

CALIFORNIA APPRENTICESHIP COUNCIL
PROPOSED REGULATIONS 206, 207 AND 212.05
AND OF PROPOSED AMENDMENTS OF
REGULATIONS 201, 205, 208, 212, 212.01, 212.2, 212.3,
212.4, 228, 229, 230, 230.1, 230.2, 231 AND 234.2

FINAL STATEMENT OF REASONS
AND
UPDATED INFORMATIVE DIGEST
(Revised)

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FINAL STATEMENT OF REASONS

Specific Technologies or Equipment

None of the proposed Regulations mandate the use of specific technologies or equipment.

Technical, Theoretical and Empirical Studies

None of the proposed adoptions is based on any technical, theoretical or empirical study.

Impact on Local Agencies or School Districts

None of the proposed Regulations imposes a mandate on local agencies or school districts.

Summary of Public Comments and Responses Thereto

A summary of public comments concerning the proposed Regulations and the Council's responses to the comments is submitted separately.

Alternatives

The Council considered alternative approaches to the setting of a minimum wage for apprentices in Regulation 208 and rejected the alternatives on the ground that the alternatives were either unworkable or did not set an adequate wage. The Council determined that there were no feasible alternatives to the subjects covered by the other Regulations. The Regulation 208 may increase the labor costs of some small businesses if the small business employs apprentices who are apprenticed under a state-approved apprenticeship program. The Council determined that there was no alternative approach to ensuring that apprentices of such small business receive an adequate minimum wage. However, apprenticeship is voluntary in that no statute requires any business to employ apprentices. It is not expected that the other proposed Regulations will have a significant adverse impact on small businesses.

Updated Informative Digest

1. Regulation 201 implements Labor Code sections 3081 and 3082 and deals with complaints to the Administrator of Apprenticeship concerning program sponsors. The proposed amendment excludes complaints based on Labor Code section 1777.5 and CCR Title 8, Chap. 2, Part 2, Article 10 (public works apprenticeship) from the requirement that the complaint be filed within 30 days. Prior regulation 231 had a specific time limit for public works violations, but that section was proposed to be repealed following the recent passage of AB 921. The proposed

action is needed to clarify that regulation 201 which concerns general complaints about violation of apprenticeship law and regulation does not apply to the complaint procedures concerning apprentices on public works set forth in Labor Code section 1777.7 and Article 10 of these regulations. Under the prior regulation 231, which provided a 90 day time limit, the Director was required to review, upon request, the decision anytime a complaint was found without merit. That cumbersome process was removed following the adoption of amendments to Labor Code 1777.7, and the Council concluded that since the legislature had not imposed any time limit for public works violations, and since the DAS was not required to proceed with every complaint, a time limit was not required.

2. Regulation 205 implements Labor Code sections 3073, 3075, 3077, 3079, 3086 and 3090 and contains definitions. The proposed amendment adds subsections (m) and (n) defining the phrases “employed as an apprentice” and “geographic area of operation.” The proposed amendment addresses the problem of uncertainty about the meaning of apprenticeship terms and solves the problem by defining them.

(m) was added because of Labor Code 3098. In 3098 the Legislature mandated that an apprentice be employed only as an apprentice when performing construction work. The CAC concluded that the phrase “employed as an apprentice” was not clear, and therefore added a definition specifying that “employed as an apprentice” meant working under the apprenticeship standards, wages and supervision applicable to the apprentice’s period of apprenticeship. This language was needed to address concerns that an apprentice might be employed as an ordinary laborer, without benefit of on the job training and other protections of that apprentice’s standards by a contractor who had agreed to provide training. This might come about because contractors are required to pay apprentice wages as set out in the apprentice standards on private works but other construction workers can be paid minimum wage.

(n) was added because of the need to have a consistent point of reference for a program’s geographic area of operation. By adding (n) the CAC was able to use that definition in other regulations. For example, in 212 each program must state its geographic area of operation. In 230 contractors must contact programs whose geographic area of operation includes the site of a public works project. These provisions function together and the definition is necessary to provide a clear and consistent point of reference.

