

8CCR, Chapter 2, California Apprenticeship Council,
Proposed Amendments and Additions

**CHANGES MADE SUBSEQUENT
TO JULY 26, 2001 ARE IN BOLD**

PART I. APPRENTICESHIP

**Article 1. Procedures for Investigating, Holding Hearings and
Determining Disputes**

Amend section by amending subsections to read:

201. Filing of Complaints.

(a) Complaints may be filed by any interested person with the Administrator of Apprenticeship or the Administrator of Apprenticeship upon his/her own initiative may issue a complaint, within the time period specified below, when there is cause to believe that a decision, order or action of an apprenticeship program sponsor has been unfair or unreasonable; or that there has been a violation of:

(1) Chapter 4, Division 3 of the Labor Code (excluding Section 1777.5), 30 days;

(2) California Code of Regulations, Title 8, Chapter 2, Part I, (excluding Article 10), 30 days;

...

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3081 and 3082, Labor Code.

Article 2. Definitions

Amend Section to add new subsections to read:

205. Definitions.

(m) “Employed as an apprentice” in the **building and construction industry** for the purpose of Labor Code Section 3098 means employment pursuant to the approved standards of apprenticeship of the Program, under the supervision of journeyman/men, where the apprentice is receiving at least the minimum wage applicable to the apprentice’s period of apprenticeship as provided for in ~~these regulations~~ **this chapter**.

(n) “Geographic Area of Operation” of an apprenticeship program means the geographic area in which the program regularly operates and trains apprentices.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3073, 3075, 3077, 3079, 3086 and 3090, Labor Code.

Add new section to read:

206. Approval and Registration of Apprenticeship Agreements

(a) Agreements approved by Joint Apprenticeship Committee

(1) An apprenticeship agreement in an approved joint apprenticeship program shall be approved by the joint apprenticeship committee if the agreement complies with the apprenticeship program standards and Chapter 4 of Division 3 of the Labor Code and its implementing regulations under Title 8, California Code of Regulations, Section 200 et seq; and where there are adequate related and supplemental instruction and an assurance of employment to provide on-the-job training.

(2) After approval by the joint apprenticeship committee, the agreement shall be sent to DAS for registration within thirty (30) days of its execution **by the apprentice.**

(3) DAS shall register the agreement if DAS determines that it was approved in accordance with the requirements set out above, under subsection (a)(1), and it was submitted to DAS within thirty (30) days of its execution **by the apprentice.**

(4) Within thirty (30) days of receipt of the agreement, DAS shall either register the agreement or return it to the program sponsor with the reasons for non-registration. **If DAS registers the agreement, the registration, registered, the registration agreement shall be effective as of the date of its execution by the apprentice.**

(b) Agreements approved by the Administrator

(1) If there is no joint apprenticeship committee, the apprenticeship agreement shall be sent to DAS for approval by the Administrator within thirty (30) days of its execution, and shall be approved if the Administrator determines that it complies with the requirements set out above, under subsection (a)(1), and it was submitted to DAS within thirty (30) days of its execution **by the apprentice.**

(2) If approved, the agreement shall be considered registered as of the date of its execution by the apprentice. A copy of the approved agreement shall be filed with the CAC for its review. If the Administrator does not approve the agreement, it shall not be registered and shall be returned to the program sponsor within 30 days **of the date of receipt with the reasons for non-approval.**

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3079 and 3080, Labor Code.

Add new section to read:

207. Termination of Apprentices Agreements.

(a) During the probationary period, if any, an apprentice agreement shall ~~may~~ be terminated by the program sponsor at the request in writing of either party.

(b) After the probationary period, or where there is no probationary period, the apprentice agreement may only be terminated by the Administrator. Where there is mutual agreement of the parties, an apprentice agreement may be terminated by submitting to the Administrator a request in writing to terminate the agreement signed by the parties. Where there is not mutual agreement, either party may request that the agreement be terminated by the Administrator. The party making the request shall submit whatever evidence it believes shows that there is good and sufficient ~~and sufficient~~ reason to terminate the agreement. The Administrator shall review the evidence and, where there is good and sufficient ~~and sufficient~~ reason, shall terminate the agreement. No program sponsor shall submit a request to terminate an apprentice agreement unless it shall first have given the apprentice notice **in writing of its intended action and, if the program's standards provide for a local adjustment procedure, of the apprentice's right to exhaust the local adjustment procedure.** In its request, the program sponsor shall advise the Administrator of the notice to the apprentice. An apprentice who contests a program sponsor's request for termination may also file a complaint under Section 201. If a complaint is filed, the Administrator shall join the request for termination with the apprentice complaint, and act upon both jointly.

NOTE: Authority cite: Section 3071, Labor Code. Reference: Sections 3077, 3078, 3079, and 3080, Labor Code.

Article 3. Standards for Minimum Wages, Maximum Hours and Working Conditions

Amend section to read:

208. Wages, Employee Benefits, and Other Compensation for Apprentices.

(a) For Apprentices In All Occupations Except The Building And Construction Industry:

For apprentices participating in approved apprenticeship programs in all industries, except the building and construction industry, the beginning wage rate, employee benefits and other compensation, and the progression of those rates, shall be decided by the sponsoring

program in consultation with and subject to the approval of the Chief DAS.

(b) For Apprentices In The Building And Construction Industry Employed On Public Works Projects:

For apprentices participating in approved apprenticeship programs in the building and construction industry, the wages and employer payments for employees benefits as defined in 8 C.C.R. § 16000 for regular and overtime work while employed on public works projects within the meaning of Labor Code § 1720 et seq. shall be not less than the per diem wage rates for apprentices in the apprenticeable occupation as determined by the Director of Industrial Relations in the geographic area of the project.

