

CALIFORNIA APPRENTICESHIP COUNCIL

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

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the California Apprenticeship Council (“Council”) proposes to amend sections 205, 206, 207, 208, 210, 212, 212.1, 212.2, 212.3, the title of Subchapter 3, 281, and 282 of its regulations in Division 1, Chapter 2, of Title 8 of the California Code of Regulations. The Council proposes to adopt these amendments pursuant to its rulemaking authority under Labor Code Section 3071, for the purpose of implementing, interpreting, and making more specific the requirements of Labor Code sections 3073.1, 3075, 3075.5, 3075.6 and 3075.7 of the Labor Code, as amended or added by Stats. 2011, Chapter 696 (SB 56) and by Stats. 2018, Chapter 704 (AB 235). Consistent with these statutory changes, these proposals will revise evaluation requirements and procedures for apprenticeship programs in general and set forth more specific requirements for programs in the building and construction trades industry, including with respect to the approval of new and expanded programs and the electronic transmission of information to the Division of Apprenticeship Standards (“DAS”), as required by SB 56.¹ The Council is also amending some of these regulations and the title of Subchapter 3 for the purpose of changing the term “journeyman” and its plural “journeymen” to “journeyworker” and “journeyworkers.”

PUBLIC HEARING

The Council will hold a public hearing on these proposals as follows:

August 29, 2019 at 10:00 a.m. until all comments have been received.
Elihu Harris Oakland State Building, Room 1
1515 Clay Street
Oakland, CA 94612

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposals. The Council requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

¹ The Council previously commenced a rulemaking to implement the requirements of SB 56 in 2013 but failed to complete action within the time limits required by the Government Code. This rulemaking is a restart of the earlier rulemaking that could not be concluded on time, but also includes some additional revisions to conform to recent statutory amendments adopted in 2018 as part of AB 235.

WRITTEN COMMENT PERIOD

Any person or authorized representative may submit written comments relevant to the proposals by mail or delivery to Eric Rood, CAC Secretary and Chief, DAS, 1515 Clay Street, Suite 301, Oakland, CA 94612 or by email to CACsuggest@dir.ca.gov. To be considered, written comments must be received by the Council no later than 5:00 p.m. on August 29, 2019.

AUTHORITY AND REFERENCE

Authority: Labor Code Section 3071.

Reference: Labor Code Sections 3073.1, 3075, 3075.5, 3075.6, 3075.7, and 3080.5 of the Labor Code.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

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.

In 2011, the Legislature adopted SB 56 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 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 data to DAS monthly in an electronic format.

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

The 2018 legislation known as AB 235 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 will remain the same, except that the Chief DAS’s decisions will be 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).)

These proposals 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 formal program evaluation process, provide 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 approval and audit/evaluation processes.

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 making nonsubstantive terminology changes, by adding the word “trades” to “building and construction . . . industry” in order to stay consistent with statutory language, and by updating the terms “journeyman” and its plural “journeymen” to “journeyworker” and “journeyworkers” respectively.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

After conducting an evaluation of other regulations in this area, the Council has concluded that these are the only regulations concerning apprenticeship oversight, reporting & evaluations. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

Specific Proposals

Section 205 sets forth regulatory definitions for the chapter on Apprenticeship in Title 8. The Council proposes to amend the definition of “Journeyman” in subsection (a) so that it also applies to the terms “journeyperson” and “journeyworker.” Additional language is being added to indicate that the terms are interchangeable and that the Council’s preferred designations at this time are “journeyworker” and its plural “journeyworkers.”

In subsection (i), the Council is correcting an erroneous cross-reference (from the non-existent subsection 212(c)(6) to 212(b)(7).) In subsection (m), the Council proposes to insert “trades” after “building and construction” and also to correct the statutory reference from Labor Code Section 3098 to Section 3080.5, consistent with a reorganization of statutory text by AB 235.

The Council also proposes to add a new subsection (o) to this section, to define what constitutes an “acceptable electronic format” for purposes of the new statutory electronic submission requirements.

Section 206 governs the Approval and Registration of Apprenticeship Agreements between programs and individual apprentices. The Council proposes to amend Section 206 in two places to add a requirement for agreements to be transmitted to DAS in an acceptable electronic format and for signed originals to be retained by the program for a specified time period. The Council also proposes to delete a requirement to file copies of approved agreements with the Council.

Section 207 governs the Termination of individual Apprenticeship Agreements. The Council proposes to add a subsection (c) requiring programs in the building and construction trades industry to include specified information in a request for cancellation and to submit the request to DAS in an acceptable electronic format.