3. Proposed Regulation 206 implements Labor Code section 3078 and 3079 by setting forth a procedure for the approval and registration of apprenticeship agreements. Existing law does not contain such a procedure. Labor Code 3079 provides for the filing of apprentice agreements with the CAC and under certain circumstances requires approval by the Administrator. When an agreement is filed with the CAC the apprentice is registered and can be paid the lower apprentice wage on public works projects. See Labor Code 1777.5. This regulation provides a standard for registration of agreements and provides that agreements are to be registered only if the agreement complies with the standards, rules and regulations. Labor Code 3079 provides that the Administrator, who is the Director of DIR, shall review certain agreements, but does not specify criteria for that review. This regulation is needed to supply those criteria. The CAC chose a 30

day time limit for submitting agreements. That 30 day time for filing and filing limit is needed because apprentices may begin work on a public works project before the agreement has been sent to DAS for registration. 30 days allows sufficient time for filing, is a round number often used for similar deadlines, and is consistent with similar federal rules. A time limit is needed to insure prompt filing of agreements and to avoid disputes as to when an agreement was executed and when a worker could be paid the lower apprentice wage on public works. The CAC rejected the alternative of treating an agreement as registered only when received because such a rule could unfairly penalize contractors who employ apprentices at the lower wage on public works between the time an apprentice signs and agreement and the time that agreement is sent to the CAC.

4. Proposed Regulation 207 implements Labor Code section 3078 and 3079 by setting forth a procedure for the termination of apprenticeship agreements. Existing law does not contain such a procedure. Labor code 3078 specifically mandates that apprentice agreements contain a period of probation during which time the agreement may be terminated by either party, and that the agreement provide that thereafter the agreement can be terminated by “mutual agreement” or cancelled by the Administrator for “good and sufficient” reason. The CAC concluded that there was a necessity for a process by which the agreement would be terminated. The regulation provides that where the termination is by mutual agreement, a request in writing shall be submitted to the Administrator. Where there is not mutual agreement, the party requesting termination is directed to submit evidence showing good cause. This is necessary to assign the burden to the requesting party rather than requiring the Administrator to seek out such information. The regulation requires the apprentice be given an opportunity to adjust any dispute. This is necessary because of regulation 201 allows for such local adjustment, and therefore there is a need to harmonize the apprentice’s options for review of the program’s decision.

5. Proposed Regulation 208 modifies the method of establishing the wage scale for apprentices. Proposed Regulation 208(a) provides that, for industries other than building and construction, the minimum wage shall be decided by the program sponsor with approval of the Chief DAS. It was necessary to add the language that the wage was “subject to the approval of the Chief DAS” to clarify that the wage proposed by the program sponsor under 208(a) remains a part of the standards which must be approved by the Chief under 212 and 212.2. Under 212, Apprenticeship standards must contain a statement of wages. See 212(a)(5). The procedure for the Chief to approve wages under 208(a) thus remains the procedure for approval of standards under 212 and 212.2. The Council decided to continue current practice and not specify criteria that the Chief must apply in every case. The Council saw no reason to limit the Chief’s discretion in this area. The added language in 208 is needed to resolve any ambiguity that may have been present in the former language of 208(a) about whether the Chief must approve wages.

Unlike the wages in the Building Trades, covered in (b), the Director does not make a determination of the prevailing wage in other industries. Under current practice, continued in this regulation, the Chief would approve wages that “progressively increase,” as required by

212(a)(5). This provision is a part of these regulations because under the federal regulations, 29 C.F.R. 29.5(b)(5), apprentice agreements must contain a progressively increasing schedule of wages “consistent with the skill acquired.” The number of apprenticeable occupations is large and the length of apprenticeship programs vary, although there must be a minimum of 2000 hours. Labor Code section 3077. While it could be expected that the starting wage would reflect the employees lack of training, the Chief would be able to insure that the wages did progress as training progressed.

