

CONTRACTORS STATE LICENSE BOARD

Title 16, California Code of Regulations, Sections 858.1 and 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 sections 858.1 and 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, and 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 delineates 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" shall be 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 858.1 sets forth blanket performance and payment bond requirements, including the required form of the blanket bond. Section 858.2 sets forth the required applicable conditions for licensees seeking approval of a blanket bond and the information required in the Application for Approval of Blanket Performance and Payment Bond, form 13B-35, to apply for the bond.

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

Amend Section 858.1 as follows:

1. Deletion of hyphen in “one-hundred percent” in subdivision (a).

This proposal would amend subdivision (a) by deleting the hyphen in “one-hundred percent” because it is not grammatically correct to include a hyphen. 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).)

2. Addition of period to subdivision (f) (form).

This proposal would amend subdivision (f) by adding a period to the end of the second sentence, so it provides, “This bond shall be filed with the Registrar of Contractors.” The period is appropriate because it is the end of a sentence. 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. Relocation of blanket performance and payment bond form number and revision date in form.

This proposal would amend subdivision (f) by moving the blanket performance and payment bond form number and revision date from the top of the bond form content to the bottom of the form. For CSLB forms, form numbers are typically placed at the bottom of the page. The Board also proposes to update the form revision date to “07/2021” to reflect the current date of the form revisions. This is a change without regulatory effect because, by changing the location of text and a revision date, it revises structure, syntax, cross-reference, grammar, or punctuation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

4. Addition of “Starting Date” and “Ending Date” in the form.

This proposal would amend section 858.1(f) by adding “Starting Date” and “Ending Date” under the first line of the bond form content to designate the fields for the term of the bond. All other similar fields in the bond form content include such descriptors below the field line, but these were inadvertently omitted when the section was adopted in 2011. The form currently already requires disclosure of the “term” of the bond, which by its commonly understood definition is the time period (starting and ending) of the bond. This is a change without regulatory effect because the proposed edits clarify what is already implied by inserting the words “Starting Date” and “Ending Date,” which is a more specific way of saying “term” and therefore does not change the current regulatory requirement that the bond application disclose the term of the bond (i.e., start and end

dates). This is a change without regulatory effect because, by inserting language that is presently implied, it does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision. (Cal. Code Regs., tit. 1, § 100, subd. (a)(4).)

5. Replacement of “&” with “and” in the form.

This proposal would amend subdivision (f) by replacing “&” with “and” in multiple locations when referring to the Business and Professions Code (BPC) to be consistent with the title of the code and other professional legal language. 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. Addition of commas in the form.

This proposal would amend subdivision (f) by adding commas before and after “services” in the first paragraph of the bond form content to be consistent with statutory language in BPC section 7159(b) that refers to “all labor, services, and materials” as three separate items. 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).)

7. Replacement of blank field in form with “the dollar amount prescribed in subdivision (b) of Section 7159 of the Business and Professions Code.”

This proposal would amend section 858.1(f) by replacing the existing blank field with a reference to the statute establishing the applicable amount. This ensures that the amount is always accurate and up to date in the event the amount established by statute changes in the future. This is a change without regulatory effect because it makes the regulation consistent with the statutory requirement contained in BPC section 7159, and (1) the regulatory provision would be inconsistent with and superseded by any future changes to section 7159, and (2) the Board has no discretion to adopt a change which differs in substance from the one chosen. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).)

8. Addition of space for amount of bond in form.

This proposal would amend subdivision (f) by adding a sentence to the end of the first paragraph of the bond form to preface a blank field for the dollar amount of the blanket performance and payment bond, which the Board inadvertently omitted from the bond form content when the regulation was adopted in 2011. Presently, there is no place in the form designated for the surety company to indicate the dollar amount for that particular blanket performance and payment bond. However, to be a valid bond, a bond must state the dollar amount covered thereunder pursuant to section 858.1(a) and (c).

This is a change without regulatory effect because it merely provides a means of providing information currently required by law. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).)

Amend Section 858.2 as follows:

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

1. Deletion of a comma in subdivision (a)(3).

This proposal would amend subdivision (a)(3) by deleting the comma between “bond” and “and” in the final sentence of the subdivision because it is unnecessary. 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).)

2. Replacement of “&” with “and” in subdivision (a)(4).

This proposal would amend subdivision (a)(4) by replacing “&” with “and” in multiple locations when referring to the BPC to be consistent with the title of the code and other professional legal language. 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. Addition of a comma in subdivision (a)(4).

This proposal would amend subdivision (a)(4) by adding a comma after the date field in the first paragraph of the Qualifier’s Certification Statement. This comma will set off the first portion of the sentence as an introductory phrase. 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 “five” with “two” in subdivision (b).

This proposal would amend subdivision (b) by changing “five” to “two” when referring to the length of time a licensee shall have been licensed in California in active status before they may apply to submit a blanket performance and payment bond. Through the passage of Senate Bill (SB) 1479 (Com. on B., P. & E.D., Chapter 634, Statutes of 2016), the Legislature implemented a statutory minimum period of licensure for applicants for the blanket performance and payment bond in BPC section 7159.5(a)(8). While CSLB originally set the minimum licensure period at five (5) years when it adopted section 858.2 in 2011, the Legislature set the time period at two (2) years in SB 1479, effective January 1, 2017. BPC section 7159.5(a)(8) currently provides, in part, “Notwithstanding any other law, a licensee shall be licensed in this state in an active status for not less than two years prior to submitting an Application for Approval of

Blanket Performance and Payment Bond as provided in Section 858.2 of Title 16 of the California Code of Regulations as it read on January 1, 2016.” The January 1, 2016 version of section 858.2 will be preserved nearly in its entirety after this rulemaking. The only changes being made to this section relate to grammar or punctuation (as discussed in numbers 1, 2, 3, and 5) and this change that acknowledges the two-year licensure minimum that SB 1479 codified. This is a change without regulatory effect because it makes the regulation consistent with a changed California statute and (1) the regulatory provision is inconsistent with and superseded by the changed statute, effective January 1, 2017, and (2) the Board has no discretion to adopt a change which differs in substance from the one chosen. (Cal. Code Regs., tit. 1, § 100, subd. (a)(6).)

5. Deletion of space between “7124.6” and “(e)(3)” in subdivision (c).

This proposal would amend subdivision (c) by deleting the space between “7124.6” and “(e)(3)” near the end of the paragraph because there is no space in “Section 7124.6(e)(2)” in the same sentence. 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. Addition of Reference section to Note.

This proposal would amend the Reference portion of the Note at the end of the regulation by adding “7071.17,” because BPC section 7071.17 is referenced in section 858.2(c). The proposal would also add a comma between “7159” and “and” in the series of statutory sections that are referenced for this regulation. This is a change without regulatory effect because it adds a reference to the regulation. (Cal. Code Regs., tit. 1, § 100, subd. (a)(5).)