(c) For Apprentices In The Building And Construction Industry Employed On Projects Not Covered By Subsection (b), Above:

The hourly wage package as used herein consists of the total of the wages and employer payments for employee benefits as defined in 8 C.C.R. § 16000. For apprentices participating in approved apprenticeship programs in the building and construction industry, the minimum hourly wage package for apprentices while employed on projects not covered by Subsection (b) above shall be calculated as **set forth either in subsections (1)-(5) of this subsection or, in the alternative, as set forth in subsection (6) of this subsection:**

(1) ~~The hourly wage package for first period apprentices shall be no less than 140 percent of the annual poverty level rate for a family of three (3) published by the United States Department of Health and Human Services in the February preceding the rate determination, (beginning with the February, 1994 published rate), which annual rate shall then be divided by 1,936 hours to determine the hourly wage package~~ A starting hourly wage package for first-period apprentices of not less than 40 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area of the project, as determined by the Director of Industrial Relations for purposes of Labor Code § 1720 et seq., using the rate effective on the immediately preceding March 1. At least 65 percent of this minimum hourly wage package must be paid to the apprentice as taxable wages.

(2) ~~A minimum of 85 percent of the hourly wage package as determined by the formula above must be paid directly to the apprentice as taxable wages; If there is no prevailing hourly wage package and wage package progression determined by the Director for journeymen for the apprenticeable occupation and geographic area, a starting wage rate decided by the sponsoring program in consultation with and subject to the approval of the Chief DAS based on consideration of the minimum starting hourly wage package and wage package progression for apprentices in the most analogous occupations and geographic areas.~~

(3) Where an employer elects to satisfy a portion of the hourly wage package

by employer payments for employee benefits as defined in 8 C.C.R. § 16000, the payment of such contributions must be verifiable, and the cost of the benefit(s) must be reasonably related to the amount of the contribution(s). The employer shall submit its books and records to an audit by the DAS staff, upon request, to verify such payments;

(4) ~~The hourly wage package for first period apprentices shall be recalculated as of January 1 of every odd numbered year using the formula set out in Subsection (c)(1) above, and shall be based upon the figures published by the United States Department of Health and Human Services in February of the year preceding the recalculation. The recalculated hourly wage package for first period apprentices shall automatically become effective as of January 1 of each year in which it is recalculated for all new apprentices indentured after January 1 of that year~~ Where an employer elects not to satisfy a portion of the apprentice's hourly wage package by employer payments for employee benefits as defined in 8 CCR § 16000, the employer shall pay the entire hourly wage package to the apprentice on the apprentice's paycheck. Where an employer elects to satisfy a portion of the apprentice's hourly wage package by employer payments for employee benefits, the employer shall pay the remainder of the apprentice's hourly wage package to the apprentice in the apprentice's paycheck;

(5) ~~The minimum amount of the periodic, equal percentage increases must be sufficient to insure that in no event shall the apprentice's hourly wage package in the final period of apprenticeship be less than 190 percent of the hourly wage package required under Subsection (c)(1), above, in effect during the apprentice's first period of apprenticeship; The minimum hourly wage package shall increase for each successfully completed period of apprenticeship to a higher percentage of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area of the project. These periodic increases in percentage shall be equal (e.g., 40 percent, 50 percent, 60 percent, etc.) and shall be such that the minimum hourly wage package in the final period of apprenticeship is not less than 80 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area of the project, as determined by the Director, using the rate effective on the immediately preceding March 1. At least 65 percent of this minimum hourly wage package must be paid to the apprentice as taxable wages.~~

(6) In the alternative, a contractor will be in compliance with this entire subsection (c) if the contractor provides the same total hourly wage package and wage package progression to apprentices employed on private projects as the contractor provides to apprentices employed on public works projects in the same geographic area, and that total hourly wage package is not less than the prevailing per diem apprentice wage package for the apprenticeable occupation and the geographic area of the project.

~~(7) At least 75 percent of each periodic increase in the hourly wage package as set out in Subsection (c)(5), above, must be paid directly to the apprentice in the form of taxable wages. For each period increase, any increase above the minimum hourly wage package is not subject to this restriction; Existing apprenticeship programs already approved~~

by the DAS and the CAC which are not in compliance with any aspect of this Subsection (c) shall have until January 1, 2002, to come into full compliance.

~~(7) Existing apprenticeship programs already approved by the DAS and the CAC which are not in compliance with any aspect of this total wage package formula for apprentices on all projects which are subject to Subsection (c) shall have one year from the effective date of this regulation (10/6/95), or until the expiration of the current collective bargaining agreement covering the program, whichever is later, to come into full compliance.~~

(8) By the enactment of this regulation, it is not the CAC's intent to change the manner by which the Director of Industrial Relations currently determines the prevailing wage rate, and the provisions of this Subsection (c) shall not be used to determine the prevailing wage rate.

(9) After January 1, 2002, all contractors employing registered apprentices shall pay not less than the minimum wages required by this subsection (c).

(d) For All Apprentices

Nothing in ~~the~~ this Section shall permit the payment of less than the minimum wage prescribed by the Federal Fair Labor Standards Act or any applicable State minimum wage order.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071 and 1777.5, Labor Code.