Existing regulation 208 provides that the apprentice wage scale for buildings and trade shall be based on the federal poverty level. The beginning wage was set at 140% of the federal poverty wage for a family of three. This produced a single rate throughout the state, despite wide variations between regions and trades. See the Director’s Prevailing Wage Determinations 2001-01 and 2001-02. The wage progressed to 190% of the poverty wage. This wage schedule was subject to change every two years and resulted in contractors having multiple wage scales for apprentices, depending on when the apprentice began the program. In addition, because the wage scale was based on a number generated by the federal government based on factors unrelated to apprenticeship, contractors subject to multiyear collective bargaining could not predict how the rate would change. One problem addressed by the proposed action is the need provide a wage scale that would vary by trade and area of the state. Another problem was to ensure that apprentices are adequately paid so as to encourage a continuing educated and skilled workforce. A final problem addressed by this regulation was the need to ensure that the wage scale could be easily understood and applied by contractors.

For apprentices in building and construction employed on private works the minimum wage was changed from a percentage of poverty wage, an admittedly arbitrary number, to a wage based on the per diem journey level wages in the apprenticeable occupation as determined by DIR for the geographic area where the apprentice is working. This change was necessary so that the wage could vary based on the trade and geographic area to take into account variations in conditions within the State. Under former 208 the apprentice wage was the same in high cost of living/high wage areas as in low cost of living/low wage areas. It was also the same for trades where the wages were high as for those where the wages were low. Under proposed 208, the minimum wage shall be no less than 40% of the prevailing per diem journeyman wage for the occupation in the geographic area of the project, as determined by DIR. A review of the Director’s prevailing wage determination shows that for most counties this wage would be close to the wage determined by the Director to be the modal rate for apprentices. The CAC concluded that the Director’s prevailing wage provides a good benchmark for a minimum wage for apprentices in training to learn skilled trades. The Council rejected the notion that the state minimum wage was appropriate as a minimum wage for apprentices. Apprentices are not low skill entry-level construction workers. Apprentices are participating in a program that provides both on-the-job training and requires school study in the form of related and supplemental instruction. In response to comments that the wage was too high, however, the CAC lowered the proposed wage from 50% of journeylevel to 40% of the journeylevel. The CAC also provided that in the alternative, a contractor may comply with Regulation 208 by paying the same wage package to apprentices as the contractor pays to apprentices on public work projects in the

same geographic area, and that package is not less than the prevailing per diem apprentice wage package for apprenticeable occupation in the geographic area. This addition was necessary because in some areas and in some trades, the lack of benefits during early periods of apprenticeship is common, and 40% of the journey rate would be higher than the prevailing wage. This change is also responsive to comments that the originally proposed wage was too high. Under prior 208, only 15% of the wage could be paid as benefits. To allow more flexibility, it was necessary to change the regulation to allow 35% of the wage package to be in the form of benefits. Proposed Regulation 208 also provides for step increases and sets the manner and extent to which wages may be paid in the form of contributions to employee benefit plans. Step increases are necessary, because under both state regulation, 212(a)(5), and federal regulation, 29 C.F.R. 29.5(5) an apprentice program must provide for an progressively increasing wage consistent with the skill acquired. The CAC chose January 1, 2002 as the compliance date for contractors to insure that whether or not an apprentice program has completed adoption of a wage revision, the minimum apprentice wage would be paid as of that date. This was needed to allow time for compliance and to insure that there would be a date certain by which contractors would be required to pay the apprentice wage.

6. Proposed Regulation 212 sets forth the required contents of the standards of an apprenticeship training program. This section was reorganized and some parts of former 212, (a)(1)-(8) which concern the approval of apprenticeship programs were moved to section 212.2. The problem addressed by proposed Regulation 212 is the need to ensure that apprentices are adequately trained. Existing Regulation 212 does not contain requirements that are specific enough to ensure adequate training or in some cases did not clearly state those requirements.

