FINAL STATEMENT OF REASONS AND UPDATED INFORMATIVE DIGEST
FOR
PROPOSED AMENDMENTS TO REGULATIONS GOVERNING EMPLOYMENT OF APPRENTICES ON PUBLIC WORKS
(Title 8, California Code of Regulations, Sections 202, 205, 212.2, 227, 228, 229, 230, 230.1, and 231 through 234.2)

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code Section 11346.9(d), the California Apprenticeship Council (CAC or Council) incorporates the Initial Statement of Reasons that were prepared and circulated for comment in this rulemaking.

Revisions Following Initial Comment Period:
No revisions were made after the initial public comment period.

Revisions Following Public Hearings:
No revisions were made following the public hearings on this rulemaking.

LOCAL MANDATES DETERMINATION

The proposals do not impose any mandate on local agencies or school districts. These proposals only affect rules regarding the employment of apprentices on public works, which are solely enforced by state agencies.

SUMMARY AND RESPONSE TO COMMENTS

During the initial public comment period, the Council received written comments from the following individuals and entities:

Written Comments in Response to Notice of Proposed Rulemaking

Commenter	Organization
Tammy Castillo	Operating Engineers Local 3 Joint Apprenticeship Committee
Jack Davis	Plumbers and Steamfitters Local 393 and its Joint Apprenticeship Training Committee (JATC), and Heat & Frost Insulators Local 16 and its JATC
Dwayne McKenzie	Associated General Contractors of California, Inc. (AGC)
Pete Saucedo	AGC San Diego Chapter Apprenticeship & Training Trust (ATT)
Eileen Goldsmith	California State Pipe Trades Council and the California JACs affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry
Mark Fuchs	Carpenters Training Trust Fund for Northern California and the Carpenter's Training Committee for Northern California
Barbara Cotter	Construction Employers Association

Commenter	Organization
Greg Vincelet	Central Valley Motherlode Plumbers, Pipe & Refrigeration Fitters JATC
Victor Sella	United Contractors
Dan Langford	Southwest Regional Council of Carpenters
Michael Walton	Association of Construction Employers
Conchita Lozano-Batista	Laborers' Training & Retraining Trust Fund for Northern California
Carrie Bushman	California Association for the Advancement of Apprenticeship and Training
Aaron Lawrence	Southern California District Council of Laborers, the Laborers Training and Retraining Trust of Southern California, and the Southern California Construction Craft Laborer JAC
Marina Garza Sandra Celis Renee Yount Diana Monarrez Lorena Moran Christina Flores Jarrod Ferrucio Various Illegible	National Inspection Testing and Certification Corporation
Adriana M. Lopez	Capstone Consulting Services, Inc.
Leonard Gonzalez Robert Vasquez	Laborers Training and Retraining Trust of Northern California
Jerry Elliott	Southern California Pipe Trades District Council 16
Bernadette Butkiewicz David Hanson Tim Redondo Various Illegible	Piping Industry Progress and Education Trust Fund
Ray Baca	Engineering Contractors Association
Mitchell Weiss	United General Contractors, Inc.

At the public hearings held on this matter, the Council received verbal comments from:

Verbal Comments at December 12, 2019 Hearing

Commenter	Organization
Jerry Elliott	Southern California Pipe Trades District Council 16
Al Cvitan	Southern California District Council of Laborers, the Laborers' Training and Retraining Trust of Southern California, and the Southern California Construction Craft Laborers Joint Apprenticeship Committee
Mark Goldman	Associated General Contractors

Commenter	Organization
Jack Davis	Plumbers and Steamfitters local unions and their joint apprenticeship committees in Northern California
Ray Baca	Engineering Contractors Association:
Jose Mejia	Laborers State Council and the Laborers training and retraining apprenticeship programs in Northern and Southern California
Ginny Smith	Construction Employers Association and the Association of Construction Employers
Larry Hopkins	Operating Engineers Local 12 Apprenticeship Program
Jeff Cutler	California State Pipe Trades Council

Verbal Comments at December 16, 2019 Hearing

Commenter	Organization
Bryan Mathews	Associated General Contractors
Jose Mejia	Laborers State Council, Laborers District Council of Northern and Southern California and the training and retraining and apprenticeship programs both Northern and Southern California
Conchita Lozano-Batista	Northern California Laborers Training and Retraining Trust and its related apprenticeship programs
Leonard Gonzales	Laborers Training and Retraining Trust Fund for Northern California and the State Registered Laborers Apprenticeship Program
Steven Cry	United Association of Plumbers and Pipefitters Local 62
Eileen Goldsmith	California State Pipe Trades Council
Aram Hodess	United Association of Plumbers and Pipefitters Local 393
Jack Davis	United Association of Plumbers and Pipefitters Local 393
Gerald Overaa	C. Overaa and Company
Jeff Naff	C. Overaa and Company
Barbara Cotter	Construction Employers Association

Comments and responses are grouped below by topic and subtopic where appropriate.

General and Other Uncategorized Written Comments:

Victor Sella on behalf of the United Contractors: The Initial Statement of Reason (ISOR) misstates the reason for the October 30, 2014 resolution of the CAC. The ISOR states that the October 30, 2014 resolution was intended to clarify how public works contractors should identify the craft of their needed apprentice. However, this is revisionist history; as the Court in *Henson* stated, nothing in the record of that October 30, 2014 resolution shows the CAC was concerned about the selection of apprentices by public works contractors; rather it was caused by complaints relating to specific work tasks assigned to apprentices after they had already been hired.

Response: The Council appreciates the comments, but disagrees. The text of the October 30, 2014 resolution, entitled "Resolution on Employment of Apprentices on Public Works" provides: "After careful consideration, the Council confirms that Labor Code section 1777.5 requires public works contractors to employ apprentices who are training under apprenticeship standards that include the specific work processes that will be performed by the contractors' journey-level employees" The text of the resolution is consistent with the proposed amendments and it is unnecessary to look to the record leading up to the resolution.

Victor Sella on behalf of the United Contractors: The Notice of Proposed Rulemaking is disingenuous because it states that there is a need to clarify the rules regarding apprentice employment under Labor Code section 1777.5, but it fails to explain that the Court of Appeal has already addressed this issue and announced a rule governing apprenticeship on public works. In fact, the *Henson* case is not mentioned at all in the notice and is buried in the ISOR.

Response: The Council appreciates the comments, but disagrees. The Council has the express authority to promulgate regulations in order to implement Labor Code section 1777.5, and *Henson* does not limit such authority.

Michael Walton on behalf of the Association of Construction Employers: The Notice of Proposed Rulemaking omits any reference to *Henson*, which makes its fiscal impact statement incorrect because this rule would result in immediate and expensive litigation for a lot of parties as well as significant new compliance costs for contractors in researching apprentice standards and citations against contractors by the Labor Commissioner for failure to employ apprentices in the proper occupation. There are 35,000+ public works contractors, so forcing each to hire office staff to review apprentice standards would cost millions.

Response: The Council appreciates the comments, but disagrees. The Council's economic impact assessment in the Initial Statement of Reasons gives an example of potential cost impacts to contractors. (See Gov. Code, §§ 11346.2, subd. (b)(2)(A), 11346.3, subd. (b).) The impact was not believed to be a significant adverse impact, and any impact to contractors to comply with the proposed regulations is outweighed by the benefits of the proper training of apprentices.

Aaron G. Lawrence on behalf of the Southern California District Council of Laborers, the Laborers Training and Retraining Trust of Southern California, and the Southern California Construction Craft Laborer JAC: The Notice of Proposed Rulemaking violates Government Code 11346.5 by asserting that the regulation will have no financial impacts on local agencies. However, the Form 399 addendum admits that the annual cost per contractor will increase at up to $212,000, which will definitely be passed along to local agencies on public works projects. The Council also has an obligation under Government Code § 11346.5(a)(8) and 11346.2(b)(5) to "provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination ... " (a determination, here, that the economic impacts of the Proposed Regulations are "none"). *See also Western States Petroleum Ass 'n v. Bd. of Equalization* (2013) 57 Cal.4th 401,424; *Sims v. Dept. of Corrections &*

Rehabilitation (Ct.App. 1 Dist. 2013) 2016 Cal.App.4th 1059, 1073 (participation only "meaningful" where the public "has timely received all available information that is relevant to the proposed regulations, accurate, and as reasonably complete as reasonably possible"). Likewise, under Government Code § 11347.3, the Council is required to maintain a rulemaking file containing all materials relevant to the rulemaking, including all "supporting data," all" factual information ... on which the agency is relying," and make the complete file available to the public. Yet in support of the Council's initial determinations, the Council provides only a cursory and conclusory summary of its assumptions, unsupported by any underlying facts, evidence, or testimony. [*See* ISOR, at p. 8-9.] There is no actual factual data anywhere in this rulemaking file. The APA requires that in addition to public posting, the notice of any proposed regulation be mailed to representatives of businesses that are "likely to be affected" by the regulation. *See* Gov. Code § 11346.4(a)(3). Here, the Economic Impact Statement acknowledges "49,000" businesses will be impacted by the Proposed Regulation, and the ISR states that at least a number of these affected businesses can expect "an annual cost increase of up to $212,000, assuming the contractor is .... using laborer apprentices rather than pipefitter, operating engineer, carpenter or electrician apprentices" because they would be required to sign with or subcontract to these other more expensive trades. Yet it does not appear that a mailing was made to these 49,000 businesses that would allow them to meaningfully weigh in on the Proposed Regulations.