Article 4. Apprenticeship Standards

Amend section to read:

212. Content of Apprenticeship Program Standards.

Apprenticeship programs shall be established by written apprenticeship standards which must be approved by the Chief DAS under Section 212.2. In order to be approved, the standards must cover all work ~~performed~~ processes within the apprenticeable occupation. The standards ~~also~~ must contain:

~~(a) Evidence of:~~

- ~~(1) — work site facilities and equipment sufficient to train the apprentices;~~
- ~~(2) — skilled workers as trainers at the work site who meet the criteria for journey person or instructor as defined in Section 205(a) or (b);~~
- ~~(3) — adequate arrangements for related and supplemental instruction pursuant to Labor Code section 3074;~~
- ~~(4) — ability to offer training and supervision in all work processes of the apprenticeable occupation;~~
- ~~(5) — provisions for evaluation of on-the-job training and related and supplemental instruction;~~
- ~~(6) — compliance with applicable federal regulations and standards for the apprenticeable occupation involved;~~
- ~~(7) — the program's ability, including financial ability, and commitment to meet and carry out its responsibility under the federal and state law and regulations applicable to the apprenticeable occupation and for the welfare of the apprentice;~~
- ~~(8) — the program's ability and commitment to train apprentices in accordance with current industry and/or trade specific training criteria, work processes, and related and supplemental instruction;~~

(ba) A statement of:

- (1) the occupation(s) and an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;
- (2) the parties to whom the standards apply, and the program sponsor's labor market area, as defined by Section 215 appendix 2(l), for purposes of meeting equal employment opportunity goals in apprenticeship training; and the program's geographic area of operation as defined by section 205 (n);
- (3) the definition and duties of the apprentice;
- (4) the working conditions of the apprentice's working conditions unique to the program;
- (5) the progressively increasing wage, employee benefits and other compensation of the apprentice, as set by Section 208;

~~(6) the ratio or number of apprentices to journeymen, or the number of apprentices to be employed, and the method used to determine the ratio whether by job site, workforce, department or plant;~~

~~(7) the mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a lay-off or the inability of an employer to provide training in all work processes as outlined in the standards the local education agency which has agreed to provide the related and supplemental instruction, and a description of the courses to be provided;~~

~~(8) the procedure for incorporating the provisions of the standards into the apprentice agreement;~~

~~(9) the procedure utilized for the periodic review and evaluation of the apprentice's progress in job performance and related instruction; the procedure utilized for the maintenance of appropriate progress records; and the procedure utilized for the recording and maintenance of all records concerning apprenticeship and otherwise required by law.~~

(eb) Provisions for:

(1) establishment of an apprenticeship committee, if applicable;

(2) administration of the standards;

(3) establishment of rules and regulations governing the program. An apprenticeship program's standards or rules may provide for a period of probation which may not be for more than the combination of 1,000 hours of employment and not more than 72 hours of related instruction;

(4) determining the qualifications of employers if other than single employer programs and an orientation, workshop, or other educational session for employers to explain the apprenticeship program's standards and the operation of the apprenticeship program;

(5) determining the qualifications of apprentice applicants; fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures, which shall be an addendum to the standards, pursuant to Section 215;

(6) the incorporation of the provisions of the standards into the apprentice agreement either directly or by reference;

~~(67) a procedure to be utilized for the recording and maintenance of all records concerning apprenticeship and otherwise required by law including a system for recording the apprentice's work site job progress and progress in related and supplemental instruction and~~

a system for the periodic review and evaluation of the apprentice's progress in job performance and related instruction;

~~(7) progressively increasing the wages of the apprentice consistent with the skill acquired.~~

(8) discipline of apprentices for failure to fulfill their obligations on-the-job or in related instruction, including provisions for fair hearings;

(9) terminating, or recommending the cancellation of, apprentice agreements in accordance with section 207;

(10) recommending issuance of State Certificates of Completion of Apprenticeship pursuant to Section 224;

~~(11) revising standards as needed;~~

~~(12) safe equipment;~~

(13) facilities for training and supervision, both on the job and in related instruction, in first aid, safe working practices and the recognition of health and safety hazards;

(14) training in the recognition of illegal discrimination and sexual harassment;

~~(15) fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures, which shall be an addendum to the standards, pursuant to Section 215;~~

~~(16) mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation;~~

~~(17) approval of the standards by the Chief DAS;~~

(18) an adequate the mechanism to be used for the rotation of the apprentice from work process to work process to assure the apprentice of complete training in the apprenticeable occupation including mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation; and an adequate mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a lay-off or the inability of one employer to provide training in all work processes as outlined in the standards;

~~(19) an orientation, workshop, or other educational session for employers to explain the apprenticeship program's standards and the operation of the apprenticeship program;~~

DAS; (14) approval of the standards, and revisions to the standards, by the Chief

(2015) the on-going evaluation of the interest and capacity of individual employers to participate in the apprenticeship program and to train apprentices on-the-job and provisions for the evaluation of on-the-job training and related and supplemental instruction;

(16) compliance with training criteria where such have been adopted pursuant to Section 212.01; and

(17) meaningful representation of the interests of apprentices in the management of the program, which is shown where:

(A) In a joint labor-management sponsored program, the apprentices participating in that program are represented by a labor organization pursuant to one of the following: National Labor Relations Act, the Railway Labor Act, the California Public Employee Relations Act, Agricultural Labor Relations Act, the Meyers-Milias Brown Act;

(B) In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are at least equally represented on an advisory panel established by the apprenticeship committee responsible for the operation of the program. The apprentices shall be represented on the advisory panel by at least three representatives of the apprentices' choice who shall have full voice and vote on the panel except as to financial matters or matters that relate to the administration or structure of an employee benefit plan or the administration or operation of a trust fund. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices conducted by the apprenticeship program not less than once every two (2) years. This advisory panel shall meet not less than once every quarter to address issues and concerns raised by and affecting the apprentices in the program.

(dc) The names and signatures of the parties.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections, 3060, 3071, 3073, 3075and 3078, Labor Code.

