, place limitations on the Department regarding the scope of regulations it may adopt to implement a statute. We propose a streamlined set of regulations (attached) that comports with the mandates of the Responsible Beverage Serving Training Act Of 2017 and the intent of the Department’s proposed regulations without being unnecessarily burdensome.

We submit this more simplified set of regulations will achieve the goals of the Act and meet the “reasonable compliance” standard and “prudent person test”¹ set forth in the SAM.

Reducing the Economic Impact on Small Businesses and Potential Servers

A key requirement in the SAM is that in developing the new regulations the Department must consider all less burdensome alternatives and adopt regulations that do not impose unrealistic obligations on small businesses or the alcohol beverage servers who must comply with the regulations.

In developing the attached regulations, we reviewed several regulations and curriculum standards adopted in other states that have already successfully achieved the same goals as the California Responsible Beverage Training Act.² The goals of these programs mirrored the goal of the California Act – to reduce instances intoxication, underage drinking, and drunk driving.

The regulations and curriculum as now proposed by the Department are much more complicated than required and because of this, makes passing the final examination difficult for the average server causing hardship for businesses in hiring eligible servers and impeding honest workers the right to work in this industry.

Server Exams Should Be Administered by the Trainer and Server Certificate Records Should Be Kept by the Trainers, the Servers, and Employers Only

A major concern raised in our September 20 Comments related to the Department’s intent to develop an elaborate online data program: (1) to collect and keep entirely too much personal data on every server on a new online data site, (2) be the only entity administering all the tests statewide, and (3) impose unreasonable costs on all businesses to maintain the proposed online site.

Our first concern is the need to maintain each employee’s privacy. Under the Proposed Regulations, to apply to take the server’s exam, the individual must provide the Department with his/her (1) legal name, (2) birthdate, (3) email, (4) zip code of current address, and (5) personal identification information (driver’s license, social security number, or similar employment identification number).

¹ SAM § 6200 explains the “prudent person test”: “For example, if an agency is required by regulation to provide transportation for certain persons, it clearly would not be appropriate to purchase limousine-type luxury automobiles to do so. On the other hand, it would not be appropriate to provide the service by purchasing tandem bicycles. Reasonable compliance can be achieved with some mode of transportation between the two extremes cited.”

² See, e.g., Arizona, Louisiana, Minnesota, North Carolina, Oregon, Rhode Island, Texas, Utah, Washington, Wisconsin as well as the TIPS program by Health Communications, Inc. and the program under America’s Alcohol Certified Educational Assn.

The Department states that approximately 1 million employees must be certified statewide. It is highly likely in this day of cyber security attacks, that some, or all, of these employees' private information could be at risk.

Our second equally important concern is the cost to businesses to maintain such a program. The Department stated the estimated cost for each small business is \$2,121.40 for the first year and \$1,060.70 for ongoing annual costs (years 2022-2024). This is a very large and significant new expense for a small business. Similarly, for a "typical business" the initial cost the first year is \$10,607 and annual ongoing costs \$5,303.50 (years 2022-2024).

Our proposed regulations require each accredited trainer give the final exam as part of the training program and keep a record of each server certificate it issues. And, each server should have a copy of his/her certificate and each employer should keep a copy as part of the employee's confidential records. The employer and/or the server must present a copy of the certificate upon request from the Department as part of an audit or investigation. There is simply no need to have an enormous data bank containing personal data on every server in the state. This goes far beyond the intention of the Act and presents an unreasonable burden on businesses and servers.

The New Regulations Must Conform to the Straightforward Intent of the Act and Should Not Contain Unnecessary Rules That Impede Reasonable Implementation of the Act

The purpose of the statute is not to create experts; rather, it is to create training programs covering the basics in such a fashion that a person of ordinary intelligence can recognize the common signs, and consequences, of intoxication.

The legislature clearly defined the problem it intended to address in passing this Act: reducing instances of sales to minors and intoxicated persons and to reduce drunk driving. The legislature also clearly presented its solution in the Act: the server should be trained in five basic subjects³ to learn methods on how to avoid sales to minors and intoxicated persons to reduce drunk driving. Training in these five subjects is not immutable and should all be part of well-designed commercial training programs that can be adapted as new information, and new techniques and tactics are developed.

The role of the Department is simply to implement the Act as written. The Department may not "enlarge" the Act through excessive regulation and detailed definitions. The Department's Proposed Regulations, however, do "enlarge" the scope of the Act in many of the regulatory sections. The legislature did not state every beverage server must become expert on the detail about how alcohol is absorbed in the body or the role of different organs in metabolizing alcohol. The Act merely requires the training to inform servers of the signs of intoxication and how to handle refusing to serve patrons if they appear intoxicated to

³ Business & Professions Code 25680: (1)Social impact of alcohol,(2)Impact of alcohol on the body, (3)State laws and regulations related to driving under the influence, (4) Intervention techniques to prevent the service of state of alcohol to underage or intoxicated patrons, (5) Instruction on the development of management policies supporting the prevention of service or sale of alcohol to underage or intoxicated patrons.

reduce drunk driving.

