

TEXT OF PROPOSED REGULATIONS

CALIFORNIA OFFICE OF THE SMALL BUSINESS ADVOCATE

1325 J Street, Suite 1800
Sacramento, CA 95814

Title 10. Investment

Chapter 13. Governor's Office of Business and Economic Development

Article 2. Made in California Program

Amend Article 2. Made in California Program, Sections 8100, 8110, 8120, 8130, 8140, and 8150.

Adopt Article 2. Made in California Program, Section 8160.

The pre-existing regulation text is set forth below in normal type. The proposed amendments are shown in single underline to indicate additions and ~~single strikeout~~ to indicate deletions from the existing regulatory text.

§ 8100. Definitions.

For purposes of this article, the following definitions shall apply:

(a) "Applicant" means any sole proprietor, corporation, partnership, 501(c)(3) non-profit, 501(c)(4) non-profit, or any other business entity type applying for the ~~CA Made license~~ Made in California Label that is legally authorized to do business in California.

(b) "Application" means the request by an ~~a~~ Applicant for the ~~CA Made~~ Made in California license ~~License by submitting the information as specified in the application form.~~

(c) "Application ~~form~~ Form" means the form designated by ~~GO-Biz~~ CalOSBA, which shall contain the information requested in Section 8110(d) ~~and shall be available on the website.~~

(d) "~~CA Made label~~" means ~~an authorized seal designated by GO-Biz that represents that the product is certified as CA Made pursuant to the program.~~

(d) "Application Portal" means a CalOSBA designated application portal.

(e) "~~Certification~~" or "~~certified~~" means ~~a determination made by a third-party certifier that the product is in compliance with the program.~~

(e) "Attestation" means a self-certification statement submitted as part of the Application that attests that the Product(s) entered in the Product Database and/or utilizing the Made in California Label complies with the Program.

(f) "~~Certification form~~" means ~~the form designated by GO-Biz on the website completed by a third-party certifier stating that the product(s) meet(s) the requirements of the program.~~

(f) “Brand Guidelines” means a resource that stipulates all usage of creative assets and messaging across all media and channels, providing consistency and clarify to the visual and written components of the branding and marketing of the Program.

(g) “CalOSBA” means the California Office of Small Business Advocate which is the office designated by GO-Biz to administer the Program.

(gh) “Certification term Term” means the three two (2) years term beginning on the date of execution of the licensing Licensing agreement Agreement.

(i) “Contract Manufacturer/Packer” means a company hired or contracted to produce goods or components, or package products on behalf of another business. These companies typically manage the transformation of raw materials or ingredients supplied by the client into finished products, often handling the entire production and packaging process to prepare them for sale.

(j) “Familiar” means has sufficient knowledge about the supply chain of the specified product(s) to verify the source of the product components in order to perform a third-party regulatory audit as set forth in Government Code section 12098.10 et seq.

(hj) “Direct labor cost Labor Cost” means salaries wages paid to workers and benefits paid on behalf of workers who are directly involved in the production of goods or services. Direct labor costs are assignable to a specific product, cost center, or work center. This includes employees who physically work on the manufacturing process, whose efforts can be directly traced to the production of specific products.

(ik) “Direct material cost Material Cost” means the cost of all items such as raw materials, standard and specialized parts, and sub-assemblies and components required to assemble, fabricate or manufacture a complete product and which can be easily identified with the complete product. Cost of packaging cannot be included.

(kl) “Fee” or “Fees” means the annual CA Made Made in California fee charged to licensees Licensees by GO-Biz CalOSBA every two (2) years.

(m) “Indirect labor cost” means salaries paid to workers to support the production process, but which is not directly involved in the active conversion of materials into finished products.

(n) “Full-Time Equivalent” or “FTE” means the standardized measurement that accounts for all part-time and full-time W-2 workers who contribute to a business; this number may be different than the total number of employees. The calculation is based on the previous calendar year for established businesses; if a business has started in the current calendar year, the calculation includes all part-time and full-time employees who are reasonably expected to work in the current year. Full-time employment is defined in California Labor Code Section 515(c) as 40 hours per week.