**Amend section heading and reference to read:
212.01. Industry- Specific Training Criteria.**

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3073, 3073.2 and 3078, Labor Code.

212.2. Eligibility and Procedure for DAS Approval of an

Appre

(a) To be eligible for approval, a program must comply with all apprenticeship program standards as set forth in applicable federal and state law and regulations; A revision to change the program's occupation or to change the program's geographic area of operation to include a different labor market area is subject to the same application and approval process set out in (a) - (j) of this section for approval of a program, including providing notice of the proposed revision and an opportunity for comment to existing programs in the same apprenticeable occupation in the labor market area. The program sponsor shall submit to the Chief, DAS, an application for approval of the program and shall provide the program standards and, either with the application or during the application review process, evidence of:

(1) commitment to provide safe work site facilities and safe equipment sufficient to train the apprentices;

(2) commitment to provide skilled workers as trainers at the work site who meet the criteria for journeyman or instructor as defined in Section 2045 (a)(e) or (b) (f);

(3) adequate arrangements for related and supplemental instruction pursuant to Labor Code section 3074;

(4) ability to offer training and supervision in all work processes of the apprenticeable occupation;

(5) the program sponsor's ability, including financial ability, and commitment to meet and carry out its responsibility under the federal and state law and regulations applicable to the apprenticeable occupation and for the welfare of the apprentice.

(b) The training must be in an apprenticeable occupation as defined in Section 205(c) and must conform to the requirements of Section 215 concerning equal opportunity in apprenticeship.

(c) Within thirty days after receipt of an application for approval of a program, or for approval of a revision to change the occupation or to change the program's geographic area of operation to include a different labor market area, the Chief DAS shall notify the sponsor in writing either that: (1) the application is complete and accepted for filing; or (2) the application is incomplete and specified additional information is required.

(d) Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing.

(d e) If the standards or collective bargaining agreement of a program proposed by an employer or employers' association provide for participation by a union in the operation of the program, the sponsor shall provide evidence that the union accepts or does not oppose the program. The union may submit comments on the proposed program within thirty days after

receipt of the proposed standards. The Chief may, in his or her discretion, consult with such union concerning the proposed program.

(e f) If the standards and collective bargaining agreement of a program proposed by an employers' association do not provide for participation by a union in the operation of the program, the sponsor shall serve a copy of the proposed standards and any supplement thereto on the union, if any, which is the collective bargaining agent of the employees to be trained. The union may submit comments on the proposed program within thirty days after receipt of the completed standards. The Chief may, in his or her discretion, consult with such union concerning the proposed program.

(f g) Upon receipt of the proposed standards of a program ~~sponsored by more than one employer~~, the Chief shall serve a copy of the proposed standards and any supplement thereto on the sponsor of each existing program in the apprenticeable occupation in the labor market area of the program, unless the program has advised the Chief DAS that it does not wish to be so notified as defined by Section 215. Each such existing program may submit comments on the proposed program within thirty days after receipt of the completed standards. The Chief may, in his or her discretion, consult with such existing program concerning the proposed program;

(g h) The Chief may, in his or her discretion, hold a hearing on any issue relating to the compliance of a proposed program with federal and state law and regulations. The Chief shall provide notice of, and an opportunity to attend, the hearing to the sponsor and to any union or existing program that is entitled to submit comments under this section. The hearing shall be conducted informally without the application of formal rules of evidence or procedure;

(h i) The Chief's decision whether to approve a program shall be issued within ninety days after the receipt of the completed application for approval. The decision shall be served on the sponsor and on each party which submitted comments on the proposed program. The decision shall be in writing and shall set forth the relevant findings of fact, a discussion of any issues raised by any comments or at any hearing and the reasons for the decision;

(i j) The median time for processing an application to train apprentices, from the receipt of the initial application to the final approval decision, based on the experience in the two years preceding the proposal of this Section, is two years. The minimum time is one and a half years, and the maximum time is three years;

(j k) ~~The decision of the Chief approving or disapproving a proposed program shall be final unless an appeal is filed with the California Apprenticeship Council within thirty days following service of the decision.~~ **The Chief's decision approving or disapproving a proposed program shall be final and become an Order of the Council if no appeal is filed within 30 days following service of the decision on the parties.** The appeal may be filed by the sponsor or by any union or existing program which was authorized to and did submitted comments under this section;

(k l) The chairperson of the Council shall refer the appeal, if any, to a three member panel which shall submit a recommendation to the full Council. The Panel's recommendation shall be submitted no later than the second regularly scheduled meeting of the Council after the filing of the appeal. The panel may, in its discretion, hold a hearing if the Chief did not hold a hearing in the consultation process. The hearing shall be conducted in compliance with Section 203;

(l m) The Council may affirm, reverse, or modify the decision of the Chief or of the appeal panel. The decision of the Council on an appeal shall be final;

(m n) All documents, notices and appeals filed or served under this Section shall be filed or served in accordance with Section 229.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3073, 3075 and 3090, Labor Code.

Amend section heading and section to read:

212.3. Apprenticeship Program ~~Self-Evaluation~~ Assessment and Monitoring Audits.

(a) Each apprenticeship program shall annually prepare and submit a Self-Assessment Review as well as a Program Improvement Plan to the Chief DAS; provided, however, that a program is not required to submit a Review and a Plan in the first year of its existence.

(b) The Self-Assessment Review shall contain an objective and critical appraisal of the following items at a minimum:

- (1) curriculum and instruction;
- (2) supervision and management;
- (3) individual apprentice training plans;
- (4) use of competent and qualified personnel;
- (5) utilization of facilities, equipment and material;
- (6) community, business and industry involvement;
- (7) recruitment, assessment and placement;
- (8) program promotion;

- (9) program accountability;
- (10) safety and drug-free environmental training; and
- (11) training in the recognition of sexual harassment and illegal discrimination.

