

NONSUBSTANTIVE REGULATIONS SUBMISSION

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION REGULATIONS SUBMISSION
STD. 400 (REV. 10/2019)

See instructions on reverse

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2021-0929-03N	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

NOV 10 2021

1:20pm

OFFICE OF ADMIN. LAW
2021 SEP 29 PM2:21

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
Contractors State License Board (CSLB)

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER	PUBLICATION DATE
		<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Blanket Performance and Payment Bond Requirements and Application	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 858.1 and 858.2
TITLE(S) 16	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input checked="" type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Betsy Figueira	TELEPHONE NUMBER (916) 255-3369	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) betsy.figueira@cslb.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>David Fogt</i> <small>David Fogt (S&P) 09/28/2021 15:21 PST</small>	DATE 09/28/2021
TYPED NAME AND TITLE OF SIGNATORY David R. Fogt, Registrar	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

NOV 10 2021

Office of Administrative Law

CONTRACTORS STATE LICENSE BOARD

PROPOSED LANGUAGE

California Code of Regulations Title 1, Section 100 Changes

Title 16, Division 8

Article 6. Bonds

Amend Section 858.1 as follows:

§858.1. Blanket Performance and Payment Bond Requirements

(a) A blanket bond that is filed on behalf of a licensee to satisfy the provisions of Section 858 shall be underwritten for a dollar amount that is sufficient to cover one-hundred percent (100%) of the home improvement contracts for which the licensee has an obligation.

(b) Upon written request by a licensee, the Registrar is authorized to approve a blanket bond that is capped according to the schedule listed under subsection (c) provided the following conditions are met:

(1) The licensee, or the parent company of the licensee, is required to submit annual reports (Form 10-K) to the United States Securities and Exchange Commission (U.S. SEC).

(2) Upon the filing of a request that the blanket bond be capped, a copy of the most recently filed Form 10-K shall be submitted to the Registrar. Thereafter, a copy of any Form 10-K report shall be submitted to the Registrar within 10 days of filing with the U.S. SEC.

(3) The net worth of the applicable firm shall, initially and annually thereafter, be not less than 10 times the sum of the blanket bond as determined by the Registrar. Each net worth calculation shall be applicable to the period for which the most recent Form 10-K report was submitted to the U.S. SEC.

(c) The blanket bonds for which a request has been submitted under subsection (b) shall comply with the following schedule:

(1) If a licensee, or the parent company of a licensee, is classified as a "large accelerated filer" by the U.S. SEC, the amount of the blanket bond shall be \$10 million.

(2) If a licensee, or the parent company of a licensee, is classified as an "accelerated filer" by the U.S. SEC, the amount of the blanket bond shall be \$5 million.

(3) If a licensee, or the parent company of a licensee, is classified as a "non-accelerated filer" by the U.S. SEC, the amount of the blanket bond shall be \$1 million.

(d) A licensee who is granted approval of a blanket bond pursuant to subsections (b) and (c) is not subject to the biennial financial reporting requirement specified under Section 858.4(a)(2). However, the qualifier's certification statement must be submitted biennially as specified under that section.

(e) For the purpose of executing the qualifier's certification statement required under Section 858.2(a)(4), the provisions of subsections (a), (b), and (c) of Section 858.1 shall be referenced collectively as "the 100% rule."

On the date that this section becomes effective, any licensee that has a blanket bond on file with the Board that fails to comply with the 100% rule shall achieve compliance not later than 90 days after the effective date of the section. The Registrar is authorized to rescind the approval of the blanket bond in accordance with the provisions of Section 858.8 of this Article if the licensee fails to comply with any provision of this section.

(f) The form of the blanket bond specified under this section is subject to the approval of the Registrar and shall conform to the following with regard to content:

This bond shall be filed with the Registrar of Contractors.