(n) “Indirect material cost” means the cost of materials used in the production process, but which cannot be linked to a specific product or job.

(tn) “GO-Biz” means Governor's Office of Business and Economic Development.

(o) “Indirect Costs” means all overhead expenses not directly related to active conversion of materials to a finished product including utilities, depreciation, rent/mortgage, office supplies, marketing, administrative or executive employee labor costs, and insurance. Costs related to Research and Development and packaging cannot be included.

(p) “Ineligibility Conditions” means the following descriptions:

(1) Businesses that do not have their Product(s) manufactured, fabricated, produced, or assembled at a facility located in California;

(2) Businesses primarily engagement in political or lobbying activities, regardless of whether the entity is registered as a 501(c)(3), 501(c)(6), or 501(c)(19);

(3) Passive businesses, investment companies, and investors who file a Schedule E on their tax returns; financial institutions or businesses primarily engaged in the business of lending, such as a banks, finance companies, and factoring companies;

(4) Businesses engaged in any activity that is unlawful under federal, state, or local law;

(5) Businesses that restrict patronage for any reason other than capacity;

(6) Speculative businesses;

(7) Businesses where the owner has, within the prior three years, been convicted of or had a civil judgment rendered against the owner, or has had commenced any form of parole or probation, including probation before judgment, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local public transaction or contract under a public transaction, violation of federal or state antitrust or procurement statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(8) Businesses where the owner is presently indicted for or otherwise criminally or civilly charged by a federal, state, or local government entity, with commission of any of the offenses enumerated in clause;

(9) Businesses of a prurient sexual nature including businesses which derive directly or indirectly more than de minimis gross revenue through the sale of products of a prurient sexual nature;

(10) Other businesses determined to be ineligible by CalOSBA for reasons of incomplete, confusing, or misleading information submitted through the Application Form.

(oq) “License” means the right to use the ~~CA Made~~ Made in California label ~~Label as permitted by GO-Biz in the licensing agreement.~~

(pr) “Licensee” means an ~~applicant~~ Applicant who has entered into a ~~licensing~~ Licensing agreement ~~Agreement~~ with ~~GO-Biz~~ CalOSBA for the use of the ~~CA Made~~ Made in California label Label.

(qs) “Licensing agreement Agreement” means the ~~written~~ agreement between a ~~licensee~~ Licensee and ~~GO-Biz~~ CalOSBA describing the terms and conditions of using the ~~t~~License.

(t) “Made in California Fund” means a separate account created and maintained for deposit of fees associated with the Program.

(u) “Salary” means the amount of monetary compensation that is paid to a worker in return for work performed but does not include tips, overtime, bonuses, benefits, or other compensation of any kind.

(u) “Made in California Label” means an authorized seal designated by CalOSBA and representing that the Product is certified to meet the minimum requirements pursuant to the Program.

(v) “Supply chain” means a system of organizations, people, activities, information, and resources involved in moving the product from supplier to customer.

(rv) “Product” means a final, recognizable good or service that has been created by a value-added process. It shall also refer to a line or related group of products.

(w) “Third-party certifier” means a qualified third-party as defined by the program who is legally and financially separate from the applicant, familiar with the product(s) being certified, and is legally authorized to do business in California.

(w) “Product Database” means a database of all Licensees and all Products manufactured by a Licensee.

(x) “Production Costs” means the summed total of Direct Material Costs and costs paid to a Contract Manufacturer/Packer for manufacturing a Product.

(y) “Wholesale value” includes the direct material cost, direct labor cost, and overhead (indirect material and indirect labor costs), as described in Section 8120(c)(1).

(sy) “Program” means the ~~CA Made~~ Made in California program created by Government Code section 12098.10 et seq.

(tz) “Research and ~~development~~ Development” means work directed toward the innovation, introduction, and improvement of products and processes.

(aa) “Substantially Made” means completing an action that contributes at least 51% of the product's total operating costs through manufacturing, assembly, fabrication, or production in order to create a recognizable product. This does not include the act of packaging a product.

(bb) “Third-party Reviewer” means an independent external vendor contracted with CalOSBA that may conduct reviews of Applications for accuracy, eligibility, validation, and verification of information submitted and provide other assistance related to the Program.