(c) The Program Improvement Plan shall contain provisions by which the program sponsor(s) represent that good faith efforts shall be made to improve identified deficiencies in program operations and in the training of apprentices. Such Plan shall contain at a minimum:

- (1) remedial priorities;
- (2) program improvement objectives;
- (3) identification of personnel, resources, and action needed; and
- (4) time lines for completion of objectives.

(d) ~~Each apprenticeship program with one (1) or more apprentices shall be subject to an Apprenticeship Program Evaluation conducted by the Division of Apprenticeship Standards, or by an independent industry review body appointed by the California Apprenticeship Council, in accordance with the provisions of this subsection: The Chief DAS shall select a program for random audit using a method that is not based on factors specific to that audit subject. A program may be selected for random audit only once during each five-year period beginning January 1, 2000. A program may be selected for non-random audit at any time if:~~

(1) there have been at least two previous final determinations that the program has violated the standards of the program, and **(2) the Chief, DAS, as the result of a previous audit under this section, has identified the program as being in non-compliance with its standards.**

~~(1) a program evaluation may be conducted at any time the Chief DAS has reason to believe that the program is operating in non-compliance with its standards;~~

~~(2) a program evaluation may be conducted during a program's initial year of operations;~~

~~(3) a program evaluation may be conducted at any time on the basis of a random selection by the Chief DAS;~~

~~(4) a program evaluation shall be conducted every fifth year of a program's operations;~~

~~(5) any program evaluation shall evaluate at least the following: on-the-job training; related and supplemental instruction; program administration; and compliance with the program's written standards. The evaluation of a program's related and supplemental instruction shall be conducted by the program's Local Education Agency (LEA), and its results transmitted to the Division of Apprenticeship Standards as part of the overall evaluation~~

process.

(e) ~~Following a program evaluation, the Chief DAS shall notify the program sponsor if any deficiencies in the program exists, and request correction of them. An apprenticeship program shall submit a plan of action to the Chief DAS within fifteen days of such notification specifying what action the program shall take to correct the deficiencies. The program shall correct such deficiencies within 60 days thereafter.~~ A program that has been selected for audit shall be notified by the Chief DAS fourteen (14) days prior to the commencement of the audit. The notice shall state whether the audit is a random audit or non-random.

(f) An audit of a program shall include a review of the program records, including records of apprentice training and related and supplemental instruction; inspection of the program's training facilities; visits to on-the-job training locations; and review of individual apprentice records. Apprentice records may be reviewed by a method of random selection and not every apprentice record need be reviewed so long as a sufficient number are reviewed to fairly evaluate the program. The Chief DAS shall provide a copy of the proposed audit report to the program within 30 days of the completion of the audit. The program shall have 14 days following receipt of the report to make comments. The Chief DAS may reopen the audit in response to any comments, and shall submit a final audit report, taking into account any comments to the California Apprenticeship Council within 10 days following the receipt of comments or the completion of the comment period final completion of the audit.

(g) Audit reports shall not include the name, address or social security number or other identifying information about any apprentice and shall not include any medical or other confidential information about any apprentice.

(h) The audit report prepared by the Chief DAS for presentation to the California Apprenticeship Council shall contain recommendations for remedial action to correct deficiencies, if any, and a proposed time schedule for doing so. The Chief DAS shall report at each regular California Apprenticeship Council meeting the status of each audit, including whether or not the deficiencies identified in the audit report have been corrected.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3073, 3073.1, 3074, 3074.3, 3075, 3078, and 3090, Labor Code.

Amend section to read:

212.4. Deregistration of Programs.

The deregistration of a program cancels the approval of a program to operate.

(a) The Chief DAS shall deregister an apprenticeship program upon the request of the sponsor as long as within fifteen days of the Chief's acknowledgment of the request for deregistration, the sponsor shall inform each apprentice in writing of the deregistration, the proposed effective date of the deregistration and the names and addresses of other programs

in the area. The Chief shall not deregister the program unless the sponsor complies with this requirement.

(b) The Chief may deregister an apprenticeship program, if the program is not conducted, operated and administered in accordance with applicable federal and state law and regulations and the program's approved apprenticeship standards, or if a program has had no active apprentices for a period of two (2) years; ,except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with Section 215;

(1) If the Chief has information that a program is not being operated in accordance with applicable federal and state law and regulations and or the program's approved apprenticeship standards, the Chief shall so notify the program sponsor in writing sent by registered or certified mail, with return receipt requested. The notice shall identify the violation and the action needed to correct the violation. The notice shall state that the program will be deregistered unless ~~the violation is corrected in~~ corrective action is effected completed within thirty days. Upon a showing of good cause, the Chief may grant the sponsor an ~~additional sixty days to correct the violation~~ a reasonable extension of time to achieve corrective action. Where the Chief has information that a program has had no active apprentices for a period of two (2) years, that shall be considered grounds for deregistration and the Chief shall notify the program sponsor in writing as set forth above that the program will be deregistered unless the program can show good cause within thirty (30) days why it should not be deregistered.

(2) The Chief shall ~~assist~~ advise the sponsor in every reasonable way to help the program sponsor correct the violation;

(3) If the required correction is made, the Chief may periodically review the program to see that the correction is maintained.

