

CALIFORNIA APPRENTICESHIP COUNCIL

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

INITIAL STATEMENT OF REASONS

The California Apprenticeship Council (“Council”) proposes to amend sections 205, 206, 207, 212, 212.2, and 212.3 of Title 8, California Code of Regulations, for the purpose of revising evaluation requirements and procedures for apprenticeship programs in general, and to set forth more specific requirements for building and construction trades programs, including with respect to the approval of new and expanded programs and the electronic transmission of information to the Division of Apprenticeship Standards (“DAS”). The Council also proposes to amend sections 208, 210, 212.1, the title of Subchapter 3, and sections 281 and 282 for the purpose of making nonsubstantive revisions to terminology.

BACKGROUND AND SUMMARY

The Council and DAS oversee and regulate apprenticeship programs in the State of California. The Council’s responsibilities include adopting regulatory standards governing the approval and operation of programs, consistent with statutory requirements. The DAS’s responsibilities include approving and auditing programs, in accordance with these standards and requirements, to give workers the skills and training needed to obtain well-paying jobs and provide employers with a highly skilled and experienced workforce.¹

In 2011, the Legislature adopted SB 56 (Stats. 2011, Chapter 696) to do the following: (1) eliminate a requirement for random audits of all apprenticeship programs within a five-year period, and replace it with a general requirement to audit/evaluate² programs; and (2) establish more specific requirements for apprenticeship programs in the building and construction trades industry. These new more specific requirements include (a) evaluating a program within one year following the approval of its creation or expansion; (b) evaluating a program that has been

¹ 2018 legislation known as AB 235 (Stats. 2018, Chapter 704) bifurcated California’s regulatory oversight of apprenticeship programs, with building and construction trades and firefighter programs staying under the jurisdiction of the Council, and other programs placed under the jurisdiction of the Chief of DAS and a new Interagency Advisory Committee on Apprenticeship. The DAS’s role with respect to all programs remains the same, except that the Chief DAS’s decisions are now final with respect to programs that are no longer under the Council’s jurisdiction. Past actions of the Council and most of the existing regulatory structure will continue to apply to programs under the Chief DAS’s and Interagency Advisory Committee’s jurisdiction pending the adoption of new requirements. (Labor Code Section 3073, subdivisions (b) and (c).)

² As discussed below, more recent legislation substituted the term “evaluation” for “audit” in Labor Code Section 3073.1.

the subject of meritorious complaints or whose successful completion rate drops below 50%; (c) requiring applications for approval of a new or expanded program to provide more detailed information about the scope and operation of the program and recruitment of new apprentices; (d) requiring the Chief of DAS to provide a detailed explanation when denying an application, and give those applicants an opportunity to correct deficiencies and resubmit their application for approval; (e) requiring programs to provide apprentices with a semi-annual statement showing their progress toward graduation; and (f) requiring programs to submit specified data to DAS monthly in an electronic format.

The proposed amendments to regulatory sections 205, 206, 207, 212, 212.2, and 212.3 are designed primarily to implement, interpret, and make more specific the requirements of SB 56. The broad objectives of the legislation and these more specific regulatory changes are to streamline and improve the audit process, provide the DAS with more factual information in the application and approval process, keep apprentices in building and construction trades better informed, and make program information easier to submit and easier to access. The proposed changes should improve the efficiency and effectiveness of the evaluation and approval processes. Most of the procedures and standards set forth in these proposals have, in fact, already been operational for several years pursuant to the mandates of SB 56. However, regulatory amendments are needed to clarify the requirements and make them more specific as well as to make the more detailed requirements fully enforceable.

These proposals make additional more technical revisions to maintain consistency with more recent statutory amendments adopted as part of AB 235. Specifically, these proposals substitute the word “evaluation” for the word “audit” to conform to the change in terminology in Labor Code Section 3073.1. These proposals also revise certain notice, posting, and appeal requirements for applications and evaluations, to conform with newly adopted amendments to Labor Code Section 3075. The Council and Chief DAS do not intend to address the AB 235 bifurcation in a comprehensive fashion in this rulemaking, but may do so later in one or more separate rulemakings.

