

DEPARTMENT OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

EXPLANATORY STATEMENT

SECTION 100 - CHANGES WITHOUT REGULATORY EFFECT

Title 5, California Code of Regulations

Subject Matter of Proposed Regulatory Revisions:	Add Business and Professions Code (BPC) Section (§) 480.2 Provisions
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Sections Affected:	Amend Title 5, California Code of Regulations, §§71130, 71400.5, 71475, 71720, 71730, 75060, 75070, and 75100.
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Pursuant to Title 1, Division 1, Chapter 1, Article 2, section 100(b)(1) of the California Code of Regulations (CCR), the Bureau for Private Postsecondary Education (Bureau) submits this written statement explaining why the proposed amendments to the above-listed sections of Division 7.5 of Title 5, and associated references in the CCR¹, do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision. These amendments are changes without regulatory effect because they:

- Delete a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)).
- Revise the structure, syntax, cross-reference, grammar, or punctuation (see Title 1 CCR §100(a)(4)).
- Change an “authority” or “reference” citation for a regulation (see Title 1 CCR §100(a)(5)).
- Make a regulatory provision consistent with a changed California statute, as the current regulatory provisions are inconsistent with and superseded by the changed statute, and the Bureau has no discretion to adopt a change that differs from the one chosen (see Title 1 CCR §100(a)(6)).

Proposed Regulatory Revisions:

1. Amend Article 1 of Chapter 2 of Division 7.5 of the CCR.

71130. Institution Ownership and Control: Violations of Law.

¹ Unless otherwise stated, all references hereafter are to Title 5.

Proposed Change 1:

Update the regulatory text from §480 of the Business and Professions Code (BPC) to §480.2 of the BPC in paragraphs two (2) and five (5) of subsection (c) of section 71130.

Justification for Proposed Change:

The Bureau proposes to amend section 71130 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation. Under BPC §480, which was in effect prior to July 2020, the Bureau possessed the authority to deny a license if an applicant had been convicted of any crime “substantially related” to the qualifications, functions, or duties of the profession. However, Assembly Bill 2138 (“AB 2138”), chaptered into law on September 30, 2018 (Chiu, Chapter 995, Statutes of 2018),² significantly revised BPC §480, introducing a seven-year “washout period” limitation. AB 2138 prohibited licensing denials based on a conviction older than seven years, unless the applicant is presently incarcerated, or the conviction involved a serious or registrable offense. These reforms took effect on July 1, 2020. Importantly, AB 2138 made the prior language of BPC §480 inoperative on July 1, 2020, added new language to BPC §480 to become operative on the same date, including language explicitly stating that BPC §480 does not in any way modify or otherwise affect the existing authority of the Bureau (see: BPC §480(i)(2)), and added §480.2 to the BPC. BPC §480.2 preserved the authority of the Bureau to deny a license to an applicant if they have been convicted of a crime, and did not limit it, amongst other specific agencies, to the 7-year washout period added to BPC 480 as a result of AB 2138.

The Bureau requests amendment of section 71130 of the CCR because the statutory authority granted by BPC §480 has been repealed as of January 1, 2021, and BPC §480 “does not in any way modify or otherwise affect the existing authority of” the Bureau. The new statutory section that pertains to the Bureau is BPC §480.2.

CCR, Title 1, §100(a) states, in part, “Changes without regulatory effect include, but are not limited to: ... (2) deleting a regulatory provision for which all statutory ... authority has been repealed;”

CCR, Title 1, §100(a) also states, in part, “Changes without regulatory effect include, but are not limited to: ... (6) making a regulatory provision consistent with a changed California statute if... (A) the regulatory provision is inconsistent with and superseded by

² Added by Stats. 2018, Ch. 995, (AB 2138).

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2138

the changed statute, and (B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.”

Thus, the Bureau’s proposed deletion of existing references to BPC §480 and replacing them with references to BPC §480.2 is a change without regulatory effect because it is deleting a regulatory provision for which the statutory authority has been repealed. If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute.

Proposed Change 2:

Update the reference in the “Note” from Section 480 of the Business and Professions Code to Section 480.2 of the Business and Professions Code.

Justification for Proposed Change:

The Bureau also requests amendment of the Note of section 71130 because the statutory authority cited is BPC §480, which “does not in any way modify or otherwise affect the existing authority of” the Bureau. Currently, the Bureau's authority to deny a license to an applicant convicted of a crime is derived from BPC §480.2.

CCR, title 1, section 100, subd (a) states, in part, “Changes without regulatory effect include, but are not limited to: ... (5) changing an “authority” or “reference” citation for a regulation[.]”].