New (a)(1) elaborates on the requirement that a program include the “work processes” of the trade. This was formerly in the introductory paragraph in a reference the work processes the standards would “cover.” This reference was unclear and it was necessary to specify that the standards would contain an outline of the work processes and the amount of time allocated to each. This is necessary to insure that an apprentice receives balanced training in all aspects of a trade.

New (a)(2) adds a requirement that the program state its geographic area of operation. That is a defined term, see 205(m), which is then used in other regulations. For example, contractors must provide contract award information to a program whose geographic area of operation includes the site of a public work project.

New (a)(3) deleted the requirement that the standards define an apprentice. This was necessary because the term is defined in the statute, Labor Code 3077.

New (a)(4) was changed because it was necessary to clarify that the standards did not need to contain all the apprentice’s working conditions, but only those that were uniquely required by the program. Many working conditions are set by law, collective bargaining agreement or employer rule and the Council determined that only those that were set by the standards needed to be in the standards.

New (a)(5) added “progressively increasing” to modify wage. This was necessary to conform to the federal requirement that the wage scale for apprentices be one that progressively

increases as skills are acquired, and consolidates a duplicate requirement in former (c)(7).

New (a)(6) added further definition of ratio in order to make the regulation more specific and clear. The former regulation only required a “ratio.” The proposed regulation specifies that the ratio is of apprentices to journeymen and requires the program to specify how the ratio will be calculated. This is necessary in order to determine whether contractors are in compliance.

New (a)(7) is derived from former (a)(3) and is necessary so that the standards will contain a description of the curriculum to be provided and an identification of the local education agency that will provide the instruction. This is necessary so that the apprentice can refer to the standards for this information.

New (b)(1) to (b)(16) were in general restatements or a reorganization of what had been (c)(1) to (c)(20). (b)(3) incorporates provision for a probation period as required by Labor Code 3078(g).

(b)(4) adds language formerly at (c)(19)

(b)(5) adds language formerly at (c)(15)

(b)(6) incorporates the requirement set out in Labor Code 3078

(b)(7) adds language from (b)(9)

(b)(8) adds language that is needed to specify the scope of discipline a program may impose on an apprentice

(b)(9) is needed to make reference to the newly added process set out in 207.

(b)(13) adds language from (b)(7)

(b)(14) combines with (c)(11)

(b)(15) is needed to incorporate the evaluation provision of 212.3 concerning on-the-job training and related and supplemental instruction into the standards

(b)(16) is needed because of the addition of industry training criteria under 212.01.

New (b)(17) was added as mandated by newly added Labor Code section 3080(b).

The proposed Regulation provides for the representation of apprentices on apprenticeship advisory panel of programs sponsored by more than one employer or by an employers’ association. The members of the apprentice advisory panel shall be chosen by secret panel and shall meet at least quarterly. This section was necessary to implement the requirement in 3080(b) that apprentices programs with more than one employer must ensure “meaningful representation of the interests of apprentices in the management of the program.”

7. Regulation 212.01 is amended to make a non substantive change the title to “Industry Specific-Training Criteria” to conform with Labor Code the language used in section 3073.2, added by AB 921, which provides that the Council may adopt industry-specific training criteria without compliance with Government Code section 11340 et seq.

8. The Council originally proposed to amend Regulation 212.05 to implement Labor Code 3075, recently enacted as part of AB 921, which provides that an apprenticeship program shall be approved if justified by the training needs in the area and further provides training needs in the area do not justify approval of a new program if there is an existing program in the area which will provide apprentices for qualified employers. However, after hearing and public comment,

the Council decided not to adopt Regulation 212.05 at this time.