Hinman & Carmichael's Proposed Revisions to the RBS Regulations

Our edits to the Proposed Regulations should simplify the curriculum to create a program so that persons of ordinary intelligence are sufficiently trained to be able to identify intoxication and learn ways to intervene to help reduce drunk driving and to identify minors and thereby eliminate unlawful sales to minors. The revised program provides adequate training but also reduces the difficulty of passing the final exam under the Department's Proposed Regulations if they were to be adopted without editing.

We divided the Regulations into Part A (which addresses the training curriculum requirements) and Part B (which addresses the RBS Accreditation Process). Sections 167 and 168 were changed to keep the Training Program Regulations in one section. New Section 167 now addresses the Server Certification Exam and new Section 168 now addresses the Certification Record Requirements.

Part A was edited to simplify the Training Program to conform with the intent of the Act and to redact unnecessary parts that went beyond "reasonable compliance" and which imposed unnecessary burdens on both businesses and the servers.

In Part B we edited the out the reference to the Department's online certification and recordkeeping systems to conform with new Part A section 168 "Certification Record Requirements" providing the Trainer, Employer and server shall keep a copy of each server's certification as part of confidential records. We also added a section modifying the "moral turpitude" criminal history prohibition to those with convictions within a ten-year period and for those outside that period who have not been found to be rehabilitated.

We look forward to further working with the Department and other stakeholders to develop a simplified training program that implements the intention of the Act without unnecessary requirements, and without imposing a large and unnecessary financial burden on businesses and servers.

Sincerely,



John A. Hinman
Hinman & Carmichael LLP

Attachment – Proposed Regulation

TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS

Text of new proposed language.

ARTICLE 25

Responsible Beverage Service Training Program

Authority cited: Sections 25680-25686, Business and Professions Code.

PART A. The Responsible Beverage Service Training Program

§160. Responsible Beverage Service Training Program.

(a) The California Alcoholic Beverage Commission adopts these regulations in compliance with Business and Professions Code § 25681 with the intent to provide training to individuals who serve alcohol to help (i) prevent serving alcohol to obviously intoxicated persons and (ii) avoid serving alcohol to minors.

(b) Definitions for use in this article and in interpreting and enforcing Business and Professions code §§ 25680-25686.

(1)“ABC” means the Department of Alcoholic Beverage Control.

(2)“ABC on-premises license” means an ABC license that grants the privilege to serve alcoholic beverages to patrons who then consume them within the licensed premises.

(3)“ABC on-premises licensee” means the owner of an ABC on-premises license

(4)“ABC licensed premises” means a location where an ABC on-premises licensee uses the privileges granted by an ABC on-premises license.

(5)“Accreditation agency” means a business entity the ABC has given the authority to approve RBS training courses and training providers according to the standards of the RBSTPA and this article.

(6)“Alcohol server certification exam” means an exam given to alcohol servers by the training provider after they complete an RBS training course to test the alcohol server’s knowledge of the required curriculum.

(7)“Alcohol server certification” is issued to the server by the training provider after successfully completing the RBS training course and passes the final certification exam and is valid for three years after the certification is issued.

(8)“Initial employment” means the date an employee signs an employment contract or employee tax and identification documents, whichever is sooner.

(9)“Interactivity element” means a portion of an RBS training course that includes role-playing examples using video or online scenarios that demonstrate techniques for refusing service to intoxicated persons and responding to situations that commonly arise when serving alcohol.

(10) “Manages or supervises” means any person who trains, hires, or oversees alcohol servers at an ABC licensed premises, or any person who makes policy or operational decisions dictating how alcohol service is performed at an ABC licensed premises, including but not limited to, when to check identification or when to refuse service to a patron. This definition specifically excludes an employee or contractor of another separate ABC licensee who is training alcohol servers for marketing or distribution purposes.

(11) “Owners and officers” means any owner, director, or officer of a business entity that has at least a 10 percent interest or control of a business entity.

(12) “RBS” means a Responsible Beverage Service Training course administered by a training provider that is designed to instruct and educate alcohol servers on responsible practices regarding the sale and service of alcoholic beverages regarding the five subject areas listed in Business & Professions Code § 25680(c) and described in California Code of Regulations Title 4 §§162 -166.

(13) “Training provider” means any provider accredited by an accreditation agency authorized by the ABC to provide RBS training, any provider authorized directly by the ABC to provide RBS training, or the ABC if the ABC is providing the training.