State of California
Contractors State License Board

Surety Code: _____
Bond No.: _____
License No.: _____

BLANKET PERFORMANCE AND PAYMENT BOND

~~13B-39~~ (Rev. 08/11)

(Business and Professions Code Section 7159.5)

The term of this bond is _____ to _____,
(Starting Date) (Ending Date)

KNOW ALL BY THESE PRESENTS: That _____,
(Business Name as Shown on the License)

whose address for service is _____

(Street Address)

(City)

(State)

(Zip Code)

as Principal, and _____
(Name of Surety)

a corporation organized under the laws of the State of _____ and authorized to transact a general surety business in the State of California, as Surety, are held and firmly bound unto each owner or tenant of a residence or dwelling unit as the beneficiaries with whom the Principal, as of the date of this bond and thereafter, enters into a home improvement contract as defined in Section 7151.2 of the Business & Professions Code for repairing, remodeling, altering, converting, or modernizing such building or structure; and the aggregate contract price specified in one or more improvement contracts including all labor, services, and materials to be furnished by the Principal as the contractor exceeds _____ Dollars (_____) the dollar amount prescribed in subparagraph (3) of subdivision (b) of Section 7159 of the Business and Professions Code in the just and full sum of the amount of each individual contract for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, successors, and assigns, jointly and severally, firmly by these presents. This blanket performance and payment bond is issued in the amount of

_____ (\$ _____).
(Bond Dollar Amount)

THE CONDITION OF THE OBLIGATION IS SUCH, That, WHEREAS, Sections 7159 and 7159.5 of the Business & Professions Code provide for bonding requirements for contractors entering into contracts covered by these provisions of law, AND, WHEREAS, the Principal desires to file a blanket guarantee to operate as security in accordance with Section 995.020 of the Code of Civil Procedure, to cover the performance and payment of all obligations resultant from such contracts in order to conduct business under the exemptions specified under paragraph (8) of subdivision (a) of Section 7159.5 of the Business & Professions Code.

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the understandings, covenants, terms, conditions, and agreements of said contracts, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contracts; and if the Principal shall promptly make payments to all persons, whether or not in direct contractual relationship with Principal, supplying labor or material or both for the prosecution of the work provided in said contracts, then this obligation is to be void; otherwise, it is to remain in full force and effect as though separate bonds in the full amount of the contract price had been written on the individual contracts.

PROVIDED, HOWEVER, this bond is issued subject to the following express conditions:

1. This bond may be cancelled by the Surety in accordance with the provisions of Sections 996.310 et seq. of the Code of Civil Procedure.

2. This bond shall be deemed continuous in form and shall remain in full force and effect and shall run concurrently with the license period for which the license is granted and shall continue beyond that period and every succeeding license period or periods for which said Principal may hold this license or until the effective date of rescission of the Registrar's approval of the bond, after which liability hereunder shall cease in accordance with provisions of Section 996.360 of the Code of Civil Procedure.

3. This bond to become effective _____
(Date)

4. Even though this bond may be in effect for more than one year, the sSurety's aggregate liability for all contracts covered hereunder shall in no event exceed the amount set forth above.

5. The sSurety signing this bond is jointly and severally liable on the obligations of the bond, the obligations of the statutes providing for this bond, and the applicable provisions of the Code of Civil Procedure regarding bonds.

(Name of Surety) (Address for Service)

I declare under penalty of perjury under the laws of the State of California that I have executed the foregoing bond under an unrevoked power of attorney. I further declare that I have relied upon the "Qualifier's Certification Statement" to determine that, as of the date of execution, the penal sum of this bond is a good faith valuation of the funds required to safeguard the financial interests of the beneficiaries relative to the obligations for which this bond is posted.

Executed in _____, _____ on _____,
(City and State) (Date)

under the laws of the State of California.

Certificate of Authority # _____

Signature of Attorney-in-Fact _____

Printed or Typed Name of Attorney-in-Fact _____

Address of Attorney-in-Fact _____

Telephone Number of Attorney-in-Fact (_____) _____

Signature of Principal (Qualifier for the License) _____

13B-39 (rev. 07/2021)

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7151.2, 7159, and 7159.5, Business and Professions Code.

Amend Section 858.2 as follows:

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

(a) A licensee seeking approval of a blanket bond shall meet the applicable conditions specified under this Article and submit to the Board an Application for Approval of Blanket Performance and Payment Bond, form 13B-35 (11/2011), that includes the following information:

(1) The name and address of the licensee as listed on the license record and the license number.