Response: The Council appreciates the comments, but disagrees. The Council relied on facts available to it to make its initial determination of the impacts, as required by the Administrative Procedures Act. The Initial Statement of Reasons describes these facts. The rulemaking file contains all material relevant to the rulemaking and is "available to the public for inspection and copying during regular business hours." (Gov. Code, § 11347.3, subd. (a).) The Council is required only to include "a statement confirming that the agency complied with the provisions of Government Code Section 11346.4(a)(1) through (4) regarding the mailing of notice of proposed action at least 45 days prior to public hearing and close of the public comment period, and stating the date upon which the notice was mailed" but not to also maintain a copy of the mailing list. (Cal. Code Regs., tit. 1, § 86.) Furthermore, the mailing need only be made to a "representative number" of small businesses or trade associations. (Gov. Code, § 11346.4, subd. (a)(3).)

Leonard Gonzalez and Robert Vasquez on behalf of the Laborers Training and Retraining Trust of Northern California: The commenters reiterate the objections about sections 205 and 230.1 conflicting with the decision in *Henson* and the Labor Code, and that the proposed amendments will lower the quality of apprentices by having them trained by a different craft. A journeyworker making less than the apprentice could be supervising him. The regulations will require all standards to be amended and cost programs significant amounts. The apprentice may not trust or care to learn from a journeyworker out of their classification. Mr. Vasquez is an instructor and union member and has seen these issues firsthand, and makes the point that: by having apprentices disconnected from their occupations, issues arise regarding the use of the DAS 7 form by employers and training programs and how apprentices who are working for an employer who is not signatory with the particular apprentice's union program will get the proper on-the-job (OTJ) training credits necessary to advance in the program. To sign the DAS-7 form, the employer must certify that it is an approved classroom for that particular craft. However, how

can an employer do this when it may not even have a single journeyworker of that craft on its payroll?

Response: The Council appreciates the comments but disagrees with the commenter's assertions. The Council believes that apprenticeship programs should train in the work processes set forth in their apprenticeship standards, for which they have received approval from DAS and the Council. On-the-job training credit is granted by each individual apprenticeship program as appropriate. The Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) The comments regarding the DAS 7 form is beyond the scope of this rulemaking. If necessary and appropriate, the DAS 7 form can be amended.

Pete Saucedo on behalf of The Associated General Contractors of America – San Diego Chapter, Inc., Apprenticeship & Training Trust: The proposed language constitutes a misuse of the CAC regulatory process as an attempt to overrule the trial and appellate courts that have ruled on the issue.

Response: The Council disagrees. Nothing in *Henson* prohibits the Council from exercising its authority to promulgate regulations in order to implement Labor Code section 1777.5.

Barbara Cotter on behalf of the Construction Employers' Association: The Notice of Rulemaking and Initial Statement of Reasons fail to identify any grounds to adopt the new rules. Although the Statement suggests that current law "offers no guidance" on determining the craft or trade of an apprentice, Labor Code section 1777.5, the *Henson* decision and current section 230.1(c) are clear provisions and there is no explanation as to why they are inadequate. The Notice also fails to identify other problems highlighted by the Court of Appeal in *Henson*. For example, the Court rejected the work-process driven hiring mandate as implausible and impractical, because a journeyman's craft or trade can vary from moment to moment, if the trade is defined by the work processes that the apprentice is carrying out. A contractor would need to constantly rotate apprentices. Also, the Court addressed how the model would violate obligations under collective bargaining agreements. The Notice also fails to address the logistical problems that would arise given the lack of publicly-available information on apprentice program standards.

Response: The Council disagrees. The *Henson* court based its holding, in part, on the fact that the Council had not promulgated regulations to define certain key terms in Labor Code section 1777.5. The Council now exercises that authority, and nothing in *Henson* suggests the Council is barred from promulgating such regulations.

John J. Davis, Jr. on behalf of Plumbers and Steamfitters Local Union No. 393, Plumber and Pipefitter JATCs in Northern California, Heat and Frost Insulators Local Union No. 16 and Local 16's JATC: CAC's regulatory authority is not preempted by federal labor law. The US Supreme Court and Court of Appeals for the Ninth Circuit have repeatedly rejected arguments that California apprenticeship law is preempted by federal labor law (*California Div. of Labor*

Standards Enforcement v. Dillingham (1997) 519 U.S. 316; *Dillingham v. Sonoma County* (1999) 190 F.3d 1034; *Assoc. Builders and Contractors v. Nunn* (2004) 356 F.3d 979. Section 301 of the Labor-Management Relations Act, 29 U.S.C section 185 will not preempt the amendments since section 301 only preempts state-law claims that are based directly on rights created by a collective bargaining agreement. In addition, the CAC amendments will not restrain the "technological evolution" of the Laborers occupation. Every craft evolves and changes with technological developments. Labor code section 3075.5 and Regulation 212.2 provide the process by which program's standards can be updated.

Response: The Council appreciates the comments.

General and Other Uncategorized Verbal Comments at the Public Hearing:

Jack Davis, on behalf of UA Local 393, and a number of plumber and steamfitter joint apprenticeship programs around Northern California:

The commenter states that the proposed amendments to sections 205 and 230.1 are a valid exercise of the Council's authority to promulgate regulations governing apprenticeship. The proposed amendments require apprentices to perform only work processes that is supplemented by the related classroom instruction in their program, because on-the-job training and related classroom instruction go hand-in-hand. The commenter also insists that the proposed amendments are not in conflict with the *Henson* opinion. The *Henson* court based its holding on the fact that the Council had not exercised its authority to define key terms in the prevailing wage law. The Council is now exercising that authority, and *Henson* does not prohibit such exercise. The commenter also remarked that the Council's authority to review and approve proposed standards is undermined by the theory that standards are merely a floor, not a ceiling. The commenter then talks about work that was "stolen" by the Laborers.

Response: The Council appreciates most of the comments, but deems the comment about "stolen" work to be irrelevant to this proposed rulemaking, as it is not specifically directed at the Council's proposed regulations or to the procedures followed by the Council in proposing the regulations.

Steven Cry, Training Coordinator for the United Association of Plumbers and Pipefitters Local 62: The commenter notes that the proposed regulations will simplify reporting on the DAS 140 and 142. The proposed regulations will promote specific training while protecting the apprentice. The change will "level the playing field and puts everyone on the same page."

Response: The Council appreciates the comments, but the Council is unable to respond as the comments are not supported by any explanation.

Jerry Elliott on behalf of Southern California Pipe Trades District Council 16:

The commenter argues the amendments to the regulations will make bidding more competitive. They will also reaffirm the concept that contractors use "only the correct apprentice on the scope of work to which they are training with the appropriate journeyman who has completed the equivalent length and content of work experience and all the other requirements in that craft."

Response: The Council appreciates the comments.

Ray Baca on behalf of the Engineering Contractors Association: The commenter opposes only the proposed amendments to the specific regulations governing the use of apprentices on public works projects. The proposed amendments would have the effect of "limiting contractors' ability to use qualified apprentices and would likely increase overall construction costs." The commenter feels the proposed amendments would "unnecessarily replace an already clear and easily applied standard, and with the cost producing an unwieldy system that ultimately harms both the apprentices and the employees both."

Response: The Council appreciates the comment, but disagrees. The comment does not specify how the proposed amendments would have the effect of "limiting contractors' ability to use qualified apprentices" or how would they would produce "an unwieldy system that ultimately harms both the apprentices and the employees both." As stated in the Initial Statement of Reasons, the underlying purpose of the amendments is to "ensure that the work performed by apprentices on public works is a genuine part of their training program leading to journey-level status, and conversely that apprentices will not be used as a source of cheap labor for work processes that are not part of their structured and approved training program."

Jose Mejia, on behalf of the Laborers State Council, Laborers District Council of Northern and Southern California and the training and retraining and apprenticeship programs both Northern and Southern California: The commenter strongly opposes the proposed regulations for the reasons stated by another commenter. He also bemoans the lack of decorum exhibited at the Council meetings during the consideration of these proposed regulations. The commenter argued that some commissioners are using the Council as a forum to push their agenda.

Response: The comment is beyond the scope of this rulemaking proposal, as it is not specifically directed at the Council's proposed regulations or to the procedures followed by the Council in proposing the regulations. The comment regarding the lack of decorum is beyond the scope of this rulemaking proposal, as it is not specifically directed at the Council's proposed regulations or to the procedures followed by the Council in proposing the regulations.

Larry Hopkins, CAC Commissioner and Director of Training for the Operating Engineers: The commenter made various statements in support of the proposed regulations, which he asserted, would provide clarity to the apprenticeship community.

Response: The Council appreciates the comments.

Written Comments Regarding Repeal of Hearing Regulations:

Eileen Goldsmith on behalf of California State Pipe Trades Council and the Joint Apprenticeship Committees throughout California that are affiliated with the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry: The regulations that govern DAS hearings are obsolete, given that Labor Code section 1777.7 now provides for the CWAPA hearing process with DLSE. They support the repeal of the regulations to avoid unnecessary confusion.

Mark Fuchs on behalf of Carpenters Training Committee: There is no objection to the proposed regulation changes meant to conform to the Labor Code that transferred apprenticeship enforcement responsibilities from DAS to DLSE.

Response: The Council appreciates the comments.

Verbal Comments on Repeal of Hearing Regulations during the Public Hearing:

None.

Written Comments Regarding the Proposed Restatement of Substantive Requirements for Employing Apprentices on Public Works:

Victor Sella on behalf of the United Contractors**:** These rules will create confusion by forcing contractors to ignore the craft of their journeymen and make them have to guess which apprentices to hire. Moreover the regulation will conflict with the statutory obligation in the Labor Code as found by the Court of Appeal in *Henson*. The work-process driven system proposed here was rejected in *Henson* as conflicting with the mandate under Labor Code 1777.5 to hire apprentices from the journeyman's classification. Because these rules violate Labor Code section 1777.5 as interpreted by the Courts in *Henson* they will be *void ab initio*. *Ontario Community Foundations Inc. v State Board of Equalization* (1984) 35 Cal.3d 811, 816-817. However, it will cost the contracting community thousands in litigation cost before the CAC will ultimately lose because it cannot overrule the courts, and compliance for contractors in the meantime will be a nightmare.

