

CALIFORNIA APPRENTICESHIP COUNCIL

NOTICE OF PROPOSED ADOPTION OF
CODE OF REGULATIONS,
TITLE 8, SECTIONS 212.5 AND 230.2(d),

The California Apprenticeship Council (“Council”) proposes to adopt as title 8, California Code of Regulations (“CCR”) 212.5 a regulation that finds the existence of a special circumstance justifying the approval of new apprenticeship training programs within the meaning of Labor Code section 3075(c). The Council also proposes to adopt as 8 CCR section 230.2(d) a regulation that establishes a procedure for the disbursement of training fund contributions under Labor Code Section 1777.5, relating to the employment of apprentices employed on public works.

PUBLIC HEARING, WRITTEN COMMENTS, AGENCY CONTACT

Public Hearing

A public hearing will be heard on the proposed rulemaking as follows:

July 21, 2004 at 10:00 a.m.

Hyatt Islandia Hotel

1441 Quivira Road

San Diego, CA

At the hearing any person may comment, either orally or in writing, on the proposed rulemaking. The Council requests, but does not require, persons who make oral comments to submit a written statement of their comments.

Written Comments

Any person may submit written comments relevant to the proposed rulemaking to the contact person identified below. The written comment period closes on July 16, 2004. Only comments received before that date will be considered. Written comments may be submitted by mail, e-mail or facsimile.

Agency Contacts

Comments and inquiries about the rulemaking should be addressed to:

Lucille Acosta

California Apprenticeship Council

455 Golden Gate Avenue, 8th Floor

San Francisco, CA 94102

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E-mail: lacosta@hq.dir.ca.gov

TEXT, AUTHORITY AND REFERENCE OF PROPOSED REGULATIONS

A. Proposed 8 C.C.R. § 212.5:

Text: Based on current labor market conditions, a special circumstance exists that justifies the approval of new programs, provided that such programs meet the requirements of Regulations 212 and 212.2. The Council shall review this determination at its second quarterly meeting in 2006 and every two years thereafter.

Authority Labor Code section 3071.

Reference Labor Code section 3075.

B. Proposed 8 C.C.R. § 230.2(d):

Text Training fund contribution paid to the CAC and deposited by the last day of a fiscal year into the Apprenticeship Training Contribution Fund shall be distributed in accordance with this subdivision within 90 days of the end of that fiscal year., Only apprenticeship programs that have had approval under Labor Code section 2075 for the entire fiscal year and are in existence at the time of the distribution of funds shall be entitled to receive a share of the distributed contributions. Contributions shall be distributed as follows: (i) payment shall first be made to the Division of Apprenticeship Standards for its budgeted expenses to administer this subdivision in the fiscal year in which the distribution is made; (ii) where there is only one applicable apprenticeship program in the same occupation for which contributions were made whose geographic area of operation as defined in 8 C.C.R. section 205(n) includes the county in which the work was performed, those contributions will be distributed to that program less the pro rata share of expenses paid by DAS; and (iii) where there are two or more applicable apprenticeship programs in the same occupation for which contributions were made whose geographic area of operation as defined in 8 C.C.R. section 205(n) includes the county in which the work was performed, those contributions will be distributed to each such program in proportion to the total number of registered apprentices that DAS has recorded in that program on June 30 of the fiscal year for which contributions were received less the pro rata share of expenses paid by DAS. “Pro rata share of expenses” means the share of DAS expenses that bears the same ratio to the contributions to be distributed as the total DAS expenses bear to the total contributions received in the fiscal year.

Authority Labor Code section 1777.7.

Reference Labor Code section 1777.5 and 1777.7

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. 8 CCR section 212.5

Labor Code section 3075(a) provides that a new apprenticeship training program shall be approved "whenever the apprentice training needs justify the establishment." Section 3075(b) provides that in the building and construction trades there is a need for a new program if one of the following conditions apply: (1) there is no existing program in the same craft or trade in the same geographic area; (2) existing programs lack capacity, or fail or refuse to dispatch qualified apprentices or (3) the Council has determined that existing programs are deficient. Section 3075(c) provides that, notwithstanding section 3075(b), the Council may approve a new program if justified by "special circumstances".