§161. Responsible Beverage Service Training Course General Requirements

(a) Training providers shall present the topics and information contained in California Code of Regulations Title 4 §§162 -166 to alcohol servers in their RBS training course. The course shall be no longer than a total of 4 hours which also includes enough time for taking the final examination.

(b) The course must be available in all languages used in California described for election ballots.

(c) The RBS training course must include interactivity elements demonstrating how to identify intoxicated persons, check IDs for minors, and techniques for dealing with common problems that arise with customers drinking alcoholic beverages.

(d) A training provider shall provide either handouts, electronic files, or transcripts detailing its RBS training course content to aid alcohol servers in refreshing their knowledge after they complete an approved RBS training course.

(e) The accredited training provider shall administer the final examination based on the approved course content.

(f) The accredited training provider shall issue a certification to each server passing its RBS training course and examination and the training provider shall keep a record of all certifications issued. The Training provider must assure certification records be kept securely to protect employee private information.

(g) The training provider must confirm that each server, before taking the course, is at least 18 years old and eligible for employment with the on-premise licensee.

§162. Curriculum requirements for the social impact of alcohol.

(a) Costs to the community from overuse of alcohol:

(1) Driving under the influence.

(2) Criminal and domestic violence.

- (3) Increased burden on law enforcement and fire departments.
- (4) Medical and social costs of alcoholism to the community at large.

§163. Curriculum requirements for the impact of alcohol on the body.

- (a) Physiology of alcohol on the human body.
 - (1) Review of central nervous systems' functions, including judgment, inhibitions, and reaction times.
 - (2) Review of effect on the body's fluids, including dehydration.
 - (3) Review of effect of alcohol on driving:
 - (i) Slows reaction times.
 - (ii) Reduced or decreased vision.
 - (iii) Impaired judgement.
 - (iv) Reduces concentration and coordination.
 - (4) Typical signs of intoxication.
 - (i) Methods of detecting intoxication in customers.
 - (ii) Common factors affecting the severity of intoxication:
 - Amount and speed of consumption of alcohol.
 - Drinking alcohol rapidly, such as binge drinking, and higher levels of intoxication.
 - Size, gender, weight effect on degree of tolerance to alcohol.
 - Potential medications or recreational and illegal drug effects when mixed with alcohol.
 - Effect of altitude on alcohol consumption.

§164. Curriculum requirements for state laws and regulations relating to alcoholic beverage control, including laws and regulations related to driving under the influence.

- (a) Statutory requirement to obtain server training certification (Business & Professions Code §25680, *et. seq.*)
- (b) Hiring practices for alcohol servers:
 - (1) An employee must be 21 years or older to pour and serve an alcoholic beverage.
 - (2) An employee who is at least 18 years old may serve an alcoholic beverage, but not pour if incidental to food service.
 - (3) ABC on-premises licensees must independently confirm any employed or contracted alcohol server is certified under Business and Professions Code § 25682 (b)(1); and
 - (4) ABC on-premises licensees' employment and payroll records shall be kept for four years and made available for inspection by ABC agents upon request.
- (c) Legal consequences of drunk driving. (Vehicle Code § 23152).
- (d) Types of liability for licensees, their employees, and their contractors.

- (1) Criminal liability: If committing a criminal act, penalties including monetary fines, community service, and jail time.
- (2) Administrative liability: Action against the license, penalties include the suspension of license privileges, the imposition of conditions, and/or revocation of a license. (Business and Professions Code § 24200.5)
- (3) Civil liability: Liability for sales to intoxicated adults or minors (Business and Professions Code §§ 25602 and 25602.1);
- (d) Understanding rules regarding: (i) providing alcoholic beverages to minors, (ii) minors entering and remaining on premises, and (iii) the ABC Target Responsibility for Alcohol Connected Emergencies (T.R.A.C.E.) protocol. (Business and Professions Code § 25658(a), (c), (d) and 25665 and ABC T.R.A.C.E. information).
- (e) Understanding disorderly conduct (Penal Code § 647(f)).
- (f) Understanding rules regarding on-premises licensees employing minors. (Business and Professions Code § 25663(a), (c)).
- (g) Understanding mandatory closing hours and prohibition to sell alcoholic beverages after hours. (Business and Professions Code §§ 25631-25632)
- (h) Enforcement of Alcohol-related laws.
 - (1) Role of the ABC:
 - (A) The ABC licenses businesses to sell alcohol.
 - (B) ABC agents are sworn peace officers.
 - (C) ABC agent are authorized to inspect licensee records required to be kept under Business and Professions Code Division 9.
 - (2) Role of local law enforcement officers:
 - (A) Local law enforcement will enforce alcohol laws.
 - (B) Local law enforcement officers are required to send the ABC all arrest reports and calls for service at ABC licensed locations.
 - (C) Any sworn peace officer, whether in uniform or in plain clothes, has the right to visit and inspect any licensed premises at any time during business hours.
 - (i) The right to inspect is not dependent on probable cause or obtaining a warrant.
 - (ii) The right to inspect extends to the bar, back bar, store room, office, closed or locked cabinets, safes, kitchen, or any other area within the licensed premises.
 - (iii) Interfering with a peace officer's right to inspect is grounds for arrest and license revocation.
 - (3) Local jurisdictions may have additional laws, ordinances, or provisions that apply to an ABC licensed location in their area in addition to the statewide laws.