Sections 208 and Section 210 govern Wages, Benefits, and Compensation for Apprentices and Working Conditions respectively. The Council proposes to make nonsubstantive changes to sections only, adding the word “trades” after “building and construction” in subsections (a), (b), and (c) of section 208, and changing “journeymen” to “journeyworkers” in paragraphs (1), (2), and (5) of subsection (c) of section 208, as well as in section 210.

Section 212 governs the Content of Apprenticeship Program Standards. In subsection (a)(6), the Council proposes to change “journeymen” to “journeyworkers.”

Subsection (b)(7) of this regulation requires an apprenticeship program’s standards to include a

procedure for recording and maintaining specified records concerning apprenticeship. The Council proposes to add the apprentice's "current address" and make another nonsubstantive grammatical change to this subsection. The Council also proposes to add a new subsection (c) to set forth additional recordkeeping and transmission requirements for programs in the building and construction trades industry. These requirements cover both the information that must be transmitted semiannually to apprentices and the information that must be transmitted monthly to DAS in an acceptable electronic format.

Section 212.1 concerns the reciprocal approval of apprenticeship programs. The Council proposes to add "trades" after "building and construction" and also add Labor Code Section 3073 in the reference note.

Section 212.2 governs Eligibility and Procedure for DAS Approval of an Apprenticeship Program. Subsection (a) requires applicants to provide evidence that their standards will meet five generalized standards with respect to facilities, job-site training, classroom instruction, supervision, and the program's ability and commitment to carry out its responsibilities under all applicable laws and regulations. The proposes to change "journeyman" to "journeywork" in paragraph (2) of this subsection. Substantively, the Council proposes to add a new paragraph (6) to this subsection with a more specific set of requirements for programs in the building and construction trades industry. These requirements include a plan setting forth projected participation levels by apprentices and employers, financial information covering the program's budget and funding, a plan for obtaining sufficient employer participation following approval, evidence of adequate classroom facilities (which includes a DAS inspection requirement), and an apprentice recruitment plan that includes outreach to women and minorities.

The Council also proposes to delete the existing language of subsection (g) regarding the sharing of application information with existing programs, and replace it with a requirement for DAS to post copies of the application and proposed standards on the DAS website, together with information on how interested persons may comment on the application or standards. The items will need to remain posted for at least 30 days, and proposed amendments to subsection (h) would extend to persons who submit comments or request notice, the right to be notified of any hearing on the application. Proposed amendments to subsection (i) would delete existing service requirements and replace them with a requirement to provide the Chief DAS's decision to the program sponsor and post that decision on the DAS website.

In addition, the Council proposes to delete the existing language in subsection (j) and replace it with a detailed set of procedures for programs in the building and construction trades industry when an application is denied. These procedures would require DAS to provide a detailed explanation of deficiencies in the application together with recommendations on how to fix those

deficiencies in order to obtain approval. Applicants will also have the option to appeal the denial to the Council or instead resubmit the application within a specified time frame. If resubmission results in a second denial, DAS will again need to provide a detailed explanation, and the applicant will have a right to appeal that second denial (but not resubmit).

The Council proposes to revise and expand subsection (k) regarding finality of the Chief DAS's decision and the right of appeal to the Council. The existing language will be designated as paragraph (1) and revised to limit its application to building and construction trades and firefighter programs, to make the appeal deadline 30 days from when the Chief's decision is posted online, and to extend appeal rights to any interested person who commented on the application. A new paragraph (2) will govern finality and appeal rights for programs that are not under the Council's jurisdiction and specifically provide a right of appeal when there is a dispute over whether the program should be within the Council's jurisdiction. This right of appeal would exist either if the issue had been raised previously but not resolved between the Chief and the Council or if the DAS failed to comply with application posting requirements.

Finally, the Council proposes to amend subsection (n) to specify that website posting is the only form of notice and service required for applications and decisions, and also to authorize the Chief to make exceptions to the formal filing and service rules in section 229 of the regulations for other documents, notices, and appeals.

Section 212.3 governs Apprenticeship Program Self-Evaluation and Monitoring, with subsections (c) and following covering program audits. The Council proposes to delete the word "audit" wherever it appears in this regulation and replace it with the word "evaluation", and the Council also is proposing several specific changes. The existing language of subsection (d), requiring a random audit every five years, will be deleted and replaced with new language specifying that a program may be selected for evaluation at any time to ensure compliance with five overarching standards (compliance with program's own standards, adequate classroom instruction, on-the-job training by journeymen, all work processes covered, and graduates completing necessary requirements). The Council also proposes to adopt a new subsection (e) specifying criteria for priority evaluations, to include: (1) a finding of program deficiency; (2) an automatic requirement for evaluation of a new or expanded building and construction trades industry program within one year following approval; (3) two or more meritorious complaints concerning recruitment or training in the past five years; (4) a building and construction trades industry program's completion rate falling below 50% of the average completion rate for other programs in the same trade (with more detailed provisions on calculating this information, excluding agreements cancelled in the first year, and accounting for delayed completions due to extenuating circumstances); and (5) a finding that a program in the building and construction trades industry purposefully misstated information.