~~(3 4)~~ If the required correction is not completed, or if a program which has had no active apprentices for a period of two (2) years fails to show good cause why it should not be deregistered, within the allotted time, the Chief shall send a notice to the sponsor, by registered or certified mail, return receipt requested. The notice shall:

(A) State that it is sent pursuant to this subsection;

(B) Indicate that the program has had no active apprentices for a period of two (2) years and has failed to show good cause why it should not be deregistered; or identify ~~Identify~~ the violation with particularity, state when it was called to the sponsor's attention, identify the correction required and state that the sponsor has failed or refused to correct the violation;

(C) State that the Chief will recommend that the Administrator deregister the program unless the sponsor requests a hearing within fifteen days of the date of

the notice;

(4 5) If the sponsor does not request a hearing, the Chief shall transmit to the Administrator of Apprenticeship a report containing all pertinent facts and circumstances concerning the violation, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences shall include the time, date, place, and persons present. The Administrator of Apprenticeship shall make a final order on the basis of the record.

(5 6) If the sponsor requests a hearing, the Chief shall transmit to the Administrator of Apprenticeship a report containing all the data listed in subparagraph (45) above. The Administrator of Apprenticeship shall hold a hearing in accordance with Section 202, and shall make a final decision on the basis of the record, including the proposed findings and recommended decision of the Chief; At the Administrator's discretion, he/she may allow the sponsor a reasonable period of time to achieve corrective action;

(6-7) The sponsor may appeal the Administrator's decision pursuant to Section 203; The decision of the Administrator concerning deregistration of a program shall be final and become an order of the Council unless an appeal is filed by the sponsor with the Council within thirty (30) days following the date the decision is issued. If the program is deregistered, and no appeal to the Council is filed, the deregistration shall be effective sixty (60) days following the date the Administrator's Decision was issued.

(8) The sponsor may appeal the Administrator's Decision to the Council. If an appeal is filed, the procedures of Section 203(b) shall be followed. The Decision of the Council shall be final and shall be effective thirty (30) days following the date the Council's Decision is issued.

(7 9) Upon issuance of the Administrator's Decision to deregister, an order of deregistration, the Administrator shall make public notice of the order this Decision and shall notify the sponsor and other programs in the same occupation and in the same labor market area. Within 15 days of service of the Administrator's Decision, the effective date of the order the sponsor shall notify each apprentice of the Administrator's Decision to deregister deregistration of the program and the effective date thereof. The sponsor shall inform each apprentice that, if the deregistration decision becomes final, it automatically terminates the apprentice's individual registration. The sponsor shall provide each apprentice with the names and addresses of other programs in the area. Finally, the sponsor shall provide Chief, DAS, with proof of said mailing. to the Chief.

NOTE: Authority cited: Sections 3071 and 3081, Labor Code. Reference: Sections 3073, 3075, 3078, 3081, 3083 and 3090, Labor Code.

Article 10. Required Apprentices on Public Works Contract

Amend section to read:

228. Definitions

For the purpose of this Article 10:

~~(a) — ACCUSATION means a formal charge filed by the Division of Apprenticeship Standards against a party(s) alleging willful violation of the provisions of Labor Code Section 1777.5.~~

~~(b a)~~ ADMINISTRATOR means the Administrator of Apprenticeship or a duly authorized representative.

~~© b)~~ **APPRENTICESHIP COMMITTEE means an apprenticeship program sponsor whose program has been approved by the Chief of the Division of Apprenticeship Standards.**

~~(d c b)~~ CHIEF means the Chief of the Division of Apprenticeship Standards or a duly authorized representative.

~~(e) — COMPLAINANT means an interested party that files a complaint with the DAS alleging violation of Labor Code Section 1777.5.~~

~~(f d c)~~ CONTRACTOR means a general, prime, specialty or subcontractor.

~~(g e d)~~ COUNCIL means the California Apprenticeship Council.

~~(h f e)~~ DAS means the Division of Apprenticeship Standards.

~~(i) — DAS INVESTIGATIVE REPORT means the written report summarizing the facts found during the DAS investigation of a complaint alleging willful violation of the provisions of Labor Code Section 1777.5.~~

~~(j g f)~~ DATE OF AGREEMENT OR CONTRACT AWARD means, whichever is earlier, the date the Public Work contract was signed by the party authorizing performance upon the Public Work, or the date a Notice to Proceed was issued.

~~(k) — INTERESTED PARTY means an apprenticeship committee, labor-management group, labor organization, management association, employer, awarding body, or an apprentice.~~

~~(l) — WILLFUL NONCOMPLIANCE means the Contractor knew or should have known of the requirements of Labor Code Section 1777.5 and failed to comply. However, when a~~

contractor's compliance is either impeded by an apprenticeship committee's failure or refusal to respond to an application to train apprentices, such shall be given due consideration by the Administrator.

(~~m~~ **h g**) WORKER means any journeyman as defined in Section 205(a) of Title 8 performing work of an apprenticeable occupation on a public works job, except a licensee who is a sole proprietor.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Sections 1777.5 and 1777.7, Labor Code.

Amend section by adding new subsection to read:

229. Service, Notice and Computation of Time

(d) A request for review which is transmitted to the Administrator within 30 days after service of the order of debarment or civil penalty will be considered timely and will be considered as having been received within 30 days after service where the request is sent to the Administrator by first class mail or facsimile within the 30 day period with a proof of service showing the date of service if the request was sent to the Administrator by first class mail or facsimile with a proof of service showing the date of service was within 30 days after service of the order of debarment or civil penalty.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Section 1777.7, Labor Code.