§165. Curriculum requirements for intervention techniques to prevent the service or sale of alcoholic beverages to underage persons or intoxicated patrons.

- (a) Checking identification (ID) of patrons prior to serving alcohol as described in Business & Professions Code Section 25660 and demonstrated in video training.

- (1) Twenty-one is the minimum age for a person to legally purchase or consume alcoholic beverages in California.
 - (2) If prior to serving alcohol an alcohol server reasonably inspects a patron's ID and reasonably concludes it is legally acceptable (even if it turns out to be a fake ID), and the appearance of the minor indicates the minor could be twenty-one years of age or older, the alcohol server has a defense to a charge of selling to a minor.
 - (3) California law recognizes IDs issued by a federal, state, county or municipal government including, but not limited to a valid passport or motor vehicle operator's license, that contain the name, date of birth, description and picture of the person.
 - (4) Describe common indications of a false ID.
- (b) The alcohol server's right to refuse service of alcoholic beverages - Business and Professions Code § 25659.
- (1) When to refuse service:
 - (A) If a patron's ID is invalid.
 - (B) If the patron becomes belligerent.
 - (C) If a patron is obviously intoxicated either by alcohol, medication, or recreational or illegal drugs.
 - (D) If a patron requests service outside the hours of operation.
 - (E) If a server has reasonable doubts about any of the preceding factors.
 - (2) Techniques for an alcohol server refusing service to a patron:
 - (A) Be courteous but firm in telling patrons they can no longer be served. Be quiet and discrete.
 - (B) Be assertive in the decision to stop alcoholic beverage service.
 - (C) Focus on statements about the alcohol server's duty and liability not to serve.
 - (D) Do not bargain with the patron.
 - (E) The server should inform managers and co-workers of the decision, identity of the person, and reasons the person should no longer be served alcohol.
 - (F) Inform other members of the patron's group, if any.
 - (G) Offer a glass of water, non-alcoholic beverage, or food item.
- (c) The general standard serving sizes for alcoholic beverages are:
- (1) 12 oz. beer or cooler, about 5% alcohol by volume.
 - (2) 8 to 9 oz. malt liquor, including some beers greater than 7% alcohol by volume.
 - (3) 5 oz. table wine, 12% alcohol by volume.
 - (4) 1.5 oz. 80 proof-distilled spirit, 40% alcohol by volume.

§166. Development of management policies that support the prevention of service or sale of alcoholic beverages to underage persons or intoxicated patrons.

(a) Best practices. Guidelines for the effective use of policies for the service of alcoholic beverages for consumption to the public:

- (1) The on-premise licensee shall keep a record of each server's RBS certification as part of the employee's record.
- (2) All licensee's policies should reinforce the elements of the RBS training.
- (3) Written policies are a best practice and should be clear, specific and reinforce the elements of the RBS training.
- (4) Policies should be reviewed for relevance and accuracy, especially if there are frequent incidents of violence or illegal activity requiring peace officer assistance.
- (4) Licensees should keep an incident log documenting:
 - (A) Any and all issues with a patron's ID.
 - (B) Any and all injuries, medical treatment, or hospitalization of a person on the ABC licensed premises.
 - (C) Any illegal or violent incidents occurring on the ABC licensed premises.
 - (D) Any calls for law enforcement assistance or other contact with peace officers.

§167. Administration of the alcohol server certification exam

(a) The final exam shall be administered by the training provider at the end of the RBS training course by a proctor for in-person classes or by secure testing software if the course is provided on-line course.

(b) If an on-line course, the training provider must include in its application a detailed description of how the online testing module will be implemented.

(c) All exam tests must be completed in one sitting.

(d) The exam should include 40 multiple choice questions similar and must include questions from each of the five subjects outlined in Sections 162-166.

(e) A passing score is 70%.

(f) Training providers must implement methods for safeguarding test integrity and ensure test security is acceptable to the ABC including:

- (1) Methods to prevent cheating.
- (2) A policy prohibiting the release of advance test copies.
- (3) Methods to assure grades cannot be changed once a grade has been assigned.

(4) Procedures for scoring and assuring tests shall not be scored in the presence of the test takers.