9. Proposed Regulation 212.2 sets forth the procedure for DAS approval of a new apprenticeship program. As noted above, the CAC moved portions of 212 pertaining to program approval into 212.2. The primary problem addressed by other changes in Proposed Regulation 212.2 is uncertainty about the circumstances in which a program's standards may be revised to change the geographical recruitment area. Proposed Regulation 212.2 provides that the revision of a program's standards to expand the geographical recruitment area is subject to the same procedural requirements as an application for approval of a new program. Proposed Regulation 212.2 also clarifies that a notice application for approval of a new program or the revision of the standards of an existing program must be served on all existing programs in the same area.

10. The proposed amendments to Regulation 212.3 implement new Labor Code section 3073.1, which requires DAS to perform random audits of apprenticeship programs. Proposed section (d) was revised to delete references to "program evaluation." This change was necessary because Labor Code section 3073.1 establishes an audit program which supersedes the "evaluation" in current 212.3. (d) provides a definition of "random" as a method that is not based on the specific factors of a program. This is necessary to assure that all programs are equally subject to audit. The regulation further provides that a program may be selected for random audit only once in each five-year period. This is necessary to insure that all, or as many programs as possible, will be audited at least once in each five-year period, rather than subjecting some programs to multiple audits. 3073.1 also provides for more frequent audits where deficiencies have been identified. These are described as non-random audits because the program is not selected randomly. Proposed 212.3(e) is necessary to insure that a program will be given notice of the audit. 14 days is considered sufficient time to allow a program to prepare for an audit, without being so much advance notice that the program could plan on deferring corrective action until after being notified that an audit was scheduled. Proposed Regulation 212.3(f) is necessary to set forth the matters to be audited, and provides that records may be evaluated by a method of random selection. This is necessary to minimize the disruption to the program and to avoid unduly lengthy audits. 3073.1 provides for audit reports. 212.3(f) provides the needed procedure for making those reports. The program is given an opportunity to make comments on the audit. This will allow correction of any misunderstanding before the audit report is made to the CAC. The Chief is authorized to continue the audit in response to comments. For example, if a program challenged an audit finding the Chief could review more records and then submit a final report. In (g) the Council specifies restrictions on information that will be made public on the audit report. This is necessary to carry out 3073.1's directive that that audit not divulge private information about apprentices. (h) is necessary to set out the time schedule for making reports (at each quarterly meeting of the CAC) since the statute requires reports but does not set forth any specific interval. The section also sets out requirement that the audit report set out recommendations for the program to take corrective action and a time schedule. This is necessary because the statute provides that failure to correct deficiencies within a reasonable period shall be grounds to deregister a program, but the statute does not identify how the program

will be advised as to when the deficiencies must be corrected.

11. The proposed amendments to Regulation 212.4 were needed to establish an effective date for deregistration of a program and to make clear the procedure for appeals from DAS deregistration decisions, and to add provisions to deal with the problem of programs that do not have active apprentices. The proposed amendments provide that a deregistration decision is final unless appealed within thirty days and effective thirty days after it is issued. The Council determined that 30 days would be appropriate because under (9) the program is required to give notice of the Administrator's decision to its apprentices and to other programs. This time period is necessary to allow apprentices the opportunity to make arrangements, and to allow notice to contractors who may have planned the use of apprentices on public works. The Council determined that the failure to have active apprentices for two years is a ground for issuing a notice of possible deregistration and (b)(1) would then allow the program the opportunity to show why it should not be deregistered. While the Chief could begin deregistration if a program is inactive under the authority of (b) since a program with no apprentices is not being operated in accordance with its standards, this change is needed to clarify a process and to provide a clear time line for action. The Council determined that, since most programs are from two to four years in length, the lack of any apprentices for a two year period was a substantial indication that the program was defunct and warranted the requirement that the program show why it should not be deregistered.