(cc) “Total Operating Cost” means the total cost to produce the Product.

(xdd) “Website” means ~~GO-Biz~~ CalOSBA's designated website.

Credits

Note: Authority cited: Sections 12098.10 and 12098.11, Government Code. Reference: Sections 12098.10 and 12098.11, Government Code

§ 8110. Application Process for ~~CA Made~~ the Label.

~~(a) Applications shall be accepted by GO-Biz on a rolling basis. GO-Biz shall review, finalize, and execute licensing agreements at the beginning of each quarter.~~

(a) CalOSBA is the program administrator of the Made in California Program.

(b) Applications shall be submitted online in the Application Portal. Applicants shall create an account and establish a login and password as instructed on the Website.

~~(c) Applicants shall create an account profile and establish a login and password as designated on the website.~~

~~(d)~~ Applicants shall be asked to provide the following information on the ~~application~~ Application Form ~~Form~~:

(1) Contact information (legal entity business name, fictitious business name, contact name and title, primary business address in California, contact phone number, and email address, and website);

(2) Company logo and description;

(3) Retail store address (if applicable);

(4) Manufacturing industry;

(5) Type of business entity (sole proprietorship, corporation, limited liability company, limited partnership, general partnerships, or limited liability partnership, 501(c)(3) non-profit, or 501(c)(4) non-profit);

(6) Whether the applicant is legally authorized to do business in California as verified by uploading documents such as filing with the Secretary of State or with the local municipality, as applicable, including but not limited to, Articles of Incorporation, Certificate of Organization, or Fictitious Name of Registration;

(7) Whether the Applicant is certified in California by the Department of General Services or other similar state agency as a Small Business (SB) or a Disabled Veteran Business Enterprise (DVBE);

(8) Applicant's Data Universal Numbering System (DUNS) number and all applicable North American Industry Classification System (NAICS) codes;

~~(4) Product(s) for which the applicant is seeking the CA Made label, categories the product(s) fall(s) under, and a brief description of the product(s);~~

~~(5) Uploaded photo(s) of the product(s);~~

~~(6) Uploaded certification form signed by a third-party certifier for the product(s) described;~~

~~(7) Any other information on their product(s) for marketing purposes; and;~~

~~(8) Business biography for website listing.~~

(d) Applicant will be asked to provide the following voluntary information on the Application Form. Such information refers to the business-owner(s) and will not be used for consideration of eligibility in the Program.

(1) Gender;

(2) Race and/or ethnicity;

(3) Veteran-status;

(4) Disabled-status;

(5) Sexual orientation, including LGBTQ+

~~(e) Applicant authorizes GO-Biz to use product information, product photos, and business biographies on the website and in any other CA Made marketing materials developed or approved by GO-Biz (i.e., CA Grown, Visit California, etc.).~~

~~(e) Applicant will be asked if they manufacture their own Products or utilize a Contract Manufacturer/Packer.~~

~~(f) Applicant gives GO-Biz permission to alter the style and format of marketing materials. GO-Biz shall not alter the content of the marketing materials without written permission from the applicant.~~

~~(gf) Applicant shall represent and warrant that all statements in the application are true and complete to the best of the applicant's Applicant's knowledge. GO-Biz CalOSBA may ask an applicant Applicant to provide supplemental information that substantiates the information provided in the application Application.~~

~~(h) Applicant may revise or withdraw an Application at any time on the Website prior to submitting the Application.~~

Credits

Note: Authority cited: Sections 12098.10 and 12098.11, Government Code. Reference: Sections 12098.10 and 12098.11, Government Code.

§ 8120. Certification Process for ~~CA Made~~ the Label.