§168. ABC On-Premises Licensee Certification Record Requirements

- (a) Beginning July 1, 2021 an on-premise licensee shall not employ or continue to employ any alcohol server without a valid alcohol server certification.
- (b) An alcohol server who was employed by the on-premise licensee prior to July 1, 2021, shall obtain an alcohol server certification by August 31, 2021.
- (c) An alcohol server employed by the licensee on or after July 1, 2021, shall obtain an alcohol server certification within 60 calendar days of employment.
- (d) The training provider issuing the server RBS certification shall keep a copy of each certification it issues and make this information available upon request by an on-premise licensee employing a server issued a RBS certification by that provider.
- (e) Confirmation of employee RBS certifications will be provided pursuant to any ABC investigation or request for records. The ABC shall treat the certification records as employee and licensee confidential information.
- (f) An ABC on-premises licensee shall require each employee serving alcohol to present confirmation of successful completion of the RBS training program and shall keep the confirmation as part of the employee record.
- (g) The ABC on-premises licensee shall ensure that all servers it employs renews their RBS certification before it expires after three years of issuance.
- (h) The on-premise licensee may assert an affirmative defense to any alleged violation of the RBS law by providing:
 - (1) The date and records of the alcohol server's initial employment and
 - (2) Six preceding months of payroll records for all employees.
- (g) The 60-day grace period for the affirmative defense found in Business and Professions Code § 25682 (b)(2) applies only to the date of initial employment, and not for alcohol server certification renewals.

PART B. The RBS Accreditation Process

§169. Accreditation Agencies Application and Standards.

- (a) To seek approval to be an accreditation agency, a business entity must submit the following information to the department:
 - (1) Legal entity name and DBA;

- (2) Legal structure of the business entity;
- (3) A business entity subject to registration with the California Secretary of State, must provide proof of that registration, including person designated for service of process and their contact information;
- (4) A list of owners and officers, their contact information, personal identification information, and titles;
- (5) Email contact information;
- (6) Telephone contact information;
- (7) Business address;
- (8) Mailing address if different;
- (9) A list of any arrests or convictions for crimes of moral turpitude by owners or officers of the business entity;
- (10) An affidavit explaining in writing how the business entity, its owners, and officers comply with the accreditation agency approval criteria;
- (11) Descriptions of accreditation policies and procedures to approve training providers and RBS training courses using the standards in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168(b); and
- (12) Fingerprints of all owners and officers;
 - (A) To be valid, each fingerprinting shall be verified by a governmental body such as a notary or through an electronic fingerprinting service such as Live Scan.
 - (B) The department is not responsible for the payment of any fees associated with the review or validation of criminal history by fingerprint of any owner or officer; and
- (13) The initial review fee set forth in this section, subsection (m)(1).

(b) Approval criteria for an accreditation agency:

- (1) An accreditation agency, its owners and officers, director, employees, or agents shall not have any ownership interest, directly or indirectly, in the business, property or license of any ABC licensee;
- (2) An accreditation agency, its owners and officers, director, employees, or agents shall not have any ownership interest, directly or indirectly, in the business or property of any training provider;
- (3) An accreditation agency, its owners, and officers shall not be RBS trainers.
- (4) An accreditation agency shall have the ability to provide technical support to training providers it accredits;
- (5) An accreditation agency shall apply the same standards for approval of RBS training providers and RBS training courses used by the department as set forth in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168(b);
- (6) An accreditation agency shall maintain strict data security protocols that protect disclosure of private training provider information, including payment information, received during its RBS training course approval process; and

- (7) An accreditation agency's owners and officers must not have been convicted of any crimes of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d).
- (c) If the department needs more information or clarification to approve an accreditation agency application, the prospective accreditation agency will have 60 days to respond from the date the department's request is issued. If the prospective accreditation agency does not respond within the specified period, the application will be deemed abandoned and withdrawn. The accreditation agency's response is considered received the day it is delivered to the department either electronically, in person, or by mail.
- (d) Accreditation agencies shall maintain current contact information with the department. Any department communication is presumed received and notice requirements are deemed effective if the communication is sent to the accreditation agency using the contact information on record.
- (e) Accreditation agencies shall maintain current lists of all owners and officers and ensure any changes to its owners and officers continue to comply with the accreditation agency approval criteria.
- (f) When approving a training provider or RBS training course, an accreditation agency shall use the policies and procedures to approve training providers and RBS training courses it submitted to the department under California Code of Regulations Title 4 §167(a)(11).
- (g) An accreditation agency shall notify the department through the department's online certification system within five business days of any training provider accreditation given.
- (h) An accreditation agency shall provide the department with a record of all information the accreditation agency received from the training provider during its approval process. The record must include the following documents; the RBS training course; handouts, electronic files, or transcripts; explanation and affidavit that the training provider complies with all training provider approval criteria; written explanation of the interactivity elements in the RBS training course; written explanation of training provider's compliance with the record keeping, customer support, and security requirements; and the list of any arrests or convictions for crimes of moral turpitude by the individual, or owners or officers of the business entity.
- (i) The record shall be submitted to the department in electronic formats through the department's online certification system.
- (j) The department may deny, revoke, or suspend an accreditation agency approval if it finds any of the following conduct by the accreditation agency:
- (1) The accreditation agency does not meet the approval criteria;
 - (2) The accreditation agency application is incomplete;
 - (3) The accreditation agency misrepresented material facts in its application;
 - (4) The department is informed an owner or officer of the accreditation agency has committed a crime of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d);
 - (5) The accreditation agency fails to inform the department of a change in its owners or officers.