Existing subsection (e) will be redesignated as subsection (f), and the requirement to specify in a notice whether the audit/evaluation is random or non-random will be deleted. Existing subsection (f) will be redesignated as subsection (g), and a requirement added for DAS to attempt to contact at least 30% of program dropouts in the preceding five years to determine their reasons for leaving. The language at the end of this subsection is being revised, and all the language in the existing subsection (g) is being deleted and moved to a later subsection.

Subsection (h) is being revised to focus on final report requirements and the consequences of noncompliance with recommendations or failing to correct deficiencies. The Council proposes to reorganize into a new subsection (i) requirements for the posting and presentation to the Council of evaluation reports. This new subsection would also include a prohibition (currently in subsection (g)) on including any personal identification or other confidential information about individual apprentices in a report. Finally, the Chief's obligation to report to the Council, at its quarterly meetings, on the status of each pending and recently completed evaluation, has been reorganized into a new subsection (j).

Subchapter 3 and Sections 281 and 282 govern journey level on-the-job training programs. The Council proposes to change "Journeyman" to "Journeyworker" in the title of Subchapter 3, and in the text of section 281. The Council also proposes to change "journeyman" to "journeyworker" and "journeymen" to "journeyworkers" in several locations in Section 282.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Council has made the following initial determinations with respect to these proposals and invites further comment on these specific impacts:

- Costs or savings for state agencies: **None.**
- Local Mandate: **None.**
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: **None.**
- Other nondiscretionary costs or savings imposed upon local agencies: **None.**
- Costs or savings in federal funding to the state: **None.**

- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: **None.**
- Significant effect on housing costs: **None.**
- Cost impacts on representative private person or business/effect on small business: **None.** The Council is not aware of any cost impacts that a representative private person or business or small business would necessarily incur in reasonable compliance with these proposals. The cost impacts of these proposals are limited to the sponsors of approved apprenticeship programs in the building and construction trades industry (totaling 276 as of October 1, 2018) and prospective applicants for approval of apprenticeship programs in that industry.³ Program sponsors are primarily joint labor-management committees established pursuant to 29 U.S.C. Section 175a, but also include unions, industry associations, and individual employers. These proposals clarify, without altering, evaluation and reporting requirements, including electronic reporting by programs in the building and construction trades industry as mandated by SB 56.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT:

The Council has made initial determinations that these proposals: (1) will not create or eliminate any jobs; (2) will not create new businesses or eliminate existing businesses within the State of California; (3) will not affect the expansion of businesses currently doing business within the State of California; and (4) will not impact the regulation of health and welfare of California residents and worker safety. The Council anticipates that these proposals will have the benefits noted in the following paragraph.

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 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 specific budget and planning metrics will enable easier assessment of the proposed training program. The proposed changes to the evaluation (formerly audit) process will allow a fairer and more efficient allocation of agency

³ According to DAS records, there were 812 sponsors of DAS-approved apprenticeship programs in all industries as of October 1, 2018. The overall number of approved programs is greater because some sponsors operate more than one program.

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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Council must determine that no reasonable alternative considered by the Council or that otherwise has been identified and brought to the Council's attention that (1) would be more effective in carrying out the purpose for which the action is proposed; (2) would be equally effective as the proposed action and less burdensome to affected private persons; or (3) would be more cost-effective to affected private persons and equally effective in implementing the underlying statutes. The Council invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Deneen Phillips
California Apprenticeship Council
1515 Clay Street, Suite 301, Oakland, CA 94612
Telephone: (510) 879-3966

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based to Ms. Phillips at the above address.

The backup contact person for these inquiries is:

Glen Forman, Deputy Chief
Division of Apprenticeship Standards
1515 Clay Street, Suite 301, Oakland, CA 94612
Telephone: (510) 879-3965

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSALS

The Council will have this Notice, the Initial Statement of Reasons, the text of the proposals, as well as the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at the above address.

Website: Principal rulemaking documents, including the text, this notice, and the Initial Statement of Reasons may also be accessed through the Department of Industrial Relations' website at www.dir.ca.gov/Rulemaking/DIRProposed.html.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed regulations substantially as described in this notice. If the Council makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Any such modifications will also be posted on the Department of Industrial Relations' website listed above.

Requests for copies of any modified regulations may be sent to the attention of the contact person(s) listed above. The Council will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS AND THE RULEMAKING FILE

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Council at the address indicated above, or accessed on the Department of Industrial Relations' website listed above.