(2) The name of every person listed on the license record of the applicant who, as specified under Section 7068 of the Code, is acting as a qualifier for the license.

(3) The reviewed year-end financial statements and a report prepared by a certified public accountant (CPA) duly licensed by the California Board of Accountancy or licensed by another state board of accountancy. The reviewed financial statements shall include supplemental information related to the liquidity ratios of the licensee's business and shall particularly include the current ratio and the quick ratio, the calculations for which are specified under subparagraphs (A) and (B) below. The review report, or a separate supplementary report, shall include an explanation that the information has been subject to the review of the CPA. The review report shall cover the two fiscal years immediately preceding application for approval of the blanket bond, and should be prepared in accordance with the current Statements of Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

(A) Current ratio calculation: current assets; divided by current liabilities.

(B) Quick ratio calculation: current assets minus inventory; divided by current liabilities.

(4) A certification statement, signed under penalty of perjury by the qualifier for the license, which shall conform to the following language:

QUALIFIER'S CERTIFICATION STATEMENT

(Unless otherwise noted, all section references are to the California Business & Professions Code.)

The undersigned declares that, in accordance with Sections 7068 and 7068.1 of the Code, he or she is a qualifier for the licensee identified below (hereafter referred to as "licensee") and is responsible for exercising the direct supervision and control of the licensee's operations as is necessary to secure full compliance with the laws and

regulations that are under the jurisdiction of the Contractors State License Board. As a qualifier of the licensee, the undersigned has reviewed sufficient financial information to execute this certification as it pertains to the licensee's home improvement sales and services that are subject to the home improvement contract requirements specified under Section 7159 of the Code. As of close of business on _____, the
(Date)

blanket performance and payment bond (bond) number _____ issued by
(Bond Number)

_____ as sSurety is, according to my comprehension
(Name of Surety Company)

of the data derived from the licensee, in an aggregate amount that is sufficient to comply with the "100% rule" as specified in the provisions of Section 858.1 of Title 16, Division 8 of the California Code of Regulations. The undersigned also certifies that he or she will monitor the relevant business activity of the licensee; exercise due diligence to secure ongoing compliance with the 100% rule; and notify the Registrar within 30 days of the licensee's refusal, failure, or inability to comply with the 100% rule.

The undersigned also certifies that, upon approval of the blanket bond by the Registrar, the contract forms that will be used by the licensee for all transactions which are subject to Section 7159 of the Code will contain a notice which informs the property owner that a blanket performance and payment bond is on file with the Registrar of Contractors, or in lieu thereof, a notice that clearly identifies the name and address of the sSurety that has issued the blanket performance and payment bond.

As a qualifying individual for the licensee, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on _____ at _____,
(Date) (City and State)

(Name of Licensee as it Appears on the License) (License Number)

(Printed Name of Qualifier) (Signature of Qualifier)

(b) A licensee shall be licensed in this state in an active status for not less than ~~five~~two years prior to submitting the application provided for by this section.

(c) Except as otherwise provided under this subsection, an application for approval of a blanket bond shall not be accepted for consideration if any member of the personnel of record of the licensee, or any home improvement salespersons registered to the licensee, was found to have been responsible for, participated in, or otherwise culpable relative to any legal action that is subject to disclosure under Section 7124.6(e)(2) or 7124.6-(e)(3) of the Code, or is named on a license that is suspended pursuant to Section 7071.17 of the Code.

(1) Any person who, after the effective date of the most recent disciplinary order applicable to that individual, is listed on an active license for three consecutive years with no violations resulting in disciplinary action may make application as provided under this Article.

(d) The application shall be signed by the person qualifying on behalf of the licensee who has executed the qualifier's certification statement required under this section. In the case of a responsible managing employee qualifier, the application shall also be signed by the owner, partner, or current corporate officer.

(e) The application shall be accompanied by a blanket bond that complies with the provisions of Section 858.1 of this Article and is underwritten by a surety that has been admitted in the State of California.

Note: Authority cited: Section 7008, Business and Professions Code. Reference: Sections 7068, 7068.1, 7071.17, 7124.6, 7159, and 7159.5, Business and Professions Code.