Thus, the Bureau’s proposed amendment of the Note of section 71130 of the CCR by replacing the outdated reference citing BPC §480 with BPC §480.2 is a change without regulatory effect because it updates the “authority” or “reference” citation for a regulation.

2. Amend Article 4 of Chapter 2 of Division 7.5 of the CCR.

71400.5. Denial of an Application.

Proposed Change 1:

Update the regulatory text from BPC §480 to BPC §480.2 in subsection (b) of section 71400.5.

Justification for Proposed Change:

The Bureau proposes to amend section 71400.5 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation after the passage of AB 2138, as described above on page 2.

Thus, the Bureau requests amendment of section 71400.5 of the CCR because the change deletes a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)). If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute (see Title 1 CCR §100(a)(6)).

Proposed Change 2:

Update the reference in the “Note” from Section 480 of the Business and Professions Code to Section 480.2 of the Business and Professions Code.

Justification for Proposed Change:

Replacing the outdated reference citing BPC §480 with BPC §480.2 is a change without regulatory effect because the only change is to the “authority” or “reference” citation for a regulation (see Title 1 CCR §100(a)(5)), as referenced on page 3.

3. Amend Article 6 of Chapter 2 of Division 7.5 of the CCR.

71475. Renewal of an Approval to Operate for a Non-Accredited Institution; Cancellation of an Approval to Operate.

Proposed Change 1:

Update the regulatory text from BPC §480 to BPC §480.2 in paragraphs two (2) and five (5) of subsection (f) of section 71475. Leave “(a)(1)” in paragraph (5) because the reference to (a)(1) is still accurate with the reference to BPC §480.2.

Justification for Proposed Change:

The Bureau proposes to amend section 71475 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation after the passage of AB 2138, as described above on page 2.

Thus, the Bureau requests amendment of section 71475 of the CCR because the change deletes a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)). If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute (see Title 1 CCR §100(a)(6)).

Proposed Change 2:

Update the reference in the “Note” for the regulatory section to add Section 480.2 of the Business and Professions Code.

Justification for Proposed Change:

The Bureau's proposed amendment of the Note of section 71475 of the CCR by adding a reference to BPC §480.2 is a change without regulatory effect because the only change is to the "authority" or "reference" citation for a regulation (see Title 1 CCR §100(a)(5)) that is currently not cited as a reference in the regulatory section.

4. Amend Article 1 of Chapter 3 of Division 7.5 of the CCR.

4a. 71720. Faculty.

Proposed Change 1:

Update the regulatory text from BPC §480 to BPC §480.2 in paragraph seven (7) of subsection (a) and paragraph three (3) of subsection (b) of section 71720.

Justification for Proposed Change:

The Bureau proposes to amend section 71720 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation after the passage of AB 2138, as described above on page 2.

Thus, the Bureau requests amendment of section 71720 of the CCR because the change deletes a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)). If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute (see Title 1 CCR §100(a)(6)).

Proposed Change 2:

Update the reference in the "Note" from Section 480 of the Business and Professions Code to Section 480.2 of the Business and Professions Code.

Justification for Proposed Change:

Replacing the outdated reference citing BPC §480 with BPC §480.2 is a change without regulatory effect because the only change is to the "authority" or "reference" citation for a regulation (see Title 1 CCR §100(a)(5)), as referenced on page 3.

4b. 71730. Administration.

Proposed Change 1:

Update the regulatory text from BPC §480 to BPC §480.2 in subsection (g) of section 71730.

Justification for Proposed Change:

The Bureau proposes to amend section 71730 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation after the passage of AB 2138, as described above on page 2.

Thus, the Bureau requests amendment of section 71730 of the CCR because the change deletes a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)). If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute (see Title 1 CCR §100(a)(6)).

Proposed Change 2:

Update the reference in the “Note” from Section 480 of the Business and Professions Code to Section 480.2 of the Business and Professions Code.

Justification for Proposed Change:

Replacing the outdated reference citing BPC §480 with BPC §480.2 is a change without regulatory effect because the only change is to the “authority” or “reference” citation for a regulation (see Title 1 CCR §100(a)(5)), as referenced on page 3.

5. Amend Article 3 of Chapter 5 of Division 7.5 of the CCR.

5a. 75060. Substantial Relationship Criteria.

Proposed Change 1:

Update the regulatory cross-reference in section 75060 from BPC §480 to BPC §480.2.