Finally, the Council is amending regulatory sections 208, 210, 212.1, the title of Subchapter 3, sections 281 and 282, for the sole purpose of revising terminology, specifically by adding the word “trades” in the phrase “building and construction . . . industry” to be consistent with the corresponding statutory terminology and by updating the term “journeyman” and its plural “journeyman” to “journeyworker” and “journeyworkers.” These revisions are also being incorporated in the other sections where substantive revisions are being made. However, the Council is not proposing these changes for the sections in Article 10 (Public Works) at this time because they will be the subject of a separate rulemaking.

SPECIFIC PURPOSE AND FACTUAL BASIS FOR PROPOSED ACTIONS

Section 205

The Council proposes to amend the definition of “journeyman” in subsection (a) so that it also applies to the terms “journeyperson” and “journeyworker.” The Council is also adding language after the definition to indicate that the terms are interchangeable as well as to express its current preference for the term “journeyworker” and its plural “journeyworkers.” These changes, which are incorporated throughout these proposals, are nonsubstantive but reflect the Council’s determination to update its terminology to reflect current practice and usage.

The Council also proposes to make nonsubstantive changes to subsections (i) and (m), to correct an erroneous regulatory cross-reference in (i) and update a statutory cross-reference in (m) as well as adding the word “trades” after “building and construction” in (m). This latter change is incorporated throughout these proposals to make the regulatory terminology consistent with the statutory terminology used in Labor Codes Sections 3075.5, 3075.6, and 3075.7.

The Council proposes to make a substantive amendment to Section 205 by adding a new definition for the term “acceptable electronic format.” Labor Code section 3075.7 requires building and construction trades industry apprenticeship programs to submit certain data to DAS “in an electronic format acceptable to [DAS].” A new regulatory standard, proposed here in the form of a definition, is necessary to indicate what is “acceptable to DAS” for purposes of meeting the statutory requirement.

Most programs already maintain records about apprentices in electronic format. The Council is trying to obtain essential apprenticeship data in a simple format compatible with the applications used by most apprenticeship programs to transmit that data. By defining “acceptable electronic format,” the proposed amendment ensures that all data can be transmitted confidentially and be obtained in a form that can be used readily by DAS.

This proposed definition actually provides two alternatives for meeting this requirement. The first is a standard protocol, called the apprenticeship electronic data interchange (EDI) protocol, for transmitting confidential data electronically. This is the protocol that the majority of program sponsors has followed for the past decade. The second is through use of an online platform on the DAS website, through which required data can be entered and submitted directly. For the few existing and any new programs that have not programmed their IT systems to use the EDI protocol, the online platform will provide a cost-free though more time-consuming alternative method for reporting electronically, as required by Labor Code Section 3075.7.³

³ The Department of Industrial Relations (DIR) provides similar options in other contexts, such as certified payroll reporting for public works contractors. (See <https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>.)

Section 206

The purpose of the proposed amendments to section 206 is twofold. First, they specify that, for programs in the building and construction trades industry, copies of individual apprentice agreements must be transmitted electronically to DAS. This is consistent with Labor Code Section 3075.7's requirement to submit "apprentice registration" data to DAS electronically, and it also saves DAS the cost and inconvenience of storing a vast volume of these agreements. Second, the amendments also specify a record-retention requirement for the original paper contract containing the original signatures. This makes that original contract available and the signatures more readily verifiable in the event of a dispute concerning the agreement. Retention for three years is pursuant to the Council's current record retention schedule.

The proposed amendments also eliminate the requirement to file a copy of the agreement with the Council. This language is unnecessary and superfluous inasmuch as the records are electronic and maintained by DAS on behalf of itself and Council, and there is no separate transaction that would constitute the act of DAS filing an agreement with the Council.

Section 207

The purpose of the proposed amendment to section 207 is to specify that, for programs in the building and construction trades industry, requests to cancel apprentice agreements must be transmitted electronically to DAS. This amendment is also necessary to conform to the electronic submission requirement in Labor Code section 3075.7, and it serves the added purpose of allowing programs and the DAS to maintain and submit apprentice records electronically, without the need to mail and store paper records.