Response: The Council appreciates the comments, but disagrees. The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Nothing in *Henson* restricts the Council's authority to define terms via regulation. After a years-long process of considering different proposals, the Council now exercises its authority to define key terms of the statute in section 1777.5. There is no conflict between *Henson* and the proposed amendments. Complying with the new regulations is compliance with the Labor Code. Any impacts to contractors and

others within the apprenticeship system have been considered by the Council and described in the rulemaking documents. The estimated impacts have been determined to be outweighed by the benefits of the proper training of apprentices.

Barbara Cotter on behalf of the Construction Employers' Association: Regulations which contradict legislative enactments are void (*Ontario Community Foundations Inc. v. State Board of Equalization* (1984) 35 Cal.3d 811, 816-817.), thus the adoption of the proposed regulations would cause confusion regarding contractor compliance obligations and undermine compliance efforts. Courts, not the agency, have final responsibility for the interpretation of the law under which the regulation was issued. *California School Board's Association v. State Board of Education* (2010) 191 Cal.App.4th 530, 544. Adopting these regulations would result in lengthy and costly court challenges. Compliance during such judicial challenges would be difficult, creating disruption for apprentices, training programs and contractors.

Response: The Council appreciates the comments, but disagrees. The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Nothing in *Henson* restricts the Council's authority to define terms via regulation. After a years-long process of considering different proposals, the Council now exercises its authority to define key terms of the statute in section 1777.5. There is no conflict between *Henson* and the proposed amendments. Complying with the new regulations is compliance with the Labor Code.

Written Comments Regarding Section 205 and 230.1

Tammy Castillo on behalf Operating Engineers Local Union No. 3 and the California Operating Engineers Journeyman and Apprentice Training Center: Support the proposed rules with the exception of the section referred to as the "Definition and Notice Requirements." Agree that the issues the proposed changes attempt to correct are worthy of attention, but do not support the specific language being proposed in 8 Cal. Code Reg. section 230.1. Prefer to have more time to fully consider alternative language or mechanisms for resolving the underlying issues since the proposed changes were only released recently.

Response: The Council appreciates the comments, but some form of the proposed regulations has been considered for several years. The Council first placed this on the agenda of a public meeting of the Council's Rules and Regulations committee back in January, 2016. Proposed language was shared with the public in 2017. There has been ample time for full consideration. The numerous quarterly Council meetings, the two public hearings in December 2019, and the period ending December 18, 2019 to receive written comments were all opportunities for the public to voice their support, opposition, or suggest alternatives.

Mark Fuchs on behalf of Carpenters Training Committee: "Work Processes" should not be used to determine what type of apprentice is entitled to work on the job. Requiring contractors to assign work in accordance with work processes as opposed to the scope of work of the craft or

trade would be a significant change from the long-standing industry practice in California - wherein apprentices and their training journeyworkers must be of the same occupation. The proposed regulations do not take into account the work of the journeyworker. If Section 230.1 is implemented, it would lead to the result of requiring journeyworkers in a craft to train apprentices in a different craft. This will result in lower quality training. Another result could be that a journeyworker receives a lower wage rate than the apprentice, harming the journeyworker-apprentice relationship.

The proposed change to assign work based on work processes is also in violation of the Shelley Maloney Apprentice Labor Standards Act of 1939, which provides that apprenticeship standards set a floor, not a ceiling.

The proposed changes to section 205 and 230.1 will place an undue burden on contractors as they attempt to comply. Under the proposed regulations, the only way for a signatory contractor to comply is to hire multiple apprentices in different crafts.

In addition, the proposed regulations will require all apprenticeship programs to revise their apprenticeship standards to cover all tasks an apprentice could potentially perform on a job site. The expanded standards would then have to be reviewed per AB 235, resulting in appeals at the CAC.

Response: The Council appreciates the comments, but disagrees. The Council issues "rules and regulations which establish standards for minimum wages, maximum hours, and working conditions for apprentice agreements in the building and construction trades and for firefighter occupations." (Lab. Code, § 3071, subd. (a).) And the "interpretation of Section 1777.5 and the substantive requirements of [section 1777.7] applicable to contractors or subcontractors shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Thus, the Council has the express authority to promulgate regulations clearly defining key terms such as "apprenticeable occupation" and "work processes," regardless of what the Department of Industrial Relations, DAS, or DLSE believe is the appropriate policy position regarding the employment and training of apprentices.

Any impacts to contractors and others within the apprenticeship system have been considered by the Council and described in the rulemaking documents. The estimated impacts have been determined to be outweighed by the benefits of the proper training of apprentices.

In proposing these amendments, the Council is merely pursuing the goal to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment." (Lab. Code, § 3073.) Any impacts are merely corollary to the Council's pursuit of that goal.

Finally, the Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) If it is necessary for an apprenticeship program to train in new work processes, the

program may seek approval of its revision to its standards through an established process. (Lab. Code, § 3075; Cal. Code Regs., tit. 8, § 212.2.) The Council has long had the responsibility to review the revision of apprenticeship standards. (Cal. Code Regs., tit. 8, § 212.2.)

Barbara Cotter on behalf of the Construction Employers' Association: The proposed change to section 205(c) will contradict the law rather than clarify it, because "occupation" is not a program. Work processes are an essential part of a formal apprenticeship program. But the adoption of such processes does not define the occupation itself. Current section 212 makes clear that apprenticeship programs, rather than "apprenticeable occupations" are defined by work processes. If the term "apprenticeable occupation" was defined by the apprenticeship program standards themselves, section 1777.5 would not make sense as it would mandate that when a contractor employs workers in any "work processes" adopted by an apprenticeship program, the contractor shall employ apprentices and may apply to any apprenticeship program in the craft or trade. The meaning of "craft or trade" would be impossible to ascertain, rendering compliance a guessing game each time an apprentice was hired and each time the specific work processes on the job changed.

Proposed changes to section 230.1 will contradict the Labor Code and the judicial authority interpreting it. The proposed new section 230.1 requires that a contractor determine "the work processes" that the contractor will perform on the project," and then only employ apprentices whose work standards incorporate such work processes. This mandate does not permit apprentice hiring and work assignments based upon the craft or trade on the jobsite, and the craft or trade of the journeymen would no longer matter. If work processes changed from day to day, the contractor would be forced to identify anew which apprentices have programs which expressly identify and include such work processes in their training standards. The Court in *Henson* expressly rejected the notion that apprentices cannot be assigned work unless such work falls under one of the work processes specifically identified in the apprentice's training standards. Citing to *Associated General Contractors of America v. San Diego Unified School Dist.* (2011) 195 Cal.App.4th 748, 761, the Court held that training standards provide a floor, not a ceiling; the contractor is free to train apprentices in work processes beyond those set forth in the training program.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. A contractor knows what type of work will be performed on a job and what work processes are entailed. With that knowledge, the contractor will easily ascertain what apprenticeable occupation or "craft or trade" is necessary and what type of apprentices to employ on the project.

It is also not the case that section 212 makes clear that apprenticeship programs are defined by work processes. Section 212 merely lists the required content of apprenticeship standards, with a description of work processes being one of the required items.

As discussed, the Council has the authority to promulgate regulations and define key terms that were undefined when *Henson* was decided. *Henson* does not bar the Council from exercising its

authority to define key, undefined terms in Labor Code section 1777.5. The proposed amendments simply require that an apprentice be trained in the work processes described in the apprenticeship program standards. The Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) Allowing contractors to train apprentices in work processes that have not gone through approval and review process by DAS and the Council dilutes the authority of these regulatory bodies.

Dwayne P. McKenzie on behalf of Associated General Contractors of California, Inc.: The proposed amendments to sections 205 and 230.1 conflict with Labor Code section 1777.5 as interpreted in *Overaa*. *Overaa* essentially held that section 1777.5 instructs that the employment of apprentices, and thus the assignment of work to apprentices, follows the craft assignment of the journeyperson. The amendments are contrary to *Overaa* in that the proposed regulations would require contractors to employ apprentices from a craft or trade that includes the applicable work processes in their apprenticeship standards. Since *Overaa* interpreted and applied 1777.5, the issuance of regulations that conflict with the interpretation are outside of the CAC's rulemaking authority and subject to challenge.

The proposed amendments to section 205 and 230.1 are contrary to the structure of the Prevailing Wage law generally. The Director of Industrial Relations looks to established collective bargaining agreements to establish the prevailing wage rates, and the crafts and trades designated in the Director's wage determinations are in accord with the construction union crafts and trades, including the scopes of work published. Apprenticeship requirements on public works are part of Prevailing Wage Law. *Associated General Contractors of America v. San Diego Unified School Dist.* (2011) 195 Cal.App.4th 748, 761. As part of the Prevailing Wage Law, the mandate of Section 1777.5 for contractors to employ apprentices in apprenticeable crafts or trades has been understood to mean that when a contractor employs a worker falling within a prevailing wage determination of a craft which has been determined to be apprenticeable, the contractor must employ apprentices for that craft. The amendments would elevate the apprenticeship standards above the area-wide master labor agreements which provide the foundation of the Prevailing Wage law's wage determinations and the scopes of work contained therein. This is contrary to prevailing wage law, which instructs that employment of apprentices follow from the craft designations in the prevailing wage determinations.

