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RESPOND TO
SACRAMENTO

TELEFAX TRANSMITTAL

OFFICE: Sacramento
FILE: 6223

DATE: October 29, 2001 **TIME:**

COMPANY: DOL **ATTN:** Stephen Jones, Esq.
DOL Solicitor

FAX#: (202)693-5732 **PHONE#:**

FROM: Ronald W. Brown, Esq.

RE: PHCC-GSA V. California Apprenticeship Council

We are sending _5___ page(s) (including transmittal page). If you have any questions, print is not clear, or pages are missing, please call us at (916) 442-3100.

COMMENTS:

Dear Mr. Jones:

As I promised, I am faxing you copies of the pertinent pages from the CAC Regulations which were just adopted by the CAC on October 25, 2001. These regulations will not be implemented unless and until approved by the Office of Administrative Law and following a 30-day comment period. I understand the CAC is targeting implementation for January 1, 2002. I will mail you a full set of proposed revisions.

The pages I am faxing consist of § 205(n) (new definition of geographical area) and § 212.2 (requiring "new program" approval for revisions to apprenticeship standards when the requested revision is a change in geographic area).

I also understand that the CAC proposed new regulations to implement the new "need" requirements set forth in Labor Code § 3075, but they were severed from this batch of regulations to avoid certain confrontation with DOL, and to get the new minimum wage regulations for apprentices approved as soon as possible. (The new wage regulation requires the payment of prevailing apprentice wages on private as well as public works).

I am gathering the additional information you suggested and will forward it as soon as possible. Please feel free to call me if there is anything else we can provide.

Ronald Brown

NOTE: The information contained in this facsimile document is confidential and is intended only for the use of the individual named above. If the reading of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original document to us at the above address via U.S. Mail. We will reimburse you for postage. Thank you.

PART I. APPRENTICESHIP

Article 1. Procedures for Investigating, Holding Hearings and Determining Disputes

Amend section by amending subsections to read:
201. Filing of Complaints.

(a) Complaints may be filed by any interested person with the Administrator of Apprenticeship or the Administrator of Apprenticeship upon his/her own initiative may issue a complaint, within the time period specified below, when there is cause to believe that a decision, order or action of an apprenticeship program sponsor has been unfair or unreasonable; or that there has been a violation of:

(1) Chapter 4, Division 3 of the Labor Code (excluding Section 1777.5), 30 days;

(2) California Code of Regulations, Title 8, Chapter 2, Part I; (excluding Article 10), 30 days;

...

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3081 and 3082, Labor Code.

Article 2.Definitions

Amend Section to add new subsections to read:

205. Definitions.

(m) "Employed as an apprentice" in the **building and** construction industry for the purpose of Labor Code Section 3098 means employment pursuant to the approved standards of apprenticeship of the Program, under the supervision of journeyman/men, where the apprentice is receiving at least the minimum wage applicable to the apprentice's period of apprenticeship as provided for in these ~~regulations~~ **this chapter.**

(n) "Geographic Area of Operation" of an apprenticeship program means the geographic area in which the program regularly operates and trains apprentices.

(~~d~~c) The names and signatures of the parties.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3073, 3075, 3060 and 3078, Labor Code.

Amend section heading and reference to read:
212.01. Industry Specific Training Criteria.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3073, 3073.2 and 3078, Labor Code.

212.2. Eligibility and Procedure for DAS Approval of an Apprenticeship Program.

(a) To be eligible for approval, a program must comply with all ~~apprenticeship program standards as set forth in~~ applicable federal and state law and regulations~~;~~. A revision to change the program's occupation or to change the program's geographic area of operation to include a different labor market area is subject to the same application and approval process set out in (a) - (j) of this section for approval of a program, including providing notice of the proposed revision and an opportunity to comment to existing programs in the same apprenticeable occupation in the labor market area. The program sponsor shall submit to the Chief an application for approval of the program and shall provide the program standards and, either with the application or during the application review process, evidence of:

(1) commitment to provide safe work site facilities and safe equipment sufficient to train the apprentices;

(2) commitment to provide skilled workers as trainers at the work site who meet the criteria for journeyman or instructor as defined in Section 201 (~~q~~a) or (~~r~~b);

(3) adequate arrangements for related and supplemental instruction pursuant to Labor Code section 3074;

(4) ability to offer training and supervision in all work processes of the apprenticeable occupation;

(5) the program sponsor's ability, including financial ability, and commitment to meet and carry out its responsibility under the federal and state law and regulations applicable to the apprenticeable occupation and for the welfare of the apprentice.