- (6) The accreditation agency perpetuates a fraud in approving training providers;
- (7) The accreditation agency does not provide the department with requested records justifying training provider approvals;
- (8) The accreditation agency fails to notify the department of training provider approvals; or
- (9) The accreditation agency does not follow the standards set forth in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168(b) to approve training providers.

(k) The department authorization to be an accreditation agency grants the accreditation agency the due process rights accorded to ABC licensees under Business and Professions code § 23009 but does not grant a license to the accreditation agency. If an accreditation agency wishes to challenge a department decision to deny, suspend, or revoke department authorization, it is subject to the processes, procedures, and due process rights of licensees under Business and Professions Code Division 9 Chapters 6 – 8.

(l) The accreditation agency must renew its approval annually.

- (1) Approvals expire at midnight on the last day of the month in which the approval was given in the previous year.
- (2) On or before the first day of the month preceding the month that the approval expires, the department shall notify the accreditation agency using the contact information on file with the department.
- (3) To seek renewal, the accreditation agency shall submit an itemized list of any changes it has made since its submission of its initial application, or last annual renewal that modifies how the accreditation agency approves training providers, approves RBS training courses, or complies with the accreditation agency approval criteria. The accreditation agency shall submit the annual renewal fee set out in California Code of Regulations Title 4 § 167 (m)(2).
- (4) The department shall review the submitted list of changes and renew the accreditation agency using the same approval standards as the initial review.
- (5) If an approval expires pursuant to subsection (l)(1), the approval may still be renewed within 60 calendar days of the expiration following the process described in subsection (l)(3). For renewals submitted during this 60-day time period, the accreditation agency shall submit payment of the annual renewal fee set out in California Code of Regulations Title 4 § 167 (m)(2), plus a penalty fee that shall be equal to 50 percent of the annual renewal fee.
- (6) Unless otherwise terminated, or until renewed, an approval that is in effect during the expiration month shall continue in effect through midnight of the 60th day following expiration of the approval pursuant to subsection (l)(1), at which time it is automatically cancelled.
- (7) On or before the 10th day preceding the cancellation of the approval pursuant to subsection (l)(6), the department shall notify the accreditation agency using the contact information on file with the department that its approval will be cancelled under California Code of Regulations Title 4 § 167(l)(6).

(m) The following non-refundable fees are established to recover the reasonable costs of the department for review, approval, and renewal of the accreditation agency standards:

- (1) Initial accreditation agency review fee of \$1000.00; and

- (2) Annual renewal fee of \$250.00.

§170. Training provider application and standards.

(a) To seek departmental approval to be a training provider, an individual or business entity must submit the following information to the department through its online certification system to complete an application:

- (1) Legal entity name and DBA;
- (2) Legal structure of the business entity;
- (3) A business entity subject to registration with the California Secretary of State must provide proof of that registration, including person(s) designated for service of process and their contact information;
- (4) A list of owners and officers, their contact information, personal identification information, and titles;
- (5) Email contact information;
- (6) Telephone contact information;
- (7) Business address;
- (8) Mailing address, if different;
- (9) A proposed RBS training course, consisting of an electronic program, electronic files, recordings, transcripts, or course outline to be approved by the department, and an itemized and tabulated record of how the proposed RBS training course complies with California Code of

Regulations Title 4 §§161-166;

- (10) Written explanation of the interactivity elements to be used in its proposed RBS training course required by California Code of Regulations Title 4 §161 (b);
- (11) A copy of the handouts, electronic files, or transcripts detailing the RBS training course content provided to alcohol servers for their use after completing the RBS training course as required by California Code of Regulations Title 4 §161 (c);
- (12) Affidavit explaining how and attesting that the training provider complies with each training provider approval criteria in subsection (b) of this section;
- (13) A list of any arrests or convictions for crimes of moral turpitude by the owners or officers of the business entity; and
- (14) The initial review fee set forth in California Code of Regulations Title 4 § 168.3(l)(1). (b)

Approval criteria for training providers:

- (1) A training provider must meet the background and expertise requirement in Business and Professions Code § 25681 (b)(1)(A), meaning a training provider must have at least one owner, employee, or consultant with degrees, work experience, or certifications in alcohol, training, hospitality, and psychology included in the creation of its RBS training course;
- (2) A training provider's proposed RBS training course(s) must comply with the minimum standard curriculum as set forth in California Code of Regulations Title 4 §§161-166 herein and be approved by the department or an accreditation agency prior to its use.