The proposed amendments will result in jurisdiction disputes over apprenticeship standards and will expose contractors to claims for violations of their collective bargaining agreement and/or the Prevailing Wage Law. Since the proposed regulations would make apprenticeship standards determinative of which apprentices can be employed on particular work, disputes will develop over program standards and which programs will be approved to train particular work processes. Rather than use the long established, jurisdictional dispute resolution mechanisms under the Labor-Management Relations Act, jurisdictional disputes will be developed and adjudicated improperly before the CAC, through the process of adopting and amending apprenticeship standards. Moreover, contractors will be faced with having to choose between compliance with

their collective bargaining agreements or the Prevailing Wage Law apprenticeship requirements, increasing violations.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. First, the Court of Appeal's holding in *Henson* was reached in part because the Council had not exercised its authority to promulgate clear regulations defining key terms such as "apprenticeable occupation" and "work processes." The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) With respect to apprentices under the prevailing wage law, the responsibility of the Director of Industrial Relations is generally to determine the prevailing wage for apprentices (Lab. Code, §§ 1770, 1773, 1773.9), grant certain exemptions from ratio requirements (Lab. Code, § 1777.5, subds. (h), (j), (k)), and he or she "may adopt regulations to establish guidelines for the imposition of monetary penalties" for apprenticeship violations. (Lab. Code, § 1777.7, subd. (h).) Defining apprenticeable occupation or "apprenticeable craft or trade" is not one of the functions of the Director of Industrial Relations.

Furthermore, the Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) If an apprenticeship program begins training in new work processes for whatever reason, the program may seek approval of its revision to its standards through an established process. (Lab. Code, § 3075; Cal. Code Regs., tit. 8, § 212.2.) The statutory "needs test" ensures the Council does not get entangled in jurisdictional disputes between unions, as revisions to apprenticeship standards that create a "substantial overlap" in work processes with an existing program are restricted unless certain criteria are satisfied. (Lab. Code, § 3075, subds. (b)(2)-(b)(3), (c).)

Pete Saucedo on behalf of The Associated General Contractors of America – San Diego Chapter, Inc., Apprenticeship & Training Trust: Submits that the proposed language would create an undue hardship on apprenticeship programs and on all contractors who employ apprentices on public works projects. The additional staff to monitor apprentice usage and every activity to ensure it coincides with a program's standards will result in increased contractor and projects costs. A high volume of unnecessary DLSE complaints can be expected. In addition, apprenticeship programs will have to amend standards to include every conceivable type of work process under the trade, and that process will lead to long, heated and unnecessary disputes at the CAC.

Response: The Council appreciates the comments, but any impacts to contractors and others within the apprenticeship system have been considered by the Council and described in the rulemaking documents. The estimated impacts have been determined to be outweighed by the benefits of the proper training of apprentices.

John J. Davis, Jr. on behalf of Plumbers and Steamfitters Local Union No. 393, Plumber and Pipefitter JATCs in Northern California, Heat and Frost Insulators Local Union No. 16 and Local

16's JATC: The amendments to Regulations 205 and 230.1 will maximize the effectiveness of training, and promote the welfare of the apprentice, by requiring contractors to match the specific skills that will be used on their projects with programs approved to train in those skills and to hire apprentices training in those programs. Identifying each "apprenticeable occupation" separately will also maximize the effectiveness of specialized training for that occupation. That specialized training will reduce the incidence of injuries that occur due to ignorance.

The amendments to Regulations 205 and 230.1 make it clear to contractors what their training obligations are.

The CAC's amendments are not prohibited by *Henson v. Overaa*. The CAC has corrected the legal problem that led to the *Overaa* decision – lack of authoritative definition of "apprenticeable occupation" – by amending the regulations to clearly define the terms "apprenticeable occupation", "work process" and "registered apprentice." There is no conflict between the CAC's regulatory authority and the Director's authority to determine prevailing wages based on collective bargaining agreements. The legislature's directives that the CAC define "apprenticeable occupation" and interpret section 1777.5 are contained in the same Article of the Labor Code as the grant of the Director's authority to determine prevailing wages under section 1773-1773.9. The Director has no authority to define the term "apprenticeable occupation" or interpret section 1777.5, that authority is given to the CAC only in section 1777.5 and 1777.7.

In addition, Labor Code section 3086 has no bearing on and does not conflict with sections 1777.5 and 1777.7 since they are in different chapters of the Labor Code. The amendments will not require a contractor to hire numerous apprentices for different craft's work in a single day given that Labor Code section 1777.5 says apprentice ratios are counted over the duration of a project.

Response: The Council appreciates the comments.

Eileen Goldsmith on behalf of California State Pipe Trades Council and the Joint Apprenticeship Committees throughout California that are affiliated with the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry: The proposed amendments will have the force of law as they are both expressly authorized by the Legislature and are fully consistent with Labor Code section 1777.5, and for the reasons stated in the Notice of Proposed Rulemaking are supported by a strong reasonable basis. See *Yamaha Corp. of Am. v. St. Bd. Of Equalization*, 19 Cal.4th 1, 11 (1998).

The proposed amendments to 8 C.C.R. sections 205 and 230.1 will ensure that apprentice employment on public works projects functions correctly – as a crucial component of apprentices' training in the work processes taught in the programs to which they are indentured, and will result in high-quality training of apprentices. The new definition of "Work process" provides clarification that will help ensure that apprentices obtain on-the-job training in the work processes for which the apprenticeship program has the knowledge, experience, and capacity to provide training. In addition, the proposed regulations will help ensure that DAS can maintain

effective oversight over apprenticeship programs, help contractors identify the appropriate apprenticeship programs that should receive the Notices and Requests for Dispatch under Labor Code section 1777.5 and 8 C.C.R. section 230.1 and promote workplace safety by ensuring that apprentices are performing tasks they have been trained to do. The CAC's regulations have always required apprenticeship standards to set forth the work processes on which apprentices will be trained. 8 C.C.R. section 212(a)(1). This allows apprentices to select a program and enables contractors to request dispatch of apprentices learning the appropriate craft.

The proposed regulations would not be preempted by federal labor law. They would be more accurately characterized as minimum labor standards that affect union and non-union employers and employees equally and that protect employees as individual workers, not as members of any particular union or no union. See *Dillingham Constr. Co. v. County of Sonoma*, 190 F.3d 1034, 1039-40 (9th Cir. 1999); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S 724, 755 (1985).

Response: The Council appreciates the comments.

Victor Sella on behalf of the United Contractors: the proposed change in the definition of "apprenticeable occupation" would remove a clear category of jobs requiring on-the-job training and replace it with a vague and dependent definition that relies on what each individual apprenticeship programs happens to adopt as its work processes. The occupation of the journeyman should continue to control because that is the actual occupation, it is easy to identify, and is not dependent upon the shifting needs and abilities of training programs. The programs are defined by their standards, but the occupation is defined by the work of the journeyman, which is what the court said in *Henson*. This change will take hiring apprentices from a simple act of getting an apprentice from the craft of the journeyman to having to parse what "work processes" are defined by which state-registered programs and reviewing individual program standards, which contractors are not equipped to do. It will cause confusion and noncompliance. The proposed new language takes a regulation that closely tracks Labor Code 1777.5—apprentices to be employed in the "craft or trade to which he or she is registered," and creates an unnecessary conflict with the Labor Code. Under the proposed regulation, contractors will need to employ apprentices solely in work processes covered by their training program, but will also still need to employ apprentices solely in the craft or trade to which they are registered. If a training program does not train in something the journeymen from the same craft does, then the contractor violates the new proposed regulation by complying with Labor Code section 1777.5. As the court in *Henson* said, training is a floor, not a ceiling. It does not make sense to turn this on its head.

Response: The Council appreciates the comments, but disagrees. The apprenticeship program standards dictate the training that apprentices are supposed to receive. For the safety and welfare of the apprentice, contractors should not be training apprentices in work processes not approved by DAS and the Council. In proposing these amendments, the Council is merely pursuing the goal to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment." (Lab. Code, § 3073.) Any impacts are merely corollary to the Council's pursuit of that goal.

Dan Langford on behalf of the Southwest Regional Council of Carpenters: The proposed rule limiting apprentices to work covered by their training program will fail to introduce them to many skills that are vastly important to their success as an eventual Journeyperson. One of the important skills of a Journeyperson is the ability to address the realities of the job on the ground, which do not always fit neatly with what they learn in school. If they don't get on-the-job exposure to these additional skills as apprentices, it diminishes the effectiveness of apprenticeship training for real world scenarios. Because the proposed rule is not in keeping with the realities of the workplace, it will leave graduates of apprenticeship programs ill prepared to assume the responsibilities of the journeypersons in their field. This rule will serve only the interest of a few apprenticeship programs and not the interests of the apprentices or of the industries in which they work.

Response: The Council appreciates the comments, but views apprenticeship as an "organized system of on-the-job training together with related and supplemental instruction." (Cal. Code Regs., tit. 8, § 205, subd. (c).) The instruction should be related to the work process training and be supplemental to it. If the on-the-job work does not relate back to the classroom instruction, then the apprenticeship is not an *organized* system, and the classroom instruction cannot supplement the on-the-job training.

Michael Walton on behalf of the Association of Construction Employers: These proposed rules conflict with the Labor Code as interpreted by the courts in *Henson* and would force contractors to violate their collective bargaining agreements and obligations to union trust funds when employed on public works. The current standard is clearer and workable. The new standard would require contractors to review work processes in apprenticeship standards, which are not posted anywhere and are subject to change. It would take hours of guesswork and public records requests to be able to hire an apprentice which is expensive and unworkable. The current definition of apprenticeable occupation is clear and workable, but the proposed definition is vague and confusing and limited to what training programs can do.

