TEXT OF PROPOSED RULEMAKING

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 2. CALIFORNIA APPRENTICESHIP COUNCIL
SUBCHAPTER 1. APPRENTICESHIP
ARTICLE 10. REQUIRED APPRENTICES ON PUBLIC WORKS CONTRACT

§205. Definitions.

(a) "Journeyman" means a person who has either

(1) completed an accredited apprenticeship in his/her craft, or

(2) who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as journeyman in the apprenticeable occupation.

(b)"Instructor" means a person who has either

(1) completed an accredited apprenticeship in his/her craft, or

(2) who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft but may not necessarily be designated as a journeyman.

(c) An "Apprenticeable Occupation" is one which requires independent judgment and the application of manual, mechanical, technical, or professional skills and is best learned through an organized system of on-the-job training together with related and supplemental instruction.

(d) “Registration of an Apprentice Agreement” means the acceptance and recording thereof by the Division of Apprenticeship Standards which serves as evidence of the participation of the apprentice in a specific apprenticeship program.

(e) “Apprenticeship Program” means a comprehensive plan containing, among other things, apprenticeship program standards, committee rules and regulations, related and supplemental instruction course outlines and policy statements for the effective administration of that apprenticeable occupation.

(f) “Apprenticeship Program Standards” means that written document containing among other things all the terms and conditions for the qualification, recruitment, selection, employment and training, working conditions, wages, employee benefits, and other compensation for apprentices and all other provisions and statements including attachments as required by the Labor Code and this Chapter which, when approved by the Chief DAS, shall constitute registration of such, and authority to conduct that program of apprenticeship in the State of California.

(g) “Apprenticeship Program Sponsor” means a joint apprenticeship committee, a unilateral labor or management committee, or an individual employer program.

(h) “Related and Supplemental Instruction” means an organized and systematic form of instruction designed to provide the apprentice with knowledge including the theoretical and technical subjects related and supplemental to the skill(s) involved.

(i) “Competent Evidence” as used in Section 224 means a transcript or abstract of the record required to be maintained pursuant to Section 212(c)(6), or an attestation by the apprentice

program sponsor stating that all training has been fully completed, on forms to be provided by the Division of Apprenticeship Standards, demonstrating that the apprenticeship program has been fully complete, certified by the apprenticeship program sponsor and endorsed by a representative of the Division of Apprenticeship Standards.

(j) An “Interested Party” for the purpose of application for approval of an apprenticeship program, means an employer, employer organization or association, a group of employers, employer associations or organizations, an employee association or organization, or employee representatives, a group of employee representatives, associations or organizations, labor and/or management groups or any combination thereof whose interest may be affected by the apprenticeship program if approved.

(k) “Maintenance” is defined as routine, recurring and usual work for the preservation, protection and keeping of any facility for its intended purposes in a safe and continually usable condition.

(l) The term “Chief DAS” means the Chief of the Division of Apprenticeship Standards.

(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 this chapter.

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

(o) “acceptable electronic format” means a tilde (~) delimited text string for each apprentice action containing the fields as specified by the Division of Apprenticeship Standards “Apprenticeship Electronic Data Interchange Protocol”, submitted via Secure File Protocol Transfer (SFTP). A static IP will be required by the SFTP server for Security.

206. Approval and Registration of Apprentice Agreements

(a) Agreements approved by Joint Apprenticeship Committee

(1) An apprentice 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 The agreement shall comply with Labor Code sections 3078, 3079, 3080 and the program standards. For programs in the building and construction industry, the agreements shall be submitted to DAS in an acceptable electronic format. Where agreements are submitted in an acceptable electronic format, the original of the agreement shall be maintained by the program for three years after the completion or cancellation of the agreement. ~~.~~

(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 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. The agreement shall comply with Labor Code sections 3078, 3079, 3080 and the program standards. For programs in the building and construction industry, the agreements shall be submitted to DAS in an acceptable electronic format. Where agreements are submitted in an acceptable electronic format, the original of the agreement shall be maintained by the program for three years after the completion or cancellation of the agreement.~~.~~

(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.

§207. Termination of Apprentice Agreements.

(a) During the probationary period, if any, an apprentice agreement shall be terminated by the program sponsor at the request in writing of either party. An apprentice terminated by the program sponsor while on probation shall have no right to file a complaint under section 201 nor to contest the cancellation under section 207.1.

(b) After the probationary period, or where there is no probationary period, the apprentice agreement may only be terminated by the Administrator.

(1) 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.

(2) 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 reason to terminate the agreement. The Administrator shall review the evidence and, where there is good and sufficient reason, shall terminate the agreement. The Administrator shall act within sixty days of receipt of the request. 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.

(c) For programs in the building and construction industry, requests for the cancellation of an apprenticeship agreement, including the effective date and reason for cancellation shall be submitted to DAS in an acceptable electronic format.

§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 processes within the apprenticeable occupation. The standards must contain:

(a) 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, 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 duties of the apprentice;

(4) 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 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 local education agency which has agreed to provide the related and supplemental instruction, and a description of the courses to be provided;

(b) 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 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 and 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;

(7) 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 apprentices' current address; a system for recording the apprentice's worksite 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; and for programs in the building and construction industry:

(A) a provision for providing each apprentice, on at least a semiannual basis, a statement showing the number of hours of on-the-job training in each work process and the number of hours of related and supplemental instruction in each course acquired toward graduation, the total number of hours of on-the-job training and number hours of related supplemental instruction that remain to be completed for graduation, and the apprentice's expected graduation date; and

(B) a provision for the submission to the Chief DAS on at least a monthly basis in an acceptable electronic format of an apprentice's change of address.