~~(a) Applicants shall provide the CA Made certification form to a third-party certifier.~~

~~(b) Third-party certifier shall determine whether the product(s) satisfies the definitions of "Made in U.S.A." and "substantially made" in California as set forth in the program. The determination of whether the product(s) is "substantially made" in California may be made by calculating the value added share of the product pursuant to subdivision (c).~~

~~(c) The California value added share of the product(s) shall be calculated based on the California wholesale value of the product(s) and total product cost as described below:~~

~~(1) The California wholesale value shall be determined by summation of the following costs:~~

~~(A) California direct and indirect material costs; and,~~

~~(B) California direct and indirect labor costs.~~

~~(2) The total product cost shall be determined by summation of:~~

~~(A) California wholesale value, as described in Section 8120(c)(1);~~

~~(B) Direct and indirect material cost from outside California; and,~~

~~(C) Direct and indirect labor cost from outside California.~~

~~(3) The California value added share is equal to the California wholesale value divided by the total product cost.~~

~~(4) The California value added share may not include research and development.~~

~~(d) Third-party certifiers may determine whether a product(s) satisfies the program's requirements by reviewing the following materials from the applicant: approved budgets, invoices, and any other documents, computerized data, and other writings, whether handwritten, typewritten, printed, copied, or electronically stored to verify the origin of materials in California or the United States. This list is not a prescriptive or exhaustive list of the materials a third-party certifier must rely upon.~~

~~(e) Third-party certifiers shall be asked to provide all of the following information as directed on the certification form:~~

~~(1) Applicant information (legal entity business name, fictitious business name, owner name, primary business address in California, phone number, and email);~~

~~(2) Third-party certifier information (legal entity business name, fictitious business name, address, phone number, and email);~~

~~(3) Acknowledgement, in the form of a "yes" or "no" response, from third-party certifier that they meet the program's requirements for third-party certifiers and a brief description of how those requirements have been met;~~

~~(4) Name of product(s) to be certified;~~

~~(5) Brief description of product(s) for which the applicant is seeking to obtain a CA Made license;~~

~~(6) Description of the documents reviewed to perform the certification;~~

~~(7) Acknowledgement, in the form of a "yes" or "no" response, that the product(s) listed in Section 8120(e)(4) meet(s) the program's requirements for certification; and;~~

~~(8) Dated third-party certifier signature verifying that all content on the certification form is true and correct to the best of his/her knowledge based on the information provided by the applicant.~~

~~(f) The applicant shall submit the certification form to GO-Biz electronically by uploading a scanned copy of the signed certification form to his/her application on the CA Made website.~~

(a) To be approved for a Licensing Agreement, the Applicant must make an Attestation that final assembly, manufacturing, or processing of each individual Product that will be entered into the Product Database and those utilizing the Made in California Label takes place in a manufacturing facility located in California and satisfies the definition of "Substantially Made" in California.

(b) Applicant is to be held legally responsible for the accuracy of the submitted information. CalOSBA reserves the right to reject an Application or to terminate a Licensing Agreement upon discovery of incorrect or misleading information.

(c) The determination of whether the Product(s) is “Substantially Made” in California shall be made by calculating the Total Operating Costs generated in California as described below.

(1) For Applicants who manufacture their own Product:

i. Total Operating Cost shall be determined by the summation of the following costs:

1. Direct Labor Costs generated within California; and,

2. Direct Material Costs generated within California; and,

3. Indirect Costs generated within California.

(2) For Applicants who utilize a Contract Manufacturer/Packer:

i. Total Operating Cost shall be determined by the summation of the following costs:

1. Production Costs generated within California; and,

2. Indirect Costs generated within California.

Credits

Note: Authority cited: Sections 12098.10 and 12098.11, Government Code. Reference: Sections 12098.10 and 12098.11, Government Code.

§ 8130. Application Review, Rejection, Approval, and Renewal Processes.

(a) Upon receipt of an a submitted application Application, ~~GO-Biz shall:~~ the Application will be reviewed to verify that the Applicant has submitted the information required to demonstrate the “Substantially Made” in California criteria and none of the Ineligibility Conditions are met.

(1) Review the application for completeness; and,

(2) Notify applicant of any deficiencies if appropriate.

(b) If an applicant intends to revise a portion of a previously submitted application form, the applicant shall either revise his/her application or withdraw the application and submit a new application. An applicant may revise or withdraw an application form at any time on the website prior to execution of a licensing agreement for the product(s).

(c) If an application is rejected, GO-Biz shall inform the applicant of the rejection by email and the applicant's right to reapply for the license. There is no appeals process.