Response: The Council appreciates the comments, but disagrees. While the apprenticeship program standards are not currently available on the DAS website, this does not seem to be a significant impediment to compliance. DAS is already required by statute to post proposed apprenticeship program standards on its website. (Lab. Code, § 3075, subd. (h).) Making current apprenticeship program standards more easily publicly accessible does not appear to be insurmountable task. Further, the Court of Appeal's holding in *Henson* was reached in part because the Council had not exercised its authority to promulgate clear regulations defining key terms such as "apprenticeable occupation" and "work processes." The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Nothing in *Henson* restricts the Council's authority to define terms via regulation. After a years-long process of considering different proposals, the Council now exercises its authority to define key terms of the statute in section 1777.5.

Conchita E. Lozano-Batista on behalf of the Laborers' Training & Retraining Trust Fund for Northern California: The proposed regulations conflict with the scope of work framework in the collective bargaining agreements of the crafts involved. Those scopes of work are published on the DIR website with white outs where scopes conflict. Apprenticeship standards are not published and easily accessible anywhere. Parties can review those scopes easily and comply. A "work process" for an apprenticeship program under the new regulation could conflict with the published scope of work for that exact same craft, making it unclear what tasks are covered by each craft. Also this rule could result in apprentices of one craft being trained on-the-job by journeymen of a different craft, which compromises the quality of training because journeymen cannot be expected to learn the apprenticeship standards of a different craft. Also programs are going to need to revise their standards to include all possible work processes regardless of the importance to training needs. The Shelley Maloney Act specifically says that apprenticeship training is a floor, not a ceiling. (See Labor Code § 3086.) The Courts concurred in *Henson* and in *Associated General Contractors of America v. San Diego Unified School Dist.* (2011) 195 Cal.App.4th 748, 761-762. A contractor may even have to hire two apprentices, one to comply with this regulation and another to meet its obligations under collective bargaining, which is huge cost increase. The regulations also directly conflict with and seek to illegally overturn the *Henson* decision.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. The Director of Industrial Relations plays a different role in the determination of prevailing wage rates (Lab. Code, §§ 1770, 1773, 1773.9) unrelated to DAS and the Council's role in approving apprenticeship program standards. (Lab. Code, § 3075.) While the apprenticeship program standards are not currently available on the DAS website, this does not seem to be a significant impediment to compliance. DAS is already required by statute to post proposed apprenticeship program standards on its website. (Lab. Code, § 3075, subd. (h).) Making current apprenticeship program standards more easily publicly accessible does not appear to be insurmountable task.

The Council also notes that the example of two apprentices, one of whom may be from a different craft than the journeyperson, is but one possible scenario. Contractors can – and many do – hire specialty contractors. The craft journeypersons employed by the specialty contractors are qualified to train apprentices in the work processes described in the specialty craft apprenticeship program standards. The *Henson* court reached its conclusion in part because the Council had not defined key terms in Labor Code section 1777.5, but *Henson* did not limit the Council's authority in promulgating such regulations.

Conchita E. Lozano-Batista on behalf of the Laborers' Training & Retraining Trust Fund for Northern California: the proposed regulations create an unlawful incursion into federal labor law and will therefore be preempted. "Section 301 of the [Labor Management Relations Act] preempts state law claims that are based directly on rights created by a collective bargaining agreement, and also preempts claims that are substantially dependent on an interpretation of a collective bargaining agreement." *Aguilera v. Pirelli Armstrong Tire Corp.,* 223 F.3d 1010, 1014 (9th Cir. 2000). 29 U.S.C. § 160(k) makes the National Labor Relations Board the arbiter of

"jurisdictional disputes" between labor unions, not the CAC. Also, the proposed regulations essentially set up unavoidable jurisdictional disputes between all crafts *See United Ass 'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. V. Manigila Landscape, Inc.,* 2019 U.S. Dist. LEXIS 121881, *2. The proposed regulations result in a static, non-evolutionary workforce and are bad for apprenticeship; and if such changes are to be undertaken, the CAC must grandfather in the work processes of all crafts. Crafts could not evolve over time at all or respond to changes in technology or the labor market.

Response: The Council appreciates the comments, but disagrees. As the commenter points out herself, Section 301 preemption requires a two-step test. First, does the claim involve a "right [that] exists solely because of the CBA"? (*Burnside v. Kiewit Pac. Corp.* (9th Cir.) 491 F.3d 1053, 1059.) If so, the claim is preempted, and the "analysis ends there." (*Ibid.*) If not, the next step examines whether the state law right is substantially dependent on interpretation of the CBA. A state law claim may avoid preemption if it does not raise questions about the scope, meaning, or application of the CBA. (See *Livadas v.Bradshaw* (1994) 512 U.S. 107, 125.) Here, the employment of apprentices on public works projects do not implicate rights that exist solely because of a CBA, nor are those rights at all dependent on interpretation of a CBA. Apprenticeship program standards and the prevailing wage law exist independently of CBAs.

The Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) If technological advances make it necessary for an apprenticeship program to train in new work processes, the program may seek approval of its revision to its standards through an established process. (Lab. Code, § 3075; Cal. Code Regs., tit. 8, § 212.2.)

Carrie Bushman on behalf of the California Association for the Advancement of Apprenticeship and Training: Under the APA, a regulation cannot be inconsistent with or in conflict with a statute. (Gov. Code, § 11342.2.) Moreover, a proposed regulation must be "in harmony with, not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." (Gov. Code, § 11349(d).) "Regulations that alter or amend the statute or enlarge or impair its scope are void." *(Pulaski v. California Occupational Safety and Health Standards Board* (1999) 75 Cal.App.4th 1315, 1332 (citing *Henning v. Division of Occupational Saf & Health* (1990) 219 Cal.App.3d 747)). Here, the proposed amendments are in conflict with Labor Code section 1777.5 and a California Court of Appeal decision which explicitly rejected the very same interpretation of section 1777.5 that these regulations seek to implement, namely, that apprentices on public works projects cannot be assigned work other than that which is stated in the work processes of the apprenticeship standards under which the apprentices are training. *(Henson v.* C. *Overaa* & *Co.* (2015) 238 Cal.App.4th 184, 193-196). Additionally, the CAC resolution referenced in the ISOR does not support these regulations as it responded to a different issue and was not thoroughly considered or supported by reasoning. Further, restricting apprentices to performing tasks specifically in apprentice programs work processes would create confusion and chaos for public works contractors and apprenticeship programs. The APA requires that regulations meet a clarity standard, in that they must be written "so that the meaning . . . will be easily understood by those persons directly affected by them." (Gov. Code, §

11349(c).) As apprenticeship program sponsors, CAAAT's members are equally concerned about the real world impact, not only on contractors, but on apprentices as well, if they are constantly rotated on and off jobsites in order to match the myriad of work processes performed on a jobsite at any given moment.

Response: The Council appreciates the comments, but disagrees. The Court of Appeal's holding in *Henson* was reached in part because the Council had not exercised its authority to promulgate clear regulations defining key terms such as "apprenticeable occupation" and "work processes." The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).)

The text of the October 30, 2014 resolution, entitled "Resolution on Employment of Apprentices on Public Works" provides: "After careful consideration, the Council confirms that Labor Code section 1777.5 requires public works contractors to employ apprentices who are training under apprenticeship standards that include the specific work processes that will be performed by the contractors' journey-level employees." The text of the resolution is consistent with the proposed amendments and it is unnecessary to look to the record leading up to the resolution.

The language of the regulations is clear, so the commenter's argument regarding the lack of clarity is not well-taken.

Furthermore, the Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) If an apprenticeship program begins training in new work processes due to technological advances, or for any other reason, the program may seek approval of its revision to its standards through an established process. (Lab. Code, § 3075; Cal. Code Regs., tit. 8, § 212.2.)

Aaron G. Lawrence on behalf of the Southern California District Council of Laborers, the Laborers Training and Retraining Trust of Southern California, and the Southern California Construction Craft Laborer JAC: The proposed regulations seek to alter or amend the requirements of the Labor Code and therefore violate the "consistency" requirements of the Administrative Procedure Act (APA). Under the APA, any regulation must be evaluated for "consistency" and deemed "in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law . . . . (Gov. Code, §§ 11349, 11349.1, 11350.) These regulations conflict with the *Henson* decision. The Proposed Regulations fail to satisfy the APA's "clarity" requirement, which is defined as being "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." (*See* Gov. Code §§ 11349(c), 11349.l(a)(3), 11350.) These regulations are impermissibly vague. The standard-however formulated-is vague because it incorporates by reference dozens of different apprenticeship standards that are not readily accessible to those charged with complying with the regulations. Secondly, even if ready access is provided to all programs' apprenticeship standards-the Proposed Regulations fail to provide sufficient guidance as to how the employer

should determine if the contemplated work process is sufficiently "contained in" (or "stated in" or "included in") them. CAC does not even use the same wording each time internal to its own regulations and does not appear to know if it means published in, contained, etc. In addition, the proposed regulations would burden public works contractors and public agencies with new costs, harm apprentices by providing narrower on the job training, and complicate the mission of DAS as it processes these new massive standards. Furthermore, they would cause jobsite friction. All these proposed amendments to advance a stated goal that is meritless and clearly pretextual in light of the *Henson* decision.