Amend section to read:

230. Notification of Contract Award Information

(a) Contractors shall provide contract award information to at least one of the ~~A~~**A**pprenticeship ~~C~~**C**ommittees for each applicable apprenticeable craft or trade in the area of the site of the public works project that has approved the contractor to train apprentices. Contractors who are not already approved to train by an apprenticeship program sponsor applicable joint apprenticeship committee(s) or a unilateral committee(s) shall provide contract award information to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. This contract award information shall be in writing and may be a DAS Form 140, Public Works Contract Award Information, (Rev. 8/91). The information shall be provided to the applicable ~~A~~**A**pprenticeship ~~C~~**C**ommittee within ten (10) days of the date of the execution of the prime contract or subcontract agreement or contract award, but in no event later than the first day in which the contractor has workers employed upon the public work. Failure to provide contract award information, which is known by the awarded contractor, shall be deemed to be a continuing violation for the duration of the contract, ending when a Notice of Completion is

filed by the awarding body, for the purpose of determining the timeliness for filing a complaint ~~and for the purpose of determining~~ accrual of penalties under Labor Code Section 1777.7. The DAS Form 140 or written notice shall include **the following information, but shall not require information not enumerated in Section 230** :

- (1) the contractor's name, address, telephone number and state license number;
- (2) full name and address of the public work awarding body;
- (3) the exact location of the public work site;
- (4) date of the contract award;
- (5) expected start date of the work;
- (6) estimated journeyman hours;
- (7) number of apprentices to be employed;
- (8) approximate dates apprentices will be employed.

~~(b) Any contractor named in an Accusation filed after the adoption of these Regulations shall be required to use certified mail as the means of serving subsequent notices of contract award information. The DAS shall provide such contractors with written notification of this requirement. The requirement to use certified mail shall commence with this notification from DAS and shall continue for two years from the date of such notification. Such contractor(s) shall maintain U.S. Postal Service return receipts as proof of having mailed these notices of contract award information.~~

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Section 1777.5, Labor Code.

Amend section to read:

230.1 Employment of Apprentices on Public Works

(a) Contractors ~~and subcontractors~~, as defined in Section ~~228015~~ to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required 1 hour of apprentices work performed by an apprentice for every five hours of labor performed by a journeyman ~~4:5 ratio of apprentice to journeymen hours~~, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 ~~or Section 218(b)~~ of these regulations. Unless an exemption has been granted, the contractor or subcontractor

shall employ apprentices for the number of hours computed above before the end of the contract. ~~Registered apprentices can only be obtained from the Apprenticeship Committee that has approved the contractor to train apprentice of the craft or trade in the area of the site of the public work. A contractor~~ Contractors who are not already approved to train by an applicable joint apprenticeship committee or unilateral committee must request the dispatch of required apprentices from one of the applicable Apprenticeship Committees whose geographic area of operation includes the site of the public work by giving the committee actual notice of at least 48 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. However, if a non-signatory contractor ~~or subcontractor~~ declines to abide by and comply with the terms of a **local** committee's standards, the Apprenticeship Committee shall not be required to dispatch apprentices to such contractor ~~or subcontractor~~. Conversely, if **in response to a written request** an Apprenticeship Committee does not dispatch any apprentice **in response to a written request** to a contractor ~~or subcontractor~~ who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within ~~72~~ 48 hours of such request notice (excluding Saturdays, Sundays and holidays) the contractor ~~or subcontractor~~ shall not be considered in violation of this section as a result of failure excused from the obligation to employ apprentices for the remainder of the project, provided that the contractor ~~or subcontractor~~ made the request in enough time to meet the above - stated ratio. If an Apprenticeship Committee dispatches fewer apprentices than the contractor ~~or subcontractor~~ requested, the contractor ~~or subcontractor~~ shall be considered in compliance if the contractor ~~or subcontractor~~ employs those apprentices who are dispatched, provided that, where there is more than one Apprenticeship Committee able and willing to unconditionally dispatch apprentices, a contractor ~~or subcontractor~~ who is not a participant in an apprenticeship program has requested dispatch from at least two committees.

(b) Apprentices employed on public works shall be paid the applicable apprentice prevailing per diem wage rate, available from DAS, and derived from the Director's survey of wages paid on public works in the geographic area of the craft or trade. DAS shall refer all complaints alleging any contractor's failure to pay **the** proper apprentice prevailing wages rate on a public works **project** to the Division of Labor Standards Enforcement for investigation and appropriate action.

(c) Apprentices employed on public works can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code Section 1777.5(c)(2), apprentices employed on public works must at all times work with or under the direct supervision of journeyman/men. The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed.

(d) Contractors who have bid or have been awarded public works projects prior to ~~December 31, 1989~~ January 1, 2000 and contractors who have bid prior to ~~December 31, 1989~~ January 1, 2000 and have been awarded public works projects after January 1, ~~1990~~ 2000 shall comply with the provisions of Labor Code Section 1777.5 in effect prior to January 1, ~~1990~~ 2000, as implemented by California Apprenticeship Council regulations in effect prior to January 1, 2000.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Section 1777.5, Labor Code.

Amend section by adding new subsections.

230.2. Payment of Apprenticeship Training Contributions to the

(c) Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC-2 Form, Training Fund Contributions, (Rev. 10/91), or the following information:

- (1) The name, address, and telephone number of the contractor making the contribution.
- (2) The contractor's license number.
- (3) The name and address of the public agency that awarded the contract.
- (4) The jobsite location, including the county where the work was performed.
- (5) The contract or project number.
- (6) The time period covered by the enclosed contributions.
- (7) The contribution rate and total hours worked by apprenticeable occupation.
- (8) The name of the program(s) that provided apprentices, if any.
- (9) The number of apprentice hours worked, by apprenticeable occupation and by program.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Sections 1770, 1773, 1773.1 and 1777.5, Labor Code.