(b) If an Application is rejected, Applicant will receive an automatic email notification of the rejection. The email will provide instruction for reapplying for a License in the future should something change which would affect the Applicant's eligibility. There will be no appeals process to eligibility decisions.

~~(d) If the application is approved, GO-Biz shall:~~

~~(1) Prepare a licensing agreement between GO-Biz and the applicant, which shall set forth the rights and limitations of use of the CA Made label.~~

~~(2) Impose the fee to the licensee based on Section 8150(c).~~

~~(e) GO-Biz will fully execute the licensing agreement once GO-Biz receives payment of the fee and the licensee executes the licensing agreement. Fees are not refundable at any time.~~

~~(c) If an Application is approved:~~

~~(1) Applicant will be directed to sign a Licensing Agreement between CalOSBA and the Applicant, which shall set forth the rights and limitations of use of the Made in California Label.~~

~~(2) Applicant will be directed to pay a Fee for the Certification Term of the Licensing Agreement.~~

~~(3) A fully executed Licensing Agreement will be issued upon receipt of payment of the Fee. Fees are nonrefundable.~~

~~(4) Applicant will be permitted to use the Made in California Label and enter qualified Products in the Product Database.~~

~~(fd) Any changes to the information submitted described in Section 8110(d) after the execution of a licensing agreement Licensing Agreement must be reported by the licensee Licensee to GO-Biz CalOSBA within thirty (30) business days by updating their account profile on the website Website. GO-Biz CalOSBA reserves the right to approve any changes to the account profile before they are published on the website Website. Changes that are inconsistent with the executed licensing agreement Licensing Agreement will result in termination of the licensing agreement Licensing Agreement and will require a new application.~~

~~(ge) Once the certification term Certification Term ends, the licensing agreement Licensing Agreement expires and the license License becomes invalid.~~

~~(hf) An applicant Applicant may renew a license License by submitting a new an updated application Application. Renewals are subject to a recalculation of the associated Fee. CalOSBA will execute a new Licensing Agreement after Applicant has made payment of the Fee.~~

Credits

Note: Authority cited: Sections 12098.10 and 12098.11, Government Code. Reference: Sections 12098.10 and 12098.11, Government Code.

§ 8140. ~~CA Made~~ Licensing Agreement and ~~CA Made~~ Label Usage.

~~(a) The website Website, and the licensing agreement Licensing Agreement, and Brand Guidelines will identify the specific conditions of use of the CA Made label Made in California Label that will to be provided to licensees Licensees by GO-Biz CalOSBA.~~

(b) The ~~CA Made label~~ Made in California Label may be used by ~~licensees~~ Licensees for ~~certified products~~ Products pursuant to the rights and limitations as described in the ~~licensing agreement~~ Licensing Agreement, which shall include, but not be limited to use on the Product, Product containers or packaging, in point-of-purchase or other displays, and in advertising.

~~(1) Use on the product, product containers, in point-of-purchase or other displays, and in advertising;~~

(c) The Made in California Label shall not be:

(1) Incorporated into any business, company or Product logo or label; and,

(2) Used as its own mark or the exclusive representation of the Product.

~~(2) Not be incorporated into any business, company or product logo or label; and,~~

~~(3) Not be its own mark or the exclusive representation of the product.~~

(d) If a ~~licensee's~~ Licensee's particular use of the ~~CA Made label~~ Made in California Label is inconsistent with the ~~licensing agreement~~ Licensing Agreement and Brand Guidelines ~~GO-Biz~~ CalOSBA may terminate the ~~licensing agreement~~ Licensing Agreement or require the ~~licensee~~ Licensee to discontinue that particular use of the ~~CA Made label~~ Label.

(e) Once a Licensing Agreement is terminated or expires for any reason, the Licensee will be notified by CalOSBA and must respond in writing within thirty (30) business days explaining how and when the Made in California Label will be removed from all packaging and promotional materials associated with the Product(s). All rights to the Made in California Label will be withdrawn until and unless a new Application is submitted and approved.