12. The proposed amendments to Regulation 228, 229, 230, 230.1, 230.2, 231 and 234.2 deal with the problem created by the Legislative changes made to Labor Code section 1777.7 which sets out penalties for violation of the apprentice requirements on public works and provides a process for contesting the assessment of penalties. The problem addressed in new regulation 228 is the need to reconcile the definitions in Regulation 228 with new Labor Code section 1777.7, enacted by AB 921, and the need to deal with the procedure for imposition of penalties for noncompliance with Labor Code section 1777.5 which deals with the employment of apprentices on public works. The proposed amendments eliminate the inconsistency by deleting definitions of certain terms that are satisfactorily defined in Labor Code section 1777.5, or that are no longer necessary. The terms that related to the old 1777.7 are "DAS Investigative Report", "Interested Party", "Willful Noncompliance", "Accusation" and "Complainant."

13. The proposed amendment to Regulation 229 is necessary to explain the new procedure for seeking review of an order of the Apprenticeship Administrator imposing penalties under Labor Code section 1777.7. The proposed amendment states that a request for review which is sent by mail or facsimile within thirty days from service of the order is timely and this explains the term "transmitted" as used in the Labor Code.

14. The proposed amendments to Regulation 230 deal with the problem of inconsistency between old Regulation 230 and new Labor Code section 1777.5. The proposed amendments are needed to explain the term "applicable" apprenticeship committee. The regulation provides

that for contractors who are approved to train apprentices, the required contract award information is to be sent to the committee that has approved the contractor. For those who are not approved by an apprenticeship committee the regulation provides contract award information is to be sent to all apprenticeship committees operating in the geographic area of the public works project. This is necessary because where the contractor is not already approved to train, the phrase “applicable” apprenticeship committee must be defined. The CAC determined that it refers to any program that may be asked to supply apprentices. The regulation further provides that the information shall be provided within ten days of the execution of the prime contract, and this addition is necessary to make specific when the information must be sent. The prior regulation referred to sending notice within 10 days of the date of the “agreement” or “contract award.” The Council believes that date of “execution” will be clearer. The regulation also moves a requirement that notices of contract award information must be served by certified mail under certain circumstances. That requirement had been required where an Accusation, a term and concept that has been deleted from the regulation, had been previously filed. The requirement continues where there has been a determination that a contractor has failed to submit required information. That requirement for use of certified mail was moved to 231(g). This move was needed because the requirement is also applicable to failure to provide information about the number of actual apprentice and journeylevel hours.

15. The proposed amendments to Regulation 230.1 deal with the problem of inconsistencies between old Regulation 230.1 and new Labor Code section 1777.5 and are needed because, while all contractors are required to employ apprentices, some are participants in apprenticeship programs and others are not. Moreover, some programs will dispatch apprentices to contractors who are not participants, while others will not. This regulation is needed to set out circumstances where a contractor will be in compliance given these differences. The proposed amendments provide that a public work contractor shall employ apprentices at the ratio required by Labor Code section 1777.5. The CAC expressed that ratio as one hour of apprentice work for every five hours of labor performed by a journeyman. This change was needed to clarify the number of hours required. The regulation provides that a contractor who is not a participant in a program shall obtain apprentices from an approved apprenticeship committee whose “geographic area of operation”, now defined in 205(n), and expressly set out in the standards pursuant to 212, includes the site of the project. This was necessary to spell out which program(s) throughout the state a contractor would need to contact in order to request apprentices. The regulation continues to recognize that a committee shall not be required to dispatch apprentices to a non-signatory employer that declines to comply with the committee’s standards. Under the circumstances where a program fails or refuses to dispatch apprentices, a contractor will be deemed to be in compliance with Labor Code section 1777.5 if the contractor makes a request in a timely manner but committee does not dispatch sufficient apprentices. The CAC requires that the request be timely so that a contractor would not be excused from compliance unless the request was made in enough time to meet the ratio.