Response: The Council appreciates the comments, but disagrees. The Court of Appeal's holding in *Henson* was reached in part because the Council had not exercised its authority to promulgate clear regulations defining key terms such as "apprenticeable occupation" and "work processes." The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) While the apprenticeship program standards are not currently available on the DAS website, this does not seem to be a significant impediment to compliance. DAS is already required by statute to post proposed apprenticeship program standards on its website. (Lab. Code, § 3075, subd. (h).) Making current apprenticeship program standards more easily publicly accessible does not appear to be insurmountable task. The work processes are to be described in the apprenticeship program standards as required by current regulation. (See Cal. Code Regs., tit. 8, § 212.) Reference to work processes in such apprenticeship standards does not make the proposed regulations impermissibly vague. Any impacts to contractors and others within the apprenticeship system have been considered by the Council and described in the rulemaking documents. The estimated impacts have been determined to be outweighed by the benefits of the proper training of apprentices.

Marina Garza, [illegible], [illegible], Sandra Celis, Renee Yount, Diana Monarrez, Lorena Moran, Christina Flores, [illegible], and Jarrod Ferruccio, on behalf of the National Inspection Testing and Certification Corporation; Bernadette Butkiewicz, [illegible], David Hanson, and Tim Redondo on behalf of the Piping Industry Progress and Education Trust Fund;Jerry Elliott on behalf of the Southern California Pipe Trades District Council 16: The commenters state that they are in support of the changes to California Code of Regulations Sections 205, and 230.1 that will recognize the work processes in each approved program by the Chief of the DAS. These Minimum Industry Training Criteria are set up for each program along with the Related Supplemental Instruction to produce the best trained craftsperson in the industry. It will also reaffirm to contractors that they must use the correct apprentice on the scope of work In which they are training. The Journeyman responsible for the highly important on-the-job training of an apprentice absolutely should be of the same craft for which the apprentice is training.

Response: The Council appreciates the comments.

Ray M. Baca on behalf of the Engineering Contractors Association

If enacted, the commenter believes these proposed changes would have the effect of limiting a contractor's ability to use qualified apprentices and would likely increase overall construction costs. The commenter feels the proposed language would unnecessarily replace an already clear and easily applied standard with a cost-burdensome and unwieldy system that ultimately harms both the apprentices and their employers. The commenter respectfully asks that the Council reconsider these proposed changes-providing a more equitable solution for both the apprentices and their employers.

Response: The Council appreciates the comment, but disagrees. The comment does not specify how the proposed amendments would have the effect of "limiting contractors' ability to use qualified apprentices" or how would they would produce "an unwieldy system that ultimately harms both the apprentices and the employees both." As stated in the Initial Statement of Reasons, the underlying purpose of the amendments is to "ensure that the work performed by apprentices on public works is a genuine part of their training program leading to journey-level status, and conversely that apprentices will not be used as a source of cheap labor for work processes that are not part of their structured and approved training program."

Mitchell G. Weiss on behalf of United General Contractors, Inc.

The commenter argues that the proposed regulations are contrary to existing law in Labor Code section 1777.5(b)(1) and appear to be an attempt by the CAC to take sides in an ongoing jurisdictional dispute among different construction unions in a way that would be expensive and harmful to contractors, forcing them into contractual disputes in order to keep their public works contracts. The regulations here are also too vague to base work assignment on, and will create jobsite issues and enhance conflicts between the trades. Finally, they will hurt contractor's ability to hire qualified people because it would limit the on-the-job training available to apprentices.

Response: The Council appreciates the comments, but disagrees. Contrary to the commenter's claim, there is no attempt to "take sides." In proposing these amendments, the Council is merely pursuing the goal to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment." (Lab. Code, § 3073.) Compliance with any law generally increases costs, and if improving the working conditions of apprentices drives up cost, the increase is worthwhile. In addition, the Council believes that proper apprenticeship training ultimately reduces cost in the long-run, since properly trained apprentices are more effective and more efficient.

Henson was partially decided on the grounds that the CAC had not issued regulations like the ones proposed. These regulations address the issue. The Council undertook an extensive years-long process to develop and refine these proposals. While the repeal of appeal and hearing rules rendered obsolete by statutory amendments to Labor Code Section 1777.7 are "changes without regulatory effect" (1 Cal. Code Reg. § 100(a)(6)), other proposed amendments involved policy choices, including whether or not to accede to the court's interpretation in *Henson v. Overaa*. The Council believes it has made choices that best promote the public policies underlying the

requirements for employing apprentices on public works and that will reduce unnecessary litigation over whether required notices have been sent.

While the apprenticeship program standards are not currently available on the DAS website, this does not seem to be a significant impediment to compliance. DAS is already required by statute to post proposed apprenticeship program standards on its website. (Lab. Code, § 3075, subd. (h).) Making current apprenticeship program standards more easily publicly accessible does not appear to be insurmountable task, and would not render the regulations impermissibly vague.

The Council also notes that the example of hiring apprentices from a different craft than the journeyperson provided by the commenter is but one scenario. Contractors can – and many do – hire specialty contractors. The craft journeypersons employed by the specialty contractors are qualified to train apprentices in the work processes described in the specialty craft apprenticeship program standards.

Verbal Comments on Proposed Restatement of Substantive Requirements for Employing Apprentices on Public Works during the Public Hearing:

Barbara Cotter on behalf of Construction Employers Association: The commenter claims that the notice of the proposed rulemaking fails to point out the "true impact of the proposed regulations" and fails to address "some of the very practical, insurmountable problems that will occur if these regulations were adopted." The commenter insists that the *Henson* decision "squarely rejects the theories proposed" in the amendments, and that the proposed amendments will conflict with Labor Code section 1777.5, as interpreted by the *Henson* court. The *Henson* decision, the commenter argues, holds that "a contractor employing journeymen in a craft or trade must employ apprentices from that craft or trade, not from a different craft or trade." Thus, "apprentices should perform work ordinarily assigned to journeymen in that craft or trade" There is no need for additional regulations, which express the same view the plaintiffs in the *Henson* case put forward, and which was rejected by the court.

The commenter further asserts that the apprenticeship program standards are "hidden from view" and that is one reason compliance with the proposed amendments is "completely impractical." Contractors would be put in the position of deciding what is or is not a work process and which specific program standards contain that work process, and apprentices would have to be thrown off jobs if the standards they are training under do not contain the specific work process scheduled to be performed on that particular day for that particular project.

The problem that the Council is supposedly fixing is the situation where an apprentice was not working at the principal craft or trade to which they were registered, and the example was a pipefitter apprentice spray painting. However, there is already a mechanism in current law to address that type of violation where the apprentice is not training in the work of the journeyperson. These proposed amendments to sections 205 and 230.1 are therefore unnecessary.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. As discussed, the Council has the authority to promulgate regulations and define key terms that were undefined when *Henson* was decided. *Henson* does not bar the Council from exercising its authority to define key terms in Labor Code section 1777.5.

While the apprenticeship program standards are not currently available on the DAS website, this does not seem to be a significant impediment to compliance. DAS is already required by statute to post proposed apprenticeship program standards on its website. (Lab. Code, § 3075, subd. (h).) Making current apprenticeship program standards more easily publicly accessible does not appear to be insurmountable task. The Council believes the commenter's concerns about throwing apprentices off job sites are overblown and speculative.

The proposed amendments will ensure that any apprentice who is not training in the work processes of the apprentice's program standards will receive protection, whether the apprentice is a pipefitter apprentice spray painting pipe or an electrician doing traffic control. The proposed amendments will provide more robust protection than that afforded by current law.

Gerald Overaa of C. Overaa and Company: The commenter claims that the Court of Appeal resolved the dispute when it issued the *Henson* opinion, but the Council is trying to resurrect it. Apprentices should be tied to the craft of the journeyperson. If the proposed regulations are adopted, contractors will be forced to violate their existing collective bargaining agreements or violate the regulations. Also, there will be a huge economic burden on contractors to comply with these proposed regulations.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. The *Henson* decision resolved the dispute between the plaintiffs and defendant in that case, but the decision did not prohibit the Council from promulgating regulations. The Council has considered the impacts and believe they are outweighed by the benefits. Furthermore, compliance with the proposed regulations does mean that a contractor would necessarily violate its collective bargaining agreements.

Jeff Naff of C. Overaa and Company:

The commenter believes the proposed amendments to the regulations governing the employment of apprentices on public works will result in every program having to develop lengthy program standards that contain "thousands and thousands of work practices" to address each and every task of installing a mechanical system. Contractors will have to subcontract work to specialty contractors and hire two sets of workers (journeypersons and apprentices), which is a redundancy. The cost will be passed on to the public.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. Proposed section 205 provides that work process is "a skill or task, stated in a program's apprenticeship standards, in which the apprentice will receive supervised work experience and training on the job." Installation of a mechanical system or other type of

construction work need not be broken down into multiple tasks, and a work process can be as general, or specific, a skill or task as the program dictates, subject to approval by DAS and the Council. The Council has considered the impacts and believe they are outweighed by the benefits. Furthermore, compliance with the proposed regulations does mean that a contractor would necessarily violate its collective bargaining agreements, nor does it necessarily mean that a contractor must hire a specialty contractor to perform the work.

Aram Hodess, on behalf of United Association Local 393: The commenter states that the proposed amendments to section 230.1 makes sense based on the structure of Labor Code section 1777.5. The employment and training of apprentices must be in accordance with either the apprenticeship standards and apprentice agreement he or she is training under or the rules and regulations of the Council. The Council also has the authority to promulgate regulations to define an apprenticeable occupation.

The proposed amendments "will eliminate exploitation of apprentices by unscrupulous employers who assign work not covered by an apprentice's standards that would normally be performed by a journeyman or apprentice of another craft or trade." Any administrative burden on contractors to comply with the law is nothing new. Law-abiding contractors are already required to devote administrative resources to discerning what type of work must be paid at what prevailing wage rate. Figuring out what work processes an apprentice can be trained in is not a significant, additional burden.

Response: The Council appreciates the comments.

