

CALIFORNIA APPRENTICESHIP COUNCIL

CALIFORNIA CODE OF REGULATIONS, TITLE 8
SECTIONS 205, 206, 207, 212, 212.2, 212.3

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9(d), the California Apprenticeship Council (“Council”) incorporates the Initial Statement of Reasons prepared in this rulemaking. There were minor textual changes to the proposals as issued at the start of this rulemaking and no changes in the basis or rationale for any of the proposals.

Section 212(c)

The proposed amendments to subdivision (c) of section 212.2 are nonsubstantive revisions to the text to clarify that the application and approval process of a program also applies to the Division of Apprenticeship Standards’ (DAS) review of amendments to program standards, which include new work processes, or to revise the program’s geographic area of operation, as set forth in subdivision (a). The proposed amendment to include “new work processes,” is intended to implement Labor Code section 3075 that clarifies these amendments are considered to be an “application for a new program” and subject to the same application and approval process. These amendments track the language in the amendment to the statute.

Section 212.2(k)

The proposed amendments to subdivision (k) are based on the bifurcation of responsibilities between the California Apprentice Council (Council) and DAS following the passage of AB 235, amending Labor Code section 3075. Because the Council’s continuing jurisdiction only extends over building and construction trades industry and firefighter programs, only the decisions of the DAS Chief with respect to these programs will be filed with and become decisions of the Council. The existing language of subdivision (k) currently makes all decisions by the DAS Chief final, subject to the filing with and being deemed a final order of the Council unless timely appealed. Labor Code section 3075, subdivision (d), further bifurcates an appeal from the DAS Chief’s decision regarding building and construction trades industry and firefighter programs, i.e., those programs that remain within the jurisdiction of the Council. The proposed amendment to paragraph (k)(1) tracks the language addressing the right to appeal in Labor Code section 3075, subdivision (d).

The proposed addition of subdivision (k)(2) addresses two other circumstances in which the DAS Chief's decision may be appealed to the Council. Subdivision (2)(A) addresses a jurisdictional issue when the DAS Chief's decision includes "overlapping work processes" that may be covered in the building and construction trade industry and firefighter programs. Labor Code section 3075, subdivision (g) preserves a right to resolve any dispute over whether a program, or a work process in which that program proposes to provide training, is under the jurisdiction of the Council. The proposed addition to the regulation permits an appeal to the Council when an objection is raised after a DAS Chief's decision is posted objecting to the decision because it approves a new apprenticeship program that includes a substantial number of work processes covered by the building and construction trades industry or firefighter programs, and the Chief failed to obtain consent from the Council before approving the program as required by Labor Code section 3075, subdivision (g). Subdivision (2) (B) tracks the language of Labor Code section 3075, subdivision (h), which permits an appeal to the Council from any decision of the DAS Chief if DAS failed to post notice as required under Labor Code section 3075, subdivision (g).

The proposed addition of subdivision (k)(2)(A) to section 212.2, addresses a jurisdictional issue that might arise if the Chief's decision to approve applications for a new apprenticeship program includes work processes that would be considered or might overlap work processes of a building and construction trade or firefighter occupation. The statute preserves a right to resolve any dispute over whether a program, or a work process in which that program proposes to provide training, is under the jurisdiction of the Council.

Labor Code section 3075, subdivision (g), limits the authority of the DAS Chief to approve applications for new apprenticeship programs in the building and construction trade industries and firefighters. Subdivision (g) provides that the Chief "shall not approve a new apprenticeship program that includes a substantial number of work processes covered by a program in the building and construction trades or firefighters, or approve the amendment of apprenticeship standards to include those work processes, unless either of the following applies: [¶] (1) The program is in the building and construction trades or a firefighter program and subject to the rules and regulations of the California Apprentice Council. [¶] (2) The California Apprenticeship Council has granted consent to the approval of the program or the amendment to the apprenticeship standards."