The proposed regulation provides that based on current market conditions a special circumstance exists within the meaning of section 3075(c) justifies the approval of new programs, providing that the programs meet the requirements of Regulations 212 and 212.2. The Council will promulgate section 212.5 pursuant to its general rule-making authority under Labor Code section 3071. Section 212.5 also provides that the Council will review this determination at its quarterly meeting in 2006 and biennially thereafter.

The purpose of Reg. 212.5 is to determine that a special circumstance exists that justifies the approval of qualified new programs whether or not there are existing programs in the same geographic area and same craft or trade that have the capacity or are willing to dispatch qualified apprentices.

The determination will eliminate case-by-case disputes concerning whether otherwise qualified applications for the establishment of a new program should be approved. The elimination of such disputes will reduce the cost and expense of obtaining program approval and will enable prospective program sponsors to understand with more certainty the requirements for approval. The requirement in Reg. 212.5 for a biennial review of the determination is intended to ensure that the determination does not remain in effect after the special circumstance has ceased to exist.

2. 8 C.C.R. Section 230.2(d)

Labor Code section 1777.5(m) provides that a public works contractor who employs journeymen or apprentices in an apprenticeship craft shall contribute to the Council the same amount that the Director of Industrial Relations has determined is the prevailing amount of apprenticeship training contributions in the area of the public works site. At the end of each fiscal year the Council shall make a grant of the funds so received, less expenses, to approved apprenticeship programs. If there is an approved multiemployer apprenticeship program in the same geographic area in the same craft or trade a grant shall be made to that program. If there are two or more such multiemployer programs, a grant shall be made to each program in proportion to the number of apprentices enrolled in each program. All training contributions not so distributed shall be used to defray future expenses of the Division of Apprenticeship Standards ("DAS"). All training contributions shall be deposited in the Apprenticeship Training Contribution Fund in the State Treasury. Notwithstanding Government Code Section 13340, all money in the Apprenticeship Training Contribution Fund is continuously appropriated for the purpose of carrying out this subdivision and to pay DAS expenses.

Reg. 230.2(d) provides that training contributions received pursuant to Labor Code section 1777.5(m) shall be distributed within 90 days of the end of the fiscal year in which they are received. Only programs that have been approved for the entire fiscal year and are in existence at the time of distribution are entitled to participate in the distribution. Training contributions shall be distributed as follows: (1) to DAS to defray the expenses of the administration of Labor Code section 1777.5; (2) if there is only one applicable program in the same geographic area of operation as defined by 8 C.C.R. § 205(n), to that program less the pro rata share of expenses paid to DAS; and (3) if there are two or more such programs, to each program in proportion to the total number of apprentices as of June 30 of the fiscal year in which the contributions were received less the pro rata share of expenses paid to DAS. “Pro rata share of expenses” means the share of DAS expenses that bears the same ratio to the contributions to be distributed as the total DAS expenses bear to the total contributions received during the fiscal year.

The purpose of Reg. 230.2(d) is to establish the priority of distributions of training fund contributions received from contractors on public works, to define the amount of DAS expenses that are deducted from grants of contributions to approved programs and to define the manner in which the number of apprentices in a program is determined.

Neither regulation mandates the use of specific technologies or equipment.

Neither regulation is based on any technical, theoretical or empirical study.

Neither regulation imposes a mandate on local agencies or school districts.

Neither regulation imposes any costs or savings to any state agency or in federal funding to the state.

Neither regulation has a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because neither imposes any requirement on any business and does not limit any business in any way. On the contrary, Reg. 212.5 enhances the ability of new apprenticeship programs to obtain approval. In making this determination, the Council does not rely on any specific fact, evidence, document, testimony or other evidence but instead relies upon the practical effect of the regulation.

The Council is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Council finds that the proposed regulation is necessary for the health, safety and welfare of the people of the state and does not affect housing costs.

The Council has determined that neither regulation will create or eliminate jobs or existing businesses or the expansion of businesses in California. Neither regulation will affect small businesses because the regulations do not impose any requirements.

Rulemaking records, including the text of the proposed regulations may be accessed through the Department's Internet website at www.dir.ca.gov.

The Council must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

An initial statement of reasons for the proposed action and the information on which the proposed action is based may be obtained from the contact person identified above. The text of the proposed regulations is included in this document.

The full text of a regulation changed pursuant to Government Code section 11346.8 will be made available for at least 15 days prior to adoption of the proposed regulation.

A copy of the final statement of reasons for Reg. 212.5 once it is prepared may be obtained by contacting the contact person identified above.