- (3) Training providers must comply with requirement in Business and Professions Code § 25681 (b)(1)(B) for keeping records of alcohol server certifications issued;
- (4) Training providers must comply with the requirement in Business and Professions Code § 25681 (b)(1)(C) to have the ability to give technical support required for alcohol servers to complete their RBS training course;
- (5) Training providers must comply with the requirement in Business and Professions Code § 25681 (b)(1)(D) for data security protocols for any collected alcohol server information, online payments, and alcohol server certification records; and
- (6) Training providers' owners and officers must not have been convicted of any crimes of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d), unless the department finds that the person is sufficiently rehabilitated.

(c) If the department needs more information or clarification to approve a training provider application, the prospective training provider will have 60 days to respond from the date the department's request is issued. If the prospective training provider does not respond in the specified time period, the application will be deemed abandoned and withdrawn. The training provider's response is considered received the day it is delivered to ABC either electronically, in person, or by mail.

§170.1. Registration of training providers approved by an accreditation agency.

- (a) If a training provider and its RBS training course are approved through an accreditation agency, the training provider does not need to pay any departmental fees for the initial review of its RBS training course.
- (b) If a training provider and its RBS training course is approved through an accreditation agency, the training provider must provide the following registration information to the department after or concurrent with accreditation agency approval in order to operate under their approval:
 - (1) Legal entity name and DBA;
 - (2) Legal structure of the business entity;
 - (3) A business entity subject to registration with the California Secretary of State, must provide proof of that registration, including person designated for service of process and their contact information;
 - (4) A list of owners and officers, their contact information, personal identification information, and titles;
 - (5) Telephone contact information;
 - (6) Business Address; and
 - (7) Mailing Address if different.
- (c) Training provider registration must be completed prior to beginning the fingerprinting process for all owners and officers required under California Code of Regulations Title 4 § 168.2.

§170.2. Fingerprinting by the department for all training providers.

- (a) After, or concurrent to, the approval of a training provider by either the department or an accreditation agency, the training provider must provide fingerprints of all its owners and officers to the department. To be valid, each fingerprinting shall be verified by a governmental body such as a notary or through an electronic fingerprinting service such as Live Scan.
- (b) The department must receive the results of the verified fingerprints of all owners and officers prior to the training provider being placed upon the department's approved training provider list.
- (c) The department is not responsible for the payment of any fees associated with the review or validation of the criminal history of any owner or officer by fingerprint.

§ 170.3. Training provider review, modifications, and fees.

- (a) A training provider shall maintain current contact information within the department's online certification system and notice from the department is deemed effective if it contacts the training provider using the information on record.
- (b) A training provider shall maintain current lists of its owners and officers and ensure any changes to its owners and officers continue to comply with the training provider approval criteria.
- (c) A training provider must use one of its approved RBS training courses on file with the department whenever providing RBS training to alcohol servers under the RBSTPA.
- (d) The department shall review the effectiveness of all training provider RBS training courses through analysis of data collected when administering alcohol server certification exams.
- (e) The department may deny, revoke, or suspend a training provider approval if it finds any of the following conduct by the training provider:
 - (1) The training provider does not meet the approval standards in this section;
 - (2) The training provider application is incomplete;
 - (3) The training provider misrepresented material facts within its application;
 - (4) The department is informed an owner or officer of the training provider has committed a crime of moral turpitude, as that term is applied to ABC license holders under Business and Professions Code §24200(d);
 - (5) The training provider fails to inform the department of a change in its owners and officers;
 - (6) The training provider's RBS training course does not follow the standards set forth in Business and Professions code § 25681(b) and California Code of Regulations Title 4 §168;
 - (7) The training provider is not teaching from its RBS training course submitted to and on file with the department pursuant to California Code of Regulations Title 4 § 168(a)(9)-(10), or the RBS training course it submitted to the accreditation agency submitted to the department pursuant to California Code of Regulations Title 4 § 167(h);;
 - (8) The training provider fails to comply with a mandatory modification request from the department as outlined in California Code of Regulations Title 4 § 168.3(f); or
 - (9) The training provider perpetuates a fraud.