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

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

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

(14) an adequate 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;

(15) 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.

(c) The names and signatures of the parties.

§212.2. Eligibility and Procedure for DAS Approval of an Apprenticeship Program.

(a) To be eligible for approval, a program must comply with all 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 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) 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.

(6) apprenticeship programs in the building and construction industry shall submit:

(A) a written plan that sets out the number of new apprentices the applicant seeks to enroll during the next five years in the new or expanded program, the number of employers that have agreed to participate and the number of journeypersons that each employed in the past 12 months;

(B) a budget for training including at least the following; income, including proposed funding sources; expenses including personnel, instruction and facilities; and insurance, including workers' compensation. In addition to the budget, the program shall provide a detailed explanation of how sufficient funding will be provided to meet the budget. If the program will rely on member participation, it will provide the number of participants and the financial obligation that will be required;

(C) a written plan providing a reasonable timetable to obtain sufficient additional employer participation during the first five years after approval to employ the new apprentices.

(D) the applicant shall provide evidence that it has arranged for adequate classroom facilities for related and supplemental instruction. If the curriculum provides for hands on instruction, the applicant shall also provide evidence that it has arranged for facilities that are adequate to replicate the on-the- job experience. If the applicant has not obtained adequate facilities at the time the standards are submitted, the applicant shall provide evidence that it will obtain adequate facilities before it begins operation. No apprentice may be enrolled in the program until such time as the adequate facilities described in the application for approval of the standards are obtained. The Chief, or his or her representative, shall personally inspect and approve the facilities before any apprentice may be enrolled in the program, but no later than six months after the approval of the program.

(E) a plan for the recruitment and selection of the new apprentices. The plan shall include advertising of the new apprenticeship opportunities within the geographic area and outreach to organizations that promote apprenticeship opportunities to women and minorities.

(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) For apprenticeship programs in the building and construction industry, the Chief shall not approve an application that fails to meet any of the requirements outlined in section 212.2(a)(6).

(~~d~~e) 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;

(~~e~~f) 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;

(~~f~~g) 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;

(~~g~~h) Upon receipt of the proposed standards and any supplement thereto of an apprenticeship program sponsor in the building and construction industry, 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. 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;

(~~h~~i) 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;

(~~i~~j) 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.~~;~~ If the Chief does not approve an application because of the program sponsor's failure to comply with section 212.2(a)(6), the Chief shall also provide the applicant with a detailed explanation of the deficiencies in the application and recommendations for addressing those deficiencies to obtain program approval. If the Chief does not approve an application because of the program sponsor's failure to comply with section 212.2(a)(6), the applicant may file an appeal pursuant to subsection (k) or may submit a new or amended application to the Chief within 90 days of receipt of the Chief's recommendations. The Chief shall provide a detailed response to a new or

amended application within 90 days of its receipt. If the application is again denied the applicant may file an appeal pursuant to subsection (k).

~~(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.~~

(k) 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 submit comments under this section;

(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.

(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.

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

§212.3. Apprenticeship Program Self-Evaluation and Monitoring.

(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) timelines for completion of objectives.

(d) ~~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 laws or regulations regulating apprenticeship; or~~

~~(2) the Chief, DAS, as the result of a previous audit under this section, has identified violations of the program's standards or laws or regulations regulating apprenticeship and believes that the violations may not have been remedied.~~

A program may be selected for audit at any time to ensure:

(1) the program is complying with its standards;

(2) that adequate Related and Supplemental Instruction is provided;

(3) on –the-job training is provided by a Journeyman;

(4) all work processes are being covered;

(5) graduates have completed the necessary requirements.

(e) The Division shall select a program for priority audit based on the following:

(1) a finding of a deficiency made by the Chief of DAS, which shall include deficiencies noted in the program self-assessment, program review, and deficiencies in areas listed in subsection (d)1-5;

(2) a building or construction industry program that is new or newly expanded shall be audited one year after approval or expansion;

(3) a determination that apprenticeship program has been the subject of two or more meritorious complaints concerning the recruitment, training or education within a five year period; or

(4) a determination that a building and construction industry apprenticeship program has an annual completion rate below 50 percent of the average completion rate for the applicable trade;

(A) The annual "Completion Rate" is determined by calculating the percentage of apprentices registered in a specific industry and program who receives a Certificate of Apprenticeship Completion by the end of the calendar year following the "Expected Completion Date" listed on their apprenticeship agreements ("Calculation Period"). Apprentice agreements that are cancelled within one year after execution of the agreement by the apprentice will not be included in the calculation of the Completion Rate. Completion Rates will be determined annually on a program and industry-wide basis.

(B) An Apprenticeship Program Sponsor may, within one (1) year after its annual Completion Rate has been determined, submit a written request to the Chief DAS to have its Completion Rate for that year revised to include any apprentices who have received a Certificate of Apprenticeship Completion within one (1) year after the end of the Calculation Period. The request must provide the name(s) of the Apprentice(s) and state the reason(s) for the apprentice's delayed completion date. Such requests shall be granted upon a showing of good cause, which shall include economic conditions that limit opportunities for on-the-job training, and personal extenuating circumstances which prevent an apprentice from completing within the Calculation Period.

(5) A finding of evidence that information provided by a building and construction industry apprenticeship program has been purposefully misstated.

(~~e~~f) 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~~g) 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 final completion of the audit.

(~~g~~h) 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~~i) 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 are identified, and a proposed time schedule for doing so. Apprenticeship programs that fail to follow the Chief DAS recommendations or to correct deficiencies within ninety (90) days of the final audit report shall be subject to deregistration per Section 212.4 (b). 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 or the apprenticeship program approval has been withdrawn.