The proposed amendment requires that the party object on the ground that the Chief approved an apprenticeship program that includes overlapping processes with a building and construction trade or a firefighter program. This tracks the language of the statute. The objection raises the issue of whether the Chief had authority to approve the program in the absence of the Council's consent. Labor Code section 3075, subdivision (d) provides that the Chief's decisions regarding applications for new apprenticeship programs in the building and construction trades and firefighters may be appealed to the Council. A program that includes overlapping processes with a building and construction trade or firefighter program is effectively a building and construction

trade or firefighter program subject to the oversight of the Council. The right to appeal to the Council also includes those decisions that address overlapping work processes within the Council's jurisdiction.

Labor Code section 3073 acknowledges the bifurcation of the building trades and firefighter occupations and addresses the rules and regulations for nonbuilding trades and nonfirefighter occupations. Subdivision (b) provides authority to the Chief to promulgate regulations that apply to apprentice programs in all industries other than the building and construction trades. Pending the issuance of new regulations, all regulations still apply to the nonbuilding and nonfirefighter trades, with the exception of those specific to the building trades and firefighters, including filing requirements, appeal rights, and other procedures applying to the Council. Stated another way, appeal rights to the Council do not apply to nonbuilding trades and nonfirefighter occupations.

Labor Code section 3075, subdivisions (e), limits the right to appeal to trades outside the building and construction trades and firefighters, unless an exception applies. Subdivision (h) provides a notice exception for all apprentice programs: "Notwithstanding subdivision (e), the chief's decision regarding any new apprenticeship program or amendment to the apprenticeship standards to include new work processes may be appealed to the California Apprenticeship Council if notice under this subdivision is not provided." Subdivision (d) provides the right to appeal the Chief's decision regarding applications for new apprenticeship programs in the building and construction trades and firefighters to the Council.

AUTHORITY AND REFERENCE CITATIONS

The Council submitted proposed amendments to section 205, 206, 207, 212, 212.2 and 212.3 of Title 8, California Code of Regulations, following the adoption of SB 56 (Stats. 2011, Chapter 696) ("SB 56"), addressing apprenticeship oversight. SB 56 amended Labor Code section 3073.1, and added specific Labor Code provisions, including sections 3075.5, 3075.6, and 3075.7 that apply to the building and trades industry and firefighter programs. These amended and newly enacted statutes are cited, where appropriate, as authority to support the proposed amendments to regulatory sections that are intended to implement, interpret, and make more specific the statutory requirements as set forth in SB56.

The Council also submitted proposed amendments to sections 208, 210, 212.2, the title of Subchapter 3, and sections 281 and 282, to make nonsubstantive revisions to track the terminology in the Labor Code provisions amended by SB56, replacing the term "journeymen" with "journey workers."

The Council submitted proposed amendments to sections 205, 206, 207, 208, 212, 212.2, of Title 8 California Code of Regulations, following the passage of AB 235. AB 235 specifically removed the authority of the Council over apprenticeship programs in nonbuilding and nonfirefighter occupations and transferred that authority to the DAS Chief. AB 235 also

modified a process whereby decisions of the Chief and Council relating to apprenticeship programs are posted, can be appealed and become final. Finally, AB235 revised and reorganized provisions relating to apprenticeship programs, and added the headings to Articles 1 - 4, commencing with Labor Code section 3070. The bill amended and added sections to the Labor Code. The newly amended and enacted Labor Code provisions are cited, where appropriate, in the proposed regulations, which are intended to implement, interpret, and make more specific these statutes.

ALTERNATIVES DETERMINATION

The proposed amendments establish basic guidelines for approval or expansion of apprenticeship programs that are intended to strengthen DAS oversight, make apprenticeship programs better for the participants, and ensure that the substantial investment in this program by the public and private sector results in high graduation rates of well-qualified apprentices. No other alternatives were considered or proposed because the proposed regulations were drafted to implement and make more specific the statutory requirements of SB56 and AB235. No alternatives were presented to the Council.

ECONOMIC IMPACT ASSESSMENT

In addition to the economic impact assessment in the Initial Statement of Reasons, the Council has determined that the proposed amendments to the regulations will benefit the state's environment with the conversion from paper to electronic reporting of information. Indirectly, a skilled workforce benefits the health and safety of all Californians, but the Council has not determined that there is any direct benefit to worker safety.