Subsection (c) is necessary to carry out the provision of 1777.5 that provides that apprentices may work under the rules of the CAC. This regulation set out that the CAC requires that apprentices must work under direct supervision of a journeyman and the apprentice’s standards

except for financial or administrative obligations to a trust fund or employee benefit plan. This is necessary because the CAC does not intend to force participation in any employee benefit plan. Under (d) the provisions of the new version of Labor Code section 1777.5 do not apply to contractors whose bids were made before January 1, 2000. Because the prior statute was substantially modified by court decisions and regulations, it was necessary for the CAC to provide that for work on projects bid prior to January 1, 2000, both the code and prior regulations interpreting that code apply.

16. The proposed amendments to Regulation 230.2 deal with the problem of inconsistencies between old Regulation 230.2 and new Labor Code section 1777.5. The proposed amendments require training contributions to be accompanied with information concerning the name of the program that provided the apprentices and the number of apprentice hours worked by occupation and program. This information is necessary because a change in 1777.5 requires the CAC to make grants to apprenticeship programs. The grants are to be made to programs in the occupation worked when the training contributions are made to the CAC so the CAC needs this information in order to make the grants.

17. The proposed amendments to section 231, deal with the problem of inconsistencies between old Regulation 231 and new Labor Code sections 1777.5 and 1777.7. The regulation provides procedures for filing and processing complaints of noncompliance with the law regarding apprenticeship on public works projects. The Labor Code sections were modified to allow the Chief to impose penalties for “knowing” violations, rather than only for “willful” violations and to set out a procedure for review of the Chief’s decision. This substantially changed the prior system which included a procedure for filing an Accusation of non compliance and provided for review of any complaint that was dismissed. The proposed regulation provides that complaints concerning non compliance with Labor Code section 1777.5 may be made to the Chief by any person, and that the that Chief may conduct an investigation in the absence of a complainant and that the contractor shall be given an opportunity to respond to the complaint. The complaint must be served on the contractor, and where the respondent is a subcontractor, on the general and prime contractor. This is necessary because the general and prime contractor may have liability under 1777.5 for the subcontractor’s violation. The CAC did not impose any time limit for filing complaints and did not impose a timeline on the Chief for conducting the investigation. The Council determined that the contractor would be given a “reasonable period of time to respond” which would be determined on a case by case basis. Since the Chief is not obligated to take action on every complaint, but rather only to advise the complaining party of the outcome of the investigation, a time limit for filing complaints was not needed. Likewise a strict time limit for conducting an investigation was not imposed. Because Labor Code 1777.7 provides for withholding of funds for the civil penalties imposed by the Chief from progress payments due to contractors, there is an incentive for prompt determinations to take advantage of withholding while payments under the contract are still due.

The proposed amendments also provide that, for purposes of Labor Code section 1777.7 a contractor knowingly violates Labor Code section 1777.5 if the contractor knew or should have

known about the contents of Labor Code section 1777.5 unless the failure to comply was beyond the contractor's control. The proposed amendments also provide that there is an irrebuttable presumption that the contractor knew the requirements of Labor Code section 1777.5 if the contractor has previously been in violation of Labor Code section 1777.5 or if the contract documents notified the contractor of Labor Code section 1777.5 or if the contractor has previously employed apprentices on public work projects. These provisions were needed to provide specific definitions of certain "knowing violations." By providing clear notice of what conduct will be considered as showing "knowing" violation compliance will be encourage and determinations of violation will be more consistent.

18. The proposed amendments to Regulation 234.2 deal with the problem of inconsistencies between old regulation 234.2 and new Labor Code section 1777.7. The Labor Code was amended to eliminate willful violations and as a result the procedures in Article 10, which includes Regulation 234.2 needed to be changed to conform. The regulation substitutes "this article" for the obsolete "Complaints and Accusations." The proposed amendments provide that the initiation of administrative proceedings against a subcontractor shall not abrogate any responsibility of the any other contractor mandated by statute. This is necessary to clarify the fact that the Chief may initiate proceedings against a subcontractor who is directly responsible for a violation without having to join any other contractor who may have responsibility imposed on him or her by statute.