Eileen Goldsmith, on behalf of the California State Pipe Trades Council: The commenter states that the Council has quasi-legislative authority to interpret Labor Code section 1777.5 through the promulgation of regulations.

The proposed regulations promote high-quality apprenticeship and protect the welfare of the apprentices. The Council oversees the approval process of apprenticeship program standards and the approval process maintains the quality of the programs and the training they provide. When apprentices are undergoing on-the-job training, they should be applying what they learn in the program that has been approved to train in those work processes. Conversely, training in work processes that are not in the approved apprenticeship standards is an end run around the Council's oversight of apprenticeship programs.

Response: The Council appreciates the comments.

Conchita Lozano-Batista on behalf of Northern California Laborers Training and Retraining Trust and its related apprenticeship programs: The commenter argues that the proposed amendments create a new forum for jurisdictional disputes that is unnecessary and does not promote apprenticeship. The commenter claims that DIR "has always made clear" that work processes under which apprentice train are a floor, not a ceiling, and apprentices are expected to train in the work of the craft of trade to which the apprentice is registered, which is work

normally assigned to a journeyperson of the same craft. The commonsense approach is that apprentice perform work of the journeypersons under which they train so they can one day become skilled journeypersons in the same craft. "There should not be a disconnect between the work of a journey-level worker and an apprentice."

The commenter insists the proposed amendments will result in other adverse consequences, such as apprentices not receiving credit for on-the-job training because journeypersons from one craft may not be qualified to train apprentices in another craft and contractors not being in compliance with their collective bargaining obligations because they are required under the amendments to hire apprentices from programs with which they are not signatory to work under journeypersons for unions with whom they are signatory.

The commenter claims that there are legal issues with the proposed amendments. First, the amendments conflict with the *Henson* decision and its interpretation of the relevant statute. The amendments are also preempted by federal labor law, because the regulations clearly conflict with trade collective bargaining agreements.

If the amendments are adopted, the Council must "grandfather in" all work processes and allow all crafts the opportunity to amend their standards to state all work processes currently performed by their journeypersons, as these are the processes under which apprentices should train under. This does not remedy the issues that will arise when new technologies and new types of work are introduced, and the apprenticeship program standards will become static documents that do not factor in new ways of performing work. The Council will be relegated to policing what apprentices can and cannot do and deciding what crafts perform what work. The crafts themselves should determine what work is performed by what craft.

Finally, the Council should not dictate contractors to subcontract certain work to specialty subcontractors, as this is a business decision for contractors. Rulemaking should not be driven by the desire to favor one type of contractor over another.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. The Council issues "rules and regulations which establish standards for minimum wages, maximum hours, and working conditions for apprentice agreements in the building and construction trades and for firefighter occupations." (Lab. Code, § 3071, subd. (a).) And the "interpretation of Section 1777.5 and the substantive requirements of [section 1777.7] applicable to contractors or subcontractors shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Thus, the Council has the express authority to promulgate regulations clearly defining key terms such as "apprenticeable occupation" and "work processes," regardless of what the Department of Industrial Relations, DAS, or DLSE believe is the appropriate policy position regarding the employment and training of apprentices.

Any impacts to contractors and others within the apprenticeship system have been considered by the Council and described in the rulemaking documents. The estimated impacts have been determined to be outweighed by the benefits of the proper training of apprentices.

As discussed, the Council has the authority to promulgate regulations and define key terms that were undefined when *Henson* was decided. Furthermore, the commenter's assertion about preemption is not well-developed or supported by authority, so the Council is unable to respond.

The Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) If technological advances make it necessary for an apprenticeship program to train in new work processes, the program may seek approval of its revision to its standards through an established process. (Lab. Code, § 3075; Cal. Code Regs., tit. 8, § 212.2.) There is no provision nor authority for DAS or the Council to "grandfather" work processes without going through the specific statutory and regulatory procedure for revision of apprenticeship program standards.

Contrary to the commenter's claim, no contractor is being "favored" over another. In proposing these amendments, the Council is merely pursuing the goal to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment." (Lab. Code, § 3073.) Any impacts are merely corollary to the Council's pursuit of that goal.

Leonard Gonzalez, executive director for the Laborers Training and Retraining Trust Fund for Northern California and the State Registered Laborers Apprenticeship Program: The commenter opposes the proposed amendments to sections 205 and 230.1. He argues that they will require journeypersons from one craft to train apprentices from another craft in work processes that are not set forth in the journeyperson's union apprenticeship program. Such training will not be effective due to the fact that the apprentice may end up earning a higher wage than the journeyperson, and the conflicting union affiliations. The apprentice may also not get credit for on-the-job hours for training under a journeyperson from another craft. It would also be infeasible for a contractor to sign training agreements with apprenticeship programs from each and every craft. The commenter again makes the "ceiling not floor" training argument, and the "technological advances" argument that apprenticeship program standards will become static. Finally, the commenter argues that the cost to contractors for compliance will be significant.

Response: The Council appreciates the comments but disagrees with the commenter's assertions. The Council believes that apprenticeship programs should train in the work processes set forth in their apprenticeship standards, for which they have received approval from DAS and the Council. On-the-job training credit is granted by each individual apprenticeship program as appropriate. The Council's statutory role is to oversee the approval of apprenticeship programs and any amendments to work processes described in program standards. (Lab. Code, § 3075, subds. (d), (g), (h).) If technological advances make it necessary for an apprenticeship program to train in new work processes, the program may seek approval of its revision to its standards through an established process. (Lab. Code, § 3075; Cal. Code Regs., tit. 8, § 212.2.)

Mark Goldman and Bryan Mathews on behalf of the Associated General Contractors: The commenters oppose only the proposed amendments to the specific regulations governing the use of apprentices on public works projects, particularly the amendment to section 230.1. The commenter argues that the proposed amendments conflict with the holding in *Henson v. C. Overaa & Co.* (2015) 238 Cal.App.4th 184. The effect of the amendments is that the assignment of apprentices will be controlled by the apprenticeship program standards for individual programs rather than having the employment of apprentices follow the journeyperson craft assignment. In practical terms, contractors with collective bargaining agreements with one craft union but not another will be put into difficult situations.

For example, if a craft union to which a contractor is signatory claims a particular type of work, but that work is not described in the craft union's apprenticeship standards, the signatory contractor would be forced to hire an apprentice from another craft union whose apprenticeship program standards do describe such work, thereby violating its collective bargaining agreement. Moreover, the contractor would have to hire a journeyperson from the other craft union to train the apprentice, again in violation of its collective bargaining agreement. The commenters claim that the result of these proposed amendments would drive up costs to the tune of $212,000, which are passed on to public entities that award public works projects.

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. First, the Court of Appeal's holding in *Henson* was reached in part because the Council had not exercised its authority to promulgate clear regulations defining key terms such as "apprenticeable occupation" and "work processes." The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Nothing in *Henson* restricts the Council's authority to define terms via regulation. After a years-long process of considering different proposals, the Council now exercises its authority to define key terms of the statute in section 1777.5.

Furthermore, the Council believes these amendments will ensure that "apprentices will not be used as a source of cheap labor for work processes that are not part of their structured and approved training program." Mandating that apprentices train only in the work processes described in their approved apprenticeship program standards is consistent with the paramount goals of the apprenticeship system to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment." (Lab. Code, § 3073.) Compliance with any law generally increases costs, and if improving the working conditions of apprentices drives up cost, the increase is worthwhile. In addition, the Council believes that proper apprenticeship training ultimately reduces cost in the long-run, since properly trained apprentices are more effective and more efficient. The Council also notes that the example of hiring apprentices from a different craft than the journeyperson provided by the commenters is but one scenario. Contractors can – and many do – hire specialty contractors. The craft journeypersons employed by the specialty

contractors are qualified to train apprentices in the work processes described in the specialty craft apprenticeship program standards.

Al Cvitan on behalf of the Southern California District Council of Laborers, the Laborers' Training and Retraining Trust of Southern California, and the Southern California Construction Craft Laborers Joint Apprenticeship Committee:

The commenter claims section 205, subdivisions (c), (p), and (q), and section 229, subdivision (c) of the proposed regulations are objectionable for three primary reasons.

First, the specific provisions are unlawful in that they directly contradict the requirements of the Labor Code not only on its face, but as interpreted by the court. Regulations must be consistent with existing statutes and judicial decisions interpreting those statutes. The Labor Code is clear that the type of work that may be performed by an apprentice is tied to the work that may be performed by the journeypersons. The Council cannot overturn the current state of the law by regulation, and that's what these proposed regulations do. Furthermore, as the *Henson v. C. Overaa & Co.* (2015) 238 Cal.App.4th 184 court noted, apprenticeship standards set a floor, not a ceiling, that apprentices can be trained under, and individual apprenticeship programs are free to supplement that floor with additional training.

Second, they reflect a number of administrative procedure act violations. The regulations are vague because they "incorporate by reference dozens and dozens of apprenticeship standards." After reviewing these many standards, contractors will then be required to interpret the meaning of different work processes described within. The commenter claims an inconsistency in the rulemaking documents. In the notice of proposed rulemaking, Council stated it is "not aware of any cost impacts that a representative private person or small business would necessarily incur" and that there are no increased costs on local agencies, but in the initial statement of reasons, the Council determines that a contractor "can expect an annual cost increase of $212,000." The commenter claims that the annual cost increase is passed on to state and local agencies that award public works contracts. The commenter also sees a lack of "fact, evidence, documents, testimony or other evidence on which it relies in its initial determination."