- (f) If the department requires a modification of all RBS training course materials due to a change in referenced law or the completion of a rulemaking action:
- (1) The department shall notify the training provider in writing with a detailed list of the mandatory changes;
 - (2) The training provider shall have 60 days from the date notice is sent by the department to respond and provide an estimate of the length of time the training provider will need to complete the modification;
 - (3) If the training provider does not respond to the department's request within the specified time, the training provider's approval will be deemed withdrawn;
 - (4) The training provider shall modify their program within a reasonable time based on the amount of mandatory changes required and submit a record of all changes to the existing program to the department for approval;
 - (5) The department shall review the training provider's RBS training course without any additional fees for a mandatory modification;
 - (6) The department shall use the same standards of approval for any modification as with the initial approval of an RBS training course; and
 - (7) The training provider shall not use the modified course until it has been approved by the department.
- (g) If a training provider chooses to modify its RBS training course without a legal requirement to do so:
- (1) The training provider shall seek approval from an accreditation agency, or the department;
 - (2) The training provider will notify the department or accreditation agency in writing with a detailed change log of all changes made to the RBS training that was submitted to the department under California Code of Regulations Title 4 § 168(a)(9)-(10), or the RBS training course it submitted to the accreditation agency submitted to the department under California Code of Regulations Title 4 § 167(h);
 - (3) The department after receiving a modification request from a training provider will determine if the modification constitutes a substantial change and notify the training provider of its decision in writing;
 - (4) If the department finds the modification request constitutes a substantial change, the request is subject to an initial review fee as itemized in California Code of Regulations Title 4 §168.3(l)(1).
 - (5) A substantial change is a modification to an approved RBS training course to the extent that the department must review most of the approved RBS training course to reapprove its suitability, including but not limited to, a 50 percent or greater change of submitted content or a new language translation;
 - (6) The department shall review a modification request for an RBS training course without any additional fees, unless the department determines that the modification constitutes a substantial change;

- (7) The department or accreditation agency shall use the same standards of approval for any modification as with the initial approval of an RBS training course; and
- (8) The training provider shall not use the modified course until it has been approved by the department or an accreditation agency.
- (h) If a training provider wishes to create a new RBS training course, either in format, presentation, language, or by a substantial change from its existing RBS training course:
 - (1) The training provider must provide an itemized and tabulated record demonstrating that the proposed RBS training course complies with California Code of Regulations Title 4 §§162-166 to the department or an accreditation agency;
 - (2) If submitted to the department, the training provider must pay an additional RBS training course initial approval fee set out in California Code of Regulations Title 4 § 168.3(l)(1) for review and approval of the proposed RBS training course; and
 - (3) The department and accreditation agency shall use the same standards for approval of the new RBS training course as if it was an initial training provider application.
- (i) The department authorization to be a training provider grants the training provider the due process rights as a licensee under Business and Professions code § 23009 but does not grant an ABC license to the training provider. If a training provider wishes to challenge a department decision to deny, suspend, or revoke department authorization, it is subject to the processes, procedures, and due process rights of licensees under Business and Professions Code Division 9 Chapters 6 – 8.
- (j) A training provider must renew its approval annually with the department or an accreditation agency to ensure it continues to comply with the statutory and regulatory standards of the RBSTPA and any mandatory content added to the curriculum requirements by the department.
 - (1) Approvals expire at midnight on the last day of the month in which the approval was given in the previous year.
 - (2) On or before the first day of the month preceding the month that the approval expires, the department shall notify the training provider using the contact information on file with the department.
 - (3) To seek renewal, the training provider shall submit an itemized list of any changes it has made since its submission of its initial application, or last annual renewal that modifies how the training provider complies with the training provider approval criteria.
 - (4) If seeking renewal from the department, the training provider shall submit the annual review fee set out in California Code of Regulations Title 4 § 168.3 (l) (2) for each approved RBS training course currently being used.
 - (5) The department or accreditation agency shall review the submitted list of changes and renew the training provider using the same approval standards as the initial review.
 - (6) If an accreditation agency gives an approval, it is subject to the same reporting requirements to the department under California Code of Regulations Title 4 § 167(g)-(i).
 - (7) If an approval expires pursuant to subsection (k) (1), the approval may still be renewed within 60 calendar days of the expiration following the process described in subsection (k)(3).

For renewals submitted to the department during this 60-day period, the training provider shall submit payment of the annual renewal fee set out in California Code of Regulations Title 4 § 168.3(l)(2), plus a penalty fee that shall be equal to 50 percent of the annual fee.

(8) Unless otherwise terminated, or until renewed, an approval that is in effect during the expiration month continues in effect through midnight of the 60th day following expiration of the approval pursuant to subsection (k)(1), at which time it is automatically cancelled.

(9) On or before the 10th day preceding the cancellation of the approval pursuant to subsection (k)(8), the department shall notify the accreditation agency using the contact information on file with the department that its approval will be cancelled under California Code of Regulations Title 4 § 168.3(k)(8)

(k) The following non-refundable fees are set to recover the reasonable costs of the department for approval, oversight, and enforcement of the above training provider standards:

- (1) RBS training course initial approval fee of \$1000.00; and
- (2) Annual renewal fee of \$250.00 per approved RBS training course.