Sections 208 and 210

The purpose of the proposed amendments to these sections is solely to make the terminology changes previously noted for the reasons previously noted, specifically by adding "trades" after "building and construction" and updating "journeymen" to "journeyworkers."

Section 212

The purpose of the proposed amendment to section 212 is to expand program standards requirements for apprenticeship programs in the building and construction trades industry in order to implement the requirements of Labor Code Sections 3075.6 and 3075.7. Subsection (b) of the existing regulation requires program standards to include a variety of structural, substantive, and procedural elements needed to operate a successful apprenticeship program in accordance with state and federal law. This proposal adds a new subsection (c) that requires programs standards in the building and construction trades industry to include systems for providing the reports required by Labor Code Sections 3075.6 and 3075.7. Specifically, Labor Code Section 3075.6 requires programs in this industry to provide progress reports to apprentices

on at least a semiannual basis, while Labor Code Section 3075.7 requires these programs to report other specified information to DAS on a monthly basis and in an acceptable electronic format. This additional regulatory requirement is needed to ensure that programs in this industry have the ability to comply with these statutory requirements.

Section 212.1

The purpose of the proposed amendment to this section is to solely is to revise the terminology by adding “trades” after “building and construction” for the reason previously noted.

Section 212.2

The purpose and necessity of the proposed amendments to subsection (a) of section 212.2 are to implement Labor Code section 3075.5. These regulatory amendments require an applicant for creation or expansion of an apprenticeship program in the building and construction industry trades industry to submit a plan, budget, and evidence of adequate facilities and support projected over a five-year period. Proposed new paragraph (a)(6) clarifies and makes more specific the statutory requirements so that applicants will understand what kind of showing and supporting information are needed to obtain approval of a new or expanded program.

Subparagraph (a)(6)(A) requires the applicant to project the anticipated number of enrollees and to estimate the number of participating employers and number of journeypersons working for those employers. This information is needed to enable DAS to assess the scope and viability of the program, including the availability and adequacy of supervised on-the-job training opportunities for apprentices.

Subparagraph (a)(6)(B) specifies the financial information needed to evaluate the adequacy of the program’s budget and anticipated sources of funding. Because the term “budget” was not further defined in the statute, the Council determined that certain items commonly required for a business plan and needed to assess the viability of that plan should be included. The subparagraph further specifies that where a program relies on member participation for funding, the number of employers and the contribution amount must be disclosed. This allows the DAS to determine whether a program that relies on income derived from employer contributions will have sufficient revenues to meet the expected costs set forth in the budget.

Subparagraph (a)(6)(C) requires the applicant to project additional employer participation over a five year period, so that DAS may assess the viability of this crucial element of the plan over the five year time frame specified in the statute.

Subparagraph (a)(6)(D) details the need for classroom facilities that are adequate and suitable for the type of classroom instruction that the program will provide. It also requires DAS to inspect these facilities either before or within six months after approval of a program, so that DAS can verify the adequacy and suitability of those facilities for the instruction portion of the program.

Finally, subparagraph (a)(6)(E) details the elements that must be included in the program's recruitment plan, so that programs will understand where and how to focus their planned recruitment, and DAS will be able to assess the likely effectiveness of that plan.

The proposed amendments to subsection (c) of section 212.2 are nonsubstantive revisions to the text to clarify that the subsection's procedural requirements apply to DAS's handling of amendments to program standards as well as to new applications.

The proposed amendments to subsections (g), (h), and (i) of section 212.2 are for purposes of bringing notice, posting, and appeal requirements into conformity with revised requirements adopted as part of AB 235. These changes are needed to delete obsolete notice and service requirements for applications and decisions, and replace them with the new webposting requirements that are now required by and which "constitute the only form of notice and service" under Labor Code Section 3075, subdivisions (f) and (h). Also, because the purpose of posting is to inform interested parties about pending applications as well as decisions, the amendments to subsection (g) also require DAS to post information about how interested parties may submit comments on an application. In addition, the amendments to subsection (h) give interested parties who have either submitted comments or requested notice, the right to notice of any hearing on a pending application (though such hearings are discretionary and rarely held).