Justification for Proposed Change:

The Bureau proposes to amend section 75060 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation after the passage of AB 2138, as described above on page 2.

Thus, the Bureau requests amendment of section 75060 of the CCR because the change deletes a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)). If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute (see Title 1 CCR §100(a)(6)).

Proposed Change 2:

Update the reference in the “Note” for the regulatory section from Section 480 of the Business and Professions Code to Section 480.2 of the Business and Professions Code and remove the reference to Section 481.

Justification for Proposed Change:

The Bureau also requests an amendment to the Note of section 75060. Replacing the outdated reference citing BPC §480 with BPC §480.2 and removing BPC §481 are changes without regulatory effect because the only changes are to the “authority” or “reference” citation for a regulation (see Title 1 CCR §100(a)(5)), as referenced on page 3.

5b. 75070. Criteria for Rehabilitation.

Proposed Change 1:

Update the regulatory cross-reference in section 75070 from BPC §480 to BPC §480.2.

Justification for Proposed Change:

The Bureau proposes to amend section 75070 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation after the passage of AB 2138, as described above on page 2.

Thus, the Bureau requests amendment of section 75070 of the CCR because the change deletes a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)). If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute (see Title 1 CCR §100(a)(6)).

Proposed Change 2:

Update the reference in the “Note” from Section 480 of the Business and Professions Code to Section 480.2 of the Business and Professions Code and remove the reference to Section 482.

Justification for Proposed Change:

The Bureau also requests an amendment to the Note of section 75070. Replacing the outdated reference citing BPC §480 with BPC §480.2 and removing BPC §482 are changes without regulatory effect because the only changes are to the “authority” or “reference” citation for a regulation (see Title 1 CCR §100(a)(5)), as referenced on page 3.

5c. 75100. Suspension, Revocation, or Probation of Approval to Operate.

Discussed amendments are not chronological because the statutory reference needs to be updated.

Proposed Change 1:

Update the regulatory text from BPC §480 to BPC §480.2 in subsection (b) of section 75100. Add BPC §490 as an additional cross-reference immediately after BPC §480.2. Add an “s” to the word “section” since multiple sections will be referenced.

Justification for Proposed Change:

The Bureau proposes to amend section 75100 to update the statutory section cross-reference in the regulatory text from BPC §480 to BPC §480.2.

Existing Bureau regulations currently reference statute found in BPC §480 rather than BPC §480.2, leading to an outdated statutory citation after the passage of AB 2138, as described above on page 2.

Thus, the Bureau requests amendment of section 75100 of the CCR because the change deletes a regulatory provision for which the statutory authority has been repealed (see Title 1 CCR §100(a)(2)). If left as-is, current Bureau regulatory provisions would be inconsistent and superseded by changed statute (see Title 1 CCR §100(a)(6)).

Adding a cross-reference to BPC §490 is because BPC §490 allows the Bureau to suspend a license. BPC §480.2(f)(1)(B) requires the Bureau to develop criteria to evaluate the rehabilitation of a person when considering the suspension or revocation of a license under BPC §490. Adding a cross-reference in the regulatory text to BPC §490 does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element, and is a non-substantive “change without regulatory effect” under Title 1 CCR § 100(a)(6), because it makes the regulatory provision consistent with statute.

Proposed Change 2:

Add a comma and the words “suspension, or revocation” after “grounds for denial” in order to make the regulatory provision consistent with statute.

Justification for Proposed Change:

This amendment adds the words “suspension or revocation” to clarify the range of actions subject to regulatory review. Inserting “suspension or revocation” aligns the text with the rest of the regulatory section, and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element. Education Code Section 94937 (a) and CCR Section 75100, subsection (a) permit the Bureau to suspend, revoke, or place on probation an approval to operate. As such, adding the words “suspension, or revocation” to the regulatory provision in subsection (b) to state

that a “material violation,” including violations of the BPC is grounds for suspension or revocation, is a change that revises the “structure, syntax, cross-reference, grammar, or punctuation” (see Title 1 CCR §100(a)(4)).

Proposed Change 3:

Update the reference in the “Note” for the regulatory section from Section 480 of the Business and Professions Code to Section 480.2, and add Section 490 as a referenced section of the Business and Professions Code.

Justification for Proposed Change:

The Bureau also requests an amendment to the Note of section 75100 because replacing the outdated reference citing BPC §480 with BPC §480.2 and adding BPC §490 are changes without regulatory effect because the only changes are to the “authority” or “reference” citation for a regulation (see Title 1 CCR §100(a)(5)), as referenced on page 3.