Amend section heading and section to read:

231. ~~Filing of Complaints~~ Complaints and Determinations of Noncompliance with Labor Code Section 1777.5

(a) ~~Complaints of allegeding noncompliance violations may be filed with DAS by any interested party when there is cause to believe that there has been a violation of~~ with Labor Code Section 1777.5 ~~may be filed with the Administrator~~ **Chief** by any person. Such complaints shall be filed ~~within ninety (90) days from the date of the alleged violation.~~

~~(b) Complaints filed with DAS shall contain the following:~~

- (1) The full name and address of the party filing the complaint.
- (2) The full name and address of the party(s) against whom the complaint is made (hereinafter referred to as the "respondent").
- (3) The name and address of the general contractor if the party against whom the complaint is filed is a subcontractor.
- (4) The full name and address of the public work awarding body.
- (5) The location (address **and or** geographic location) of the public work site.
- (6) A clear and concise statement of the facts constituting the basis for the complaint, date(s) of the alleged violation(s) and where appropriate, substantiation that respondent has: (A) failed to provide the applicable Apprenticeship Committee with notice of contract award information; and/or (B) failed to comply with the required apprentice to journeyman ratio; and/or (C) failed to properly employ apprentice(s) by assigning apprentice(s) to perform work outside the craft or trade of the apprenticeable occupation; and/or (D) failed to make required contributions to the Council or to the applicable apprenticeship program trust fund or to the Council; and/or (E) failed to provide the applicable Apprenticeship Committee with a verified statement of the journeyman and apprentice hours performed on the contract; and/or (F) otherwise violated Labor Code Section 1777.5.
- (7) The apprenticeable occupation.
- (8) A declaration by the person signing the complaint under penalty of perjury that its contents are true and correct to the best of his/her knowledge and belief.
- (9) The signature of the person filing the complaint, or in the case of an organization, an authorized officer or agent.

(10) Proof of Service of the complaint on the respondent, and in the case of a respondent subcontractor also on the general **and/or prime** contractor, pursuant to the provisions of Section 229.

(b) The ~~Administrator~~ **Chief** shall investigate complaints and provide written notice to the complaining party, **if any**, and the respondent of the **outcome of the investigation determination. Whether or not there is a complaint, the Chief shall conduct an investigation before making a determination that a violation has occurred.**

(c) Complaints alleging willful violation of Labor Code Section 1777.5 shall contain, in addition to the items set forth in subpart (b) above, evidence of willfulness and a statement that the complainant is seeking imposition of penalties pursuant to Labor Code Section 1777.7(a). **The filing of a complaint is not a prerequisite to the initiation of an investigation by the ~~Administrator~~ **Chief** or to a determination by the ~~Administrator~~ **Chief** that a violation has occurred.**

(d) The Chief, on his/her own initiative, may file an Accusation with the Administrator, when there is cause to believe that there has been a willful violation of Labor Code Section 1777.5. Such Accusation shall be filed within six (6) months from the date of the alleged violation and shall contain the information required in subparts (b) and (c) of this section, but need not be under penalty of perjury. **Before issuing a determination that a violation has occurred, the ~~Administrator~~ **Chief** shall provide the affected contractor(s) with written notice of the allegations and a reasonable opportunity to respond.**

(e) The Chief, on his/her own initiative, may issue a non-willful Notice when there is cause to believe that there has been a non-willful violation of Labor Code Section 1777.5. Such Notice shall be filed within six (6) months from the date of the alleged violation and shall contain the information required in subpart (b) of this section, but need not be under penalty of perjury. **The ~~Administrator~~ **Chief** shall serve notice of a **determination that is of a civil penalty or debarment on the affected contractor(s). The notice shall set forth the procedure set forth in Labor Code section 1777.7(c) for obtaining review of the ~~Administrator's~~ **Chief's** decision. For purposes of commencing a period of debarment, the date of the determination of noncompliance by the ~~Administrator~~ **Chief** shall be the first date on which the ~~Administrator~~ **Chief's** decision is no longer subject to review.****

(f) Nothing in **these regulations this part** shall prevent the ~~Administrator~~ **Chief** from entering into a settlement with the affected contractor, either before or after a notice of a **civil penalty or debarment is served determination.**

(g) If the ~~Administrator~~ **Chief** determines that a contractor has failed to submit contract award information and/or a verified statement of the journeyman and apprentice hours performed, the contractor shall use certified mail as the means of making subsequent submissions and maintain U.S. Postal Service return receipts as proof of mailing. The certified mail requirement shall end after two years **from the notice of the determination.**

(h) 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 of the requirements of that Section and fails to comply, unless the failure to comply was due to circumstances beyond the contractor's control. There is an irrebuttable presumption that a contractor knew or should have known of the requirements of Section 1777.5 if the contractor had previously been found to have violated that Section, or the contract and/or bid documents notified the contractor of the obligation to comply with Labor Code provisions applicable to public works projects, or the contractor had previously employed apprentices on a public works project.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Sections 1770, 1773, and 1777.5 and 1777.7. Labor Code.

Amend section to read:

234.2 Administrative Procedures Are Not The Exclusive Remedy For Violations

The procedures in this Article for complaints and Accusations are not intended to supersede, supplant, replace or limit any other means of enforcing the laws and regulations herein that may exist. The public agencies and political subdivisions administering them -- the Chief, the Administrator and Council -- or interested private parties, may initiate court proceedings where authorized under statutes, ~~or by a settlement agreement entered under subdivision 231.2 (c)~~ in an appropriate case without recourse to (or during) administrative proceedings described under this ~~section~~ Article. See, e.g., Labor Code Section 3084.5; Bus. & Prof. Code Section 17200, et seq. The initiation of administrative proceedings against a subcontractor shall not abrogate any responsibility attributed to any other ~~the prime~~ contractor by statute.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Section 3084.5, Labor Code; and Section 17200, et seq., Business and Professions Code.