The proposals delete the existing language of subsection (j) concerning application processing times because that language is both dated and serves no regulatory purpose. In place of the deleted language, the Council is substituting the detailed requirements specified by statute for decisions on program applications in the building and construction trades industry. The new language also restates and clarifies statutory appeal rights and deadlines, including an applicant's right to amend and resubmit an application following an initial denial.

The proposed amendments to subdivision (k) are based on the bifurcation of responsibilities under AB 235. Because the Council's continuing jurisdiction will only extend over building and construction trades and firefighter programs, only the decisions of the DAS Chief with respect to those programs will be filed with and become decisions of the Council. Nevertheless, 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. The existing language of subsection (k) currently makes all decisions by the Chief of DAS final, subject to filing with and being deemed the final order of the Council unless timely appealed. The proposed amendments would retain the existing language in paragraph (1), while adding additional language to clarify that this procedure only applies to programs in the building and construction trades industry and to firefighter programs, *i.e.* to programs that remain under the jurisdiction of the Council following the adoption of AB 235. A new paragraph (2) sets forth the appeal rights from a final decision of the DAS Chief in the event of a dispute over whether the program or work process is under the jurisdiction of the Council. This language restates and

clarifies the two circumstances under which this right of appeal exists under Labor Code 3075.5 – (i) if a party previously and timely raised the issue but the Chief failed to obtain the Council’s consent prior to approving the program, or (ii) DAS failed to post notice of the application on its website as required by the statute and this regulation.

Finally, the Council proposes amending subsection (n) by adding a restatement of the statutory provision that website posting “shall constitute the only form or notice and service” required for applications and decisions by the DAS Chief. Although this is redundant to the statutory provision, it is added here so that the requirements will be understood in the context of the regulation itself and also to forestall contrary arguments (concerning additional service requirements) that might be derived from other regulatory language. The Council is also adding qualifying language to the existing text of subsection (n) to specify that the DAS Chief may authorize different forms of notice or service for documents and appeals, other than those specified in section 229 of the regulations. The purpose of this amendment is to allow flexibility in how notices and documents may be filed and served, such as by email, rather than requiring strict adherence to the formal 20th Century modalities and service requirements embodied in section 229. The proposal does not *require* the Chief to exercise discretion to alter service rules, so that formal requirements can be maintained and enforced when circumstances do not warrant the allowance of alternatives.

Section 212.3

The principal purpose of the proposed amendments to section 212.3 is to implement SB 56’s amendments to Labor Code section 3075.5. The proposed amendments also implement a terminology change required by AB 235 – specifically changing the term “audit” to the new term “evaluation” – and they revise and clarify the DAS Chief’s reporting responsibilities to the Council with respect to pending and recently completed evaluations (*nee* audits). In terms of substance, these amendments are needed to ensure that evaluations will effectively assess the quality of apprenticeship programs.

The requirement that new programs be evaluated one year after approval was added by Labor Code section 3073.1. The amendments also address evaluation metrics. The Council is defining “completion rate,” which is relevant to a statutory requirement to evaluate programs whose completion rate is below a specified average. Excluding apprentices who leave the program in the first year provides a more realistic view of the completion rate for those who participate fully in the program. The expected graduation date provides an end point for the calculation, but because economic circumstances may sometimes prolong an apprentice’s on-the-job training, programs are allowed to request modification of the graduation rate to reflect graduations occurring after their scheduled dates. In connection with such evaluations, the statute requires DAS “to attempt to contact a statistically valid sample of apprentices who have dropped out of the program prior to completion” to determine their reasons for leaving. The proposed regulation projects that a survey of 30% of the dropouts in the previous five years may constitute

a statistically valid sample, but the Council also acknowledges the limited response rate in prior efforts to contact program dropouts and invites comments on the most and efficient way to survey what may be regarded as a statistically *valid* sample.