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(f) The Brand Guidelines will include the following design parameters:

(1) Visual demonstration of the Label;

(2) Clear space expectations for the Label;

(3) Typography recommended for use with the Label;

(4) Color palettes recommended for use with the Label;

(5) Tone of language to be used in written text about the Label;

(6) Talking points regarding the Label and its benefits;

(7) A Quick Response (QR) code for promotion to the Label;

(8) Images and video assets that can be used in promotional materials; and

(9) Details on media requests and program information.

Credits

Note: Authority cited: Sections 12098.10 and 12098.11, Government Code. Reference: Sections 12098.10 and 12098.11, Government Code.

§ 8150. Fee Imposition, Structure, and Management.

(a) Upon ~~application~~ Application approval, ~~GO-Biz~~ CalOSBA shall assess a ~~fee~~ Fee on all ~~licensees~~ Licensees. The total Fee will be collected in advance for the entire Certification Term of the License Agreement.

(b) The ~~fee~~ Fee shall be ~~determined~~ calculated for each licensee based on the number of ~~products that are included in an approved application~~ employees employed by the Applicant. The number of employees will be calculated as Full-Time Equivalent (FTE).

(1) The Fee shall be seventy-five dollars (\$75.00) for companies with less than (20) employees, two hundred fifty dollars (\$250.00) for companies with twenty (20) to five hundred (500) employees and five hundred dollars (\$500.00) for companies with over five hundred (500) employees.

(2) The Fee will be imposed every two (2) years commencing on the date when CalOSBA signs this Agreement and on the same date every two (2) years while the Agreement remains valid.

(c) CalOSBA may provide a one-time waiver or discount on the Fee for the first two (2) year term of the License Agreement. Applicants may become eligible for a waiver or discount in the following ways:

(1) Be an existing participant in the Made in California Program administered by California Manufacturing Technology Consulting (CMTC).

(2) Participate in the Made in California Advisory Committee convened by CMTC.

(3) Make in-kind contributions to the Made in California Program worth at least the value of the highest Fee.

(4) Promote the benefits of the License Agreement or associated program to their target audience(s). These groups may include trade associations, business networks, or other entities focused on supporting manufacturers, and their promotion must align with the goals of CalOSBA.

~~(c) The fee shall be one hundred dollars (\$100.00) for the first product in an approved application and twenty-five dollars (\$25.00) for each additional product not to exceed a total of one hundred and fifty dollars (\$150.00) from a single approved application.~~

~~(d) The fee will be imposed on an annual basis commencing on the date when an application is approved and on the same date each following year while the license remains valid.~~

~~(d) CalOSBA will post Fees on the Made in California Website.~~

~~(e) GO-Biz~~ CalOSBA will collect and deposit all fees in the Made in California Fund.

~~(f) CalOSBA reserves the right to change the Fee with a sixty (60) day notice to current Licensees and posting of change on the Made in California Website.~~

Credits

Note: Authority cited: Sections 12098.10 and 12098.11, Government Code. Reference: Sections 12098.10 and 12098.11, Government Code.

8160. Product Database

(a) The Product Database shall be available on the Website and shall include information about the Licensee and all Licensee's Products. Licensees are responsible for inputting, maintaining and updating their own Product information.

(b) It is the responsibility of each Licensee to ensure all Products listed in the Product Database meet the Program requirements.

(c) Licensee's may enter the following information into the Product Database:

(1) Product(s) eligible to use the Made in California Label, categories the Product(s) fall(s) under, and a brief description of the Product(s);

(2) Uploaded photo(s) of the Product(s);

(3) Any other descriptive information about the Product(s) to be used for marketing purposes on the Website;

(4) Company logo; and,

(5) Company biography.

(d) Applicant authorizes CalOSBA and GO-Biz to use all information contained in the Product Database such as Product information, Product photos, and business biographies on the Website and in any other Made in California marketing materials developed or approved by CalOSBA and GO-Biz (i.e., CA Grown, Visit California, etc.).

(e) Applicant gives CalOSBA permission to alter the style and format of marketing materials. CalOSBA shall not alter the content of the marketing materials without written permission from the Applicant.

Credits

Note: Authority cited: Sections 12098.10 and 12098.11, Government Code. Reference: Sections 12098.10 and 12098.11, Government Code.