And third, the proposed regulations are just an ill-conceived and unworkable policy underlying these regulations that will burden apprentices, apprenticeship programs, and employers. Contractors will be faced with a choice to violate the proposed regulations or their collective bargaining agreements. The amendments will harm apprentices, because they will bar apprentices from performing the same work as the journeypersons. Apprenticeship programs, the Division of Apprenticeship Standards (DAS) and the Council will also be burdened because each program will have to revise its standards to specify exactly the work processes they train in, and DAS and the Council will have to resolve objections to amendments to program standards. There will also be friction on the jobsite. How is a journeyperson from one craft train an apprentice from a competing craft?

Response: The Council appreciates the comments, but disagrees with the commenter's assertions. First, the Court of Appeal's holding in *Henson* was reached in part because the Council had not exercised its authority to promulgate clear regulations defining key terms such as "apprenticeable occupation" and "work processes." The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Nothing in *Henson* restricts the Council's authority to define terms via regulation. After a years-long process of considering different proposals, the Council now exercises its authority to define key terms of the statute in section 1777.5.

There is no inconsistency with the Council's estimate that there is no "cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies." (Gov. Code, § 11346.5, subd. (a)(6).) The Council's economic impact assessment in the Initial Statement of Reasons gives an example of potential cost impacts to contractors. (See Gov. Code, §§ 11346.2, subd. (b)(2)(A), 11346.3, subd. (b).) The impact was not believed to be a significant adverse impact, and any impact to contractors to comply with the proposed regulations is not expected to incur any additional costs to local agencies or school districts, as the state Division of Labor Standards Enforcement (DLSE) conducts enforcement.

Furthermore, the Council believes these amendments embody the policy that the Council wishes to pursue, as enshrined in the statute to "foster, promote, and develop the welfare of the apprentice and industry, improve the working conditions of apprentices, and advance their opportunities for profitable employment." (Lab. Code, § 3073.) Compliance with any law generally increases costs, and if improving the working conditions of apprentices drives up cost, the increase is worthwhile. In addition, the Council believes that proper apprenticeship training ultimately reduces cost in the long-run, since properly trained apprentices are more effective and more efficient. The Council also notes that the example of hiring apprentices from a different craft than the journeyperson provided by the commenters is but one scenario. Contractors can – and many do – hire specialty contractors. The craft journeypersons employed by the specialty contractors are qualified to train apprentices in the work processes described in the specialty craft apprenticeship program standards.

Jack Davis on behalf of Plumbers and Steamfitters local unions and their joint apprenticeship committees in Northern California: The commenter insists that the Council has authority to define what constitutes an apprenticeable craft or training for an occupation. *Henson v. C. Overaa & Co*. (2015) 238 Cal.App.4th 184 held nothing to the contrary. These regulations will clarify a muddy area of the apprenticeship law.

Response: The Council appreciates the comments.

Ginny Smith on behalf of the Construction Employers Association and the Association of Construction Employers: The commenter opposes the proposed changes to sections 205 and 230.1. The commenter contends that contractors would "confront contradictory mandates on

which apprentices to hire and whether they can be hired at all," as the proposed amendments would "force contractors to choose between compliance with California Labor Code or complying with the new regulations" and "also force contractors to choose between complying with collective bargaining agreements and compliance with the regulations."

The commenter states that the Labor Code provides a simple rule: "a contractor need only look to the work being performed by the journeymen in that craft" and assign apprentices in that same craft. The proposed regulations abolish that simple rule in favor of a rule that requires contractors to identify specific processes performed on any given day and then research which apprenticeship program, if any, lists those specific processes in its standards. This creates an undue administrative burden on contractors and results in uncertain outcomes. This simple was also affirmed by the Court of Appeal in *Henson, supra,* 238 Cal.App.4th 184. The proposed amendments establish a system that runs contrary to the *Henson* decision and the Labor Code. The proposed rulemaking documents do not adequately discuss the *Henson* decision.

The cost impact has been downplayed. There is significant economic impact in the form of increased labor costs and administrative staff burdens to comply with this new rule.

The commenter further insists that equating an apprentice occupation with the standards adopted by a training program "makes no sense." Occupations continue to evolve based on engineering and technological advances, and cannot be defined by an apprenticeship curriculum. Limiting what apprentices can be trained on impedes rather than facilitates apprentices' ability to handle journey-level work in their craft.

Response: The Council appreciates the comments but disagrees with the commenter's assertions. First, the Court of Appeal's holding in *Henson* was reached in part because the Council had not exercised its authority to promulgate clear regulations defining key terms such as "apprenticeable occupation" and "work processes." The Council is expressly empowered by the Legislature to promulgate regulations to interpret Labor Code section 1777.5, as such interpretation "shall be in accordance with the regulations of the California Apprenticeship Council." (Lab. Code, § 1777.7, subd. (g).) Nothing in *Henson* restricts the Council's authority to define terms via regulation. After a years-long process of considering different proposals, the Council now exercises its authority to define key terms of the statute in section 1777.5. There is no conflict between *Henson* and the proposed amendments. Complying with the new regulations is compliance with the Labor Code.

Compliance with any law generally increases costs, and if improving the working conditions of apprentices drives up cost, the increase is worthwhile. In addition, the Council believes that proper apprenticeship training ultimately reduces cost in the long-run, since properly trained apprentices are more effective and more efficient. The economic impact assessment has been prepared in accordance with the Administrative Procedures Act. (See Gov. Code, §§ 11346.2, subd. (b)(2)(A), 11346.3, subd. (b).)

The Council is authorized to clearly define terms such as “apprenticeable occupation” which are used in the Labor Code, but left undefined by the Legislature. The Council exercises its quasi-legislative judgment in determining that an apprenticeable occupation should be defined by the work processes described in the apprenticeship standards under which the apprentice is training. Such a definition clearly delineates the many apprenticeable occupations that work at a worksite.

Jeffrey Cutler on behalf of California State Pipe Trades Council: The commenter insists that the Council has authority to promulgate these regulations and the rulemaking proposal went through the correct procedures. Any claims that compliance with the proposed amendments will impose undue administrative burdens on contractors are specious, since contractors already have to go through a similar process reviewing published scopes of work to determine what rate to pay their workers. Any argument that compliance is burdensome because apprenticeship program standards are not publicly available can be easily addressed when the Division of Apprenticeship Standards publishes the program standards on its website.

Response: The Council appreciates the comments.

Written Comments Regarding the Additional Record Retention Requirements:

Adriana M. Lopez on behalf of Capstone Consulting Services, Inc.: Labor Code 1777.5(d) requires “A contractor who employs workers in an '"apprenticeable craft or trade" can have apprentices dispatched to a public works project by applying to any apprentice program in the craft or trade that can provide apprentices to the site" or by obtaining them from an approved program that already covers the contractor's work.” The commenter claims that this means a contractor need only notify, and request dispatch from, halls with apprentices specific to their scope of work. DAS has confirmed this interpretation in prior communications with me, but DLSE investigators enforce it both ways and the commenter states she has been cited for failure to dispatch to hod carrier and parking and highway laborers when she only needed a general construction laborer.

Response: The comment is beyond the scope of this rulemaking proposal, as it is not specifically directed at the Council’s proposed regulations or to the procedures followed by the Council in proposing the regulations. The Council may consider regulations suggested by the commenter in the future, and the commenter may propose amendments to the Council in the appropriate forum. However, questions about an individual deputy labor commissioner’s enforcement position should be directed to that deputy or the deputy’s supervisor.

Eileen Goldsmith on behalf of California State Pipe Trades Council and the Joint Apprenticeship Committees throughout California that are affiliated with the United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry: The proposed record-keeping requirements are important clarifications that should streamline the conduct of Labor Code 1777.5 hearings by preserving evidence and eliminating disputes.

Response: The Council appreciates the comment.

Verbal Comments on Additional Record Retention Requirements during the Public Hearing:

None.

ALTERNATIVES THAT WOULD LESSEN THE ECONOMIC IMPACT ON SMALL BUSINESS

Victor Sella on behalf of the United Contractors: Prevent confusion and administrative and compliance costs on contractors by continuing to allow contractors to hire from the craft of their journeymen. Otherwise, contractors will need to hire staff and research apprentice standards and may innocently run afoul of the regulation and lose the right to perform public works or be cited and fined by the Labor Commissioner.

Response: The suggested alternative would reduce the proposed regulations to merely an advisory expression of the Council's view, rather than regulations that have the force of law.

Conchita E. Lozano-Batista on behalf of the Laborers' Training & Retraining Trust Fund for Northern California: If the CAC insists on the changes to sections 205 and 230.1, it should allow all crafts to grandfather in all work processes that are part of existing scopes of work approved by DAS prior to the effective date of the new regulations in order to limit the scale of the disruption to contractors who will otherwise have enormous new compliance costs in all crafts and no easy baseline from which to judge their responsibilities.

Response: An established process exists for the revision of apprenticeship program standards and is controlled by statute and regulation. The suggested alternative is unworkable, because the Council cannot bypass the statutory and regulatory requirements to revise apprenticeship program standards to "grandfather" work processes.

Adriana M. Lopez on behalf of Capstone Consulting Services, Inc.: Since the Council is amending the regulations, the Council should put in more specific language on who needs to get the DAS 140 and 142. DAS says it's just the one specific program, but DLSE requires wider distribution.

Response: The suggested alternative is outside the scope of this proposed rulemaking, as it is not specifically directed at the Council's proposed rulemaking, nor does the alternative lessen the economic impact on small business.

ALTERNATIVE IMPACTS DETERMINATION

The Council has determined that no reasonable alternative that has been considered or otherwise been identified and brought to the Council's attention would be (1) more effective in carrying out the purpose for which these regulations were proposed, (2) as effective as and less burdensome

to affected private persons than these proposals, or (3) more cost-effective to affected private persons but equally effective in implementing the statutory policy. The Council's reasons for rejecting any proposed alternatives are set forth in the responses to comments.