The redesignation of subsections, the amendments to subsection (h), and the proposed addition of a new subsections (i) and (j) are designed to restate, clarify, and place in a logical and more understandable sequence, the rights and requirements with respect to final evaluation (audit) reports. Preexisting requirements have not been changed, with the exception that the Chief DAS will be required to post final evaluation reports on the DAS website, and the scope of reports provided to the Council is more specifically defined as including both pending evaluations and those concluded in the past 180 days. The posting requirement is consistent with other notice updates required by AB 235 and also makes more specific and helps effectuate the statutory requirement that these evaluation (audit) reports be made public. The requirement that the Chief report on evaluations concluded in the past 180 days is based on two factors – first, these reports must include information about remediation efforts, which is a process that occurs within 90 days following the final evaluation report; and second, because the Council only meets quarterly (*see* Labor Code Section 3071), the 180 day time frame is large enough to include all such activity that occurred since the last Council meeting without requiring unnecessary repetition of report information in succeeding meetings.

Title of Subchapter 3 and Sections 281 and 282

The purpose of the proposed amendments to the title of Subchapter 3 and the following sections is solely to revise the terminology by changing “journeyman” to “journeyworker” and “journeymen” to “journeyworkers” for the reasons previously noted.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

SB 56 requires building and construction trade industry apprenticeship programs to report specified information to DAS in an “acceptable electronic format.” This statutory requirement, adopted in 2011, assumed that apprenticeship program sponsors in this industry would have access to computers and the internet, and would be capable of complying with DAS expectations regarding how to report data electronically. In fact, many programs already had the ability to report the required information, and as of the latter part of 2018, only three existing program sponsors in the building and construction trades industry were still reporting required data manually rather electronically through the “Apprenticeship Electronic Data Interchange [EDI] Protocol” specified in proposed subsection (n)(1) of regulatory section 205.

For the current programs that still report manually, and proposed new programs that currently lack electronic reporting capability, these proposals would require access to a computer and

internet access. These proposals do not require ownership of a computer, only access to one, including free access provided at a DIR office or public library. Ordinary personal computers will be capable of transmitting reports through the proposed subsection (n)(2) alternative of direct data entry and submission through an online platform on the DAS website.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES RELIED ON

The proposed action is not based on any technical, theoretical, empirical, or other type of study.

BENEFITS OF THE PROPOSED ACTION

The regulations implement statutory changes that will make the transmittal of information to DAS more efficient and allow participants in apprenticeship programs easier access to information about their programs and their own individual progress. The regulations also implement legislative changes to the new and expanded program approval processes by specifying some of the requirements for approval. Requiring an applicant to set forth more specific budget and planning metrics will make it easier to assess the adequacy of a proposed training program. The proposed changes to the program evaluation process will allow for a fairer and more efficient allocation of agency resources and will help programs identify areas for improvement. The website posting requirements in these proposals will make the application and evaluation processes more transparent for interested parties and the public. Streamlining these processes will improve the overall quality of training, for the benefit of apprentices, employers, and the public.

ECONOMIC IMPACT ASSESSMENT

The principal economic impacts of these proposals will be on sponsors of apprenticeship programs who are seeking approval of new or expanded programs or whose programs are being evaluated by DAS. For programs in the building and construction trades industry, which are the principal focus of these proposals, the cost impacts are primarily associated with the conversion from paper to electronic reporting of information. As of October 1, 2018, all but three of the 276 sponsors of existing programs in this industry had already made the conversion, at a cost ranging from \$2-10,000 to program their computer systems for EDI reporting to DAS. For existing and new programs that do not wish to incur this cost, DAS is providing an online portal through which information can be entered and transmitted at no cost. While the process of data-entry is more time-consuming than EDI reporting, the same level of effort is required now for entering report data on paper forms.

These proposals do not impose any ongoing costs, and they do not impose new reporting or recordkeeping requirements aside from the requirements imposed by statute.

In light of this assessment, the Council has determined that this regulatory proposal will not create a significant number of new jobs or businesses, eliminate a significant number of existing jobs or businesses, or significantly expand business in California. The proposed action is not expected to have an adverse impact on small business.

CONSIDERATION OF ALTERNATIVES

The Council has not formally considered alternatives to the proposed action, which conforms current regulations to legislative changes in the Labor Code. The public is invited to provide comments and suggestions regarding alternatives during the comment period.