

## **CONTRACTORS STATE LICENSE BOARD**

### **Title 16, California Code of Regulations, Section 858.2**

#### **Section 100 CHANGE WITHOUT REGULATORY EFFECT**

#### **WRITTEN STATEMENT OF EXPLANATION REGARDING CHANGES WITHOUT REGULATORY EFFECT**

Pursuant to Title 1, Division 1, Chapter 1, Article 2, Section 100(a), of the California Code of Regulations (CCR), the Department of Consumer Affairs, the Contractors State License Board (Board or CSLB) submits this written statement explaining why the proposed amendments to section 858.2 of Article 6, Division 8, of Title 16, CCR do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.

Business and Professions Code (BPC) section 7008 authorizes the Board to adopt rules and regulations, in accordance with the Administrative Procedure Act, that are reasonably necessary to carry out the provisions of the chapter of the BPC. Section 7151 sets forth the projects for which a home improvement contract is required. Section 7159 sets forth the requirements for home improvement contracts, notably including a limitation on contractors for a down payment that is not to exceed 10% of the contract price or \$1,000, whichever is less, and a requirement to include a Mechanics Lien Warning in the contract language. Furthermore, section 7159 requires a contract for home improvements to contain a schedule of progress payments for the work that is to be accomplished in each phase of the project. Each progress payment must not exceed the value of the amount of work (labor and materials) that has been incorporated into each phase.

BPC section 7159.5 further details the requirements for home improvement contracts, including the provision that contractors who file a performance and payment bond or a “bond equivalent... approved by the registrar” are exempt from certain provisions of the home improvement contract requirements relating to down payments, progress payments, and the Mechanics Lien Warning for home improvement work.

Section 858.2 sets forth the required applicable conditions for licensees seeking approval of a blanket performance and payment bond and the information required in the Application for Approval of Blanket Performance and Payment Bond, form 13B-35, to apply to CSLB for approval of the bond.

Effective November 10, 2021, the Office of Administrative Law (OAL) approved changes without regulatory effect (OAL #2021-0929-03 N) to conform CSLB’s regulations (CCR sections 858.1 and 858.2) to superseding amendments made to the governing statutes by Senate Bill 1479 (Chapter 634, Statutes of 2016). The action also made other non-

substantive changes to the Board's regulations to correct grammar and punctuation issues, to update a Reference citation, and to make a related form easier to use. OAL approved the changes without regulatory effect pursuant to title 1, section 100. After receiving the returned approved rulemaking record, CSLB staff discovered that several additional non-substantive changes to section 858.2 were needed but were inadvertently overlooked.

Subject to the approval of OAL, the Board would add to, revise, or delete text in the CCR as follows:

**Amend Section 858.2 as follows:**

**§858.2. Application for Approval of Blanket Performance and Payment Bond**

**1. Update application revision date in subdivision (a).**

This proposal would amend subdivision (a) by updating the form revision date to "11/2021" for the Application for Approval of Blanket Performance and Payment Bond, form 13B-35, to reflect the date when OAL approved the previous section 100 amendments that impacted the application form. Specifically, OAL approved the following four changes to Section 858.2 on November 10, 2021 (OAL #2021-0929-03 N):

- Subdivision (a)(4), immediately under the "QUALIFER'S CERTIFICATION STATEMENT," the Board replaced the ampersand with the word "and" in the reference to "California Business & Professions Code."
- Subdivision (b), the Board replaced "five" with "two" in the statement "A licensee shall be licensed in this state in an active status for not less than five years prior to submitting the application provided for by this section." The Board made this amendment to reflect the statutory change made by Senate Bill 1479 (Chapter 634, Statutes of 2016, effective January 2017) that changed the minimum period for which a contractor must be licensed prior to being considered for the bond from five to two years.
- Subdivision (c), the Board deleted the space between section 7124.6 and (e)(3), in the reference toward the end of the subdivision, "subject to disclosure under Section 712.46(e)(2) or 7124.6 (e)(3) of the code."
- Within the authority cited "Note" at the end of the regulation, the Board added a reference to Section 7071.17. The Board made this amendment because subdivision (c) references Section 7071.17.

Because these amendments became effective in November 2021, the form's revision date should reflect the date the changes were made. This is a change without regulatory effect because it does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. It only changes the date to reflect the latest revisions to the form. (Cal. Code Regs., tit. 1, § 100, subd. (a).)

## **2. Replacement of “which” with “that” in subdivision (a)(4).**

This proposal would amend subdivision (a)(4) by replacing “which” with “that” in multiple locations for grammatical purposes because the clauses are essential to the meaning of the sentence. Therefore, “that” is more appropriate than the parenthetical “which.” This is a change without regulatory effect because it revises structure, syntax, cross-reference, grammar, or punctuation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

## **3. Replacement of “he or she” with “they” in subdivision (a)(4).**

This proposal would amend subdivision (a)(4) by replacing “he or she” with “they” in multiple locations, and updating its accompanying verb, from “is” to “are,” to be gender neutral in an application contractor licensees complete. (Assembly Concurrent Resolution No. 260 (2018).) This is a change without regulatory effect because it revises structure, syntax, cross-reference, grammar, or punctuation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

## **4. Replacement of “my” with “the qualifier’s” in subdivision (a)(4).**

This proposal would amend the second paragraph of the Qualifier's Certification Statement in subdivision (a)(4) by replacing “my” with “the qualifier's” to keep the voice of the document consistent throughout because the rest of the application is written in the third person. This is a change without regulatory effect because it revises structure, syntax, cross-reference, grammar, or punctuation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

## **5. Replacement of semicolons with commas in subdivision (a)(4).**

This proposal would amend the third paragraph of the Qualifier's Certification Statement in subdivision (a)(4) by replacing the semicolons with commas in a series of items that contains another series. Commas are the appropriate punctuation for this situation because the series is located at the end of the series of items and is easily understood without the use of semicolons. This is a change without regulatory effect because it revises structure, syntax, cross-reference, grammar, or punctuation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

**6. Replacement of “I” with “the undersigned” in subdivision (a)(4).**

This proposal would amend the fifth paragraph of the Qualifier’s Certification Statement in subdivision (a)(4) by replacing “I” with “the undersigned” to keep the voice of the document consistent throughout because the rest of the application is written in the third person. This is a change without regulatory effect because it revises structure, syntax, cross-reference, grammar, or punctuation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)