(b) The training must be in an apprenticeable occupation as defined in Section 205(c) and must conform to the requirements of Section 215 concerning equal opportunity in apprenticeship;

(c) Within thirty days after receipt of an application for approval of a program, or for approval of a revision to change the occupation or to change the program's geographic area of operation to include a different labor market area, the Chief DAS shall notify the sponsor in writing either that: (1) the application is complete and accepted for filing; or (2) the application is incomplete and specified additional information is required;

(d) Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing;

(~~d~~ e) If the standards or collective bargaining agreement of a program proposed by an employer or employers' association provide for participation by a union in the operation of the program, the sponsor shall provide evidence that the union accepts or does not oppose the program. The union may submit comments on the proposed program within thirty days after receipt of the proposed standards. The Chief may, in his or her discretion, consult with such union concerning the proposed program;

(~~e~~ f) If the standards and collective bargaining agreement of a program proposed by an employers' association do not provide for participation by a union in the operation of the program, the sponsor shall serve a copy of the proposed standards and any supplement thereto on the union, if any, which is the collective bargaining agent of the employees to be trained. The union may submit comments on the proposed program within thirty days after receipt of the completed standards. The Chief may, in his or her discretion, consult with such union concerning the proposed program;

(~~f~~ g) Upon receipt of the proposed standards of a program sponsored by more than one employer, the Chief shall serve a copy of the proposed standards and any supplement thereto on the sponsor of each existing program in the apprenticeable occupation in the labor market area of the program, unless the program has advised the Chief DAS that it does not wish to be so notified ~~as defined by Section 215~~. Each such existing program may submit comments on the proposed program within thirty days after receipt of the completed standards. The Chief may, in his or her discretion, consult with such existing program concerning the proposed program;

(~~g~~ h) The Chief may, in his or her discretion, hold a hearing on any issue relating to the compliance of a proposed program with federal and state law and regulations. The Chief shall provide notice of, and an opportunity to attend, the hearing to the sponsor and to any union or existing program that is entitled to submit comments under this section. The hearing shall be conducted informally without the application of formal rules of evidence or procedure;

(~~h~~ i) The Chief's decision whether to approve a program shall be issued within ninety days after the receipt of the completed application for approval. The decision shall be served on the sponsor and on each party which submitted comments on the proposed program. The decision shall be in writing and shall set forth the relevant findings of fact, a discussion of any issues raised by any comments or at any hearing and the reasons for the decision;

(~~i~~j) The median time for processing an application to train apprentices, from the receipt of the initial application to the final approval decision, based on the experience in the two years preceding the proposal of this Section, is two years. The minimum time is one and a half years, and the maximum time is three years;

(~~j~~ k) ~~The decision of the Chief approving or disapproving a proposed program shall be final unless an appeal is filed with the California Apprenticeship Council within thirty days following service of the decision.~~ **The Chief's decision approving or disapproving a proposed program shall be final and become an Order of the Council if no appeal is filed within 30 days following service of the decision on the parties.** The appeal may be filed by the sponsor or by any union or existing program which was authorized to and did submit~~ted~~ comments under this section;

(~~k~~ l) The chairperson of the Council shall refer the appeal, if any, to a three member panel which shall submit a recommendation to the full Council. The Panel's recommendation shall be submitted no later than the second regularly scheduled meeting of the Council after the filing of the appeal. The panel may, in its discretion, hold a hearing if the Chief did not hold a hearing in the consultation process. The hearing shall be conducted in compliance with Section 203;

(~~l~~ m) The Council may affirm, reverse, or modify the decision of the Chief or of the appeal panel. The decision of the Council on an appeal shall be final;

(~~m~~ n) All documents, notices and appeals filed or served under this Section shall be filed or served in accordance with Section 229.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3073, 3075 and 3090, Labor Code.

Amend section heading and section to read:

212.3. Apprenticeship Program Self-~~Evaluation~~ Assessment and ~~Monitoring~~ Audits.

(a) Each apprenticeship program shall annually prepare and submit a Self-Assessment Review as well as a Program Improvement Plan to the Chief DAS; provided, however, that a program is not required to submit a Review and a Plan in the first year of its