

INITIAL STATEMENT OF REASONS

The Employment Training Panel (Panel) proposes to amend Sections 4402.2, 4406, 4409, 4420, 4420.5, and 4426 of Title 22 of the California Code of Regulations.

Specific Purpose of the Regulatory Action

The specific purpose of each regulatory action is summarized below:

Amend Section 4402.2

This amendment would clarify Section 4402.2 on the role of the Panel in developing Critical Proposals for training that supports a statewide economic development effort.

Amend Section 4406

This amendment to Section 4406 would eliminate an existing cap on the cost of New Hire training.

Amend Section 4409

This amendment would revise Section 4409 to allow modification of the Special Employment Training (SET) Wage on a case-by-case basis for a larger trainee population. Under the existing regulation, unless the requirement is modified, SET trainees must earn the statewide average hourly wage post-retention. The proposed amendment would also conform the old 10% funding allocation to the new 15% allocation that was enacted in the underlying statute last January by AB 2570. (U.I. Section 10214.5.)

Amend Section 4420

This amendment to Section 4420 would delete a “needs assessment” prerequisite prior to funding literacy training; and would change the cap on Literacy Training from 45% of vocational training hours, to 45% of total training hours.

Amend Section 4420.5

This amendment to Section 4420.5 would change the cap on Safety Training from 10% of vocational training hours, to 10% of total training hours; and, make other clarifying revisions between various types of safety training.

Amend Section 4426

This amendment to Section 4426 would distinguish between public and private Training Agencies, which may have different accreditation standards. Also, it would replace certification by the now-defunct Bureau of Private Post-Secondary Vocational Education (BPPVE), with a requirement for certification on a case-by-case basis.

The amendment would also make minor clarifying revisions, such as including “public high school district” as an eligible entity, and revising “a foundation formed under Education Code Section 89900” to read “a California State University auxiliary organization” which is how the entity is described in Education Code.

The proposed amendment would also delete requirements that must be met before a Training Agency can administer a contract, apart from training delivery; and remove a restriction on subcontracting for any but “ancillary” training.

Necessity for the Regulatory Action

1. Amend Section 4402.2, Critical Proposal. Under existing Section 4402.2, Critical Proposals may be approved for reimbursement at up to 25% above the standard rates for Retraining and New Hire training. The Panel may also modify retention, turnover rate, laboratory training and other basic program requirements on a case-by-case basis.

The Critical Proposal designation is made, in the first instance, by the Executive Director based on four specific factors in Section 4402.2(a)(2). However, Section 4402.2(a)(3) provides: “Critical proposals shall be initiated by a participating State of California economic development entity . . . ,” such as CalBIS. Subsection (a)(3) is superfluous, and detracts from the Panel’s ability to move quickly in response to statewide economic development needs. The proposed amendment would delete this inconsistent statement and make other clarifications, for a more streamlined approach to workforce development partnerships.

2. Amend Section 4406, New Hire Cost Cap. New Hire training typically requires more training hours, which in turn drives up cost. Existing Section 4406(a) sets a dollar cap based on the average cost-per-trainee paid in the prior Fiscal Year. Using the old reimbursement rate (\$17), the average cost-per-trainee is now capped at \$4,854. Unless the dollar cap is revised, the new increase to the New Hire training rate (\$20) will drive down hours per-trainee and be ineffective as a catalyst for training displaced workers.

The dollar cap was enacted in Section 4406 in July 2006, using average cost paid in the prior year, as a measurement. Since then, however, it has become apparent that prior payment is an unreliable measure of future cost. This measurement becomes skewed when earnings are unusually low in a prior year, for even one training provider. Moreover, the cost measurement degrades over time because “average cost” is inherently reduced from one prior year to the next.

Staff suggests discontinuing the dollar cap in favor of an hourly cap. This approach would be consistent with the Panel’s long-standing policy to cap Retraining at 200 hours per-trainee. However, a 200-hour cap is too low for New Hire training. Using the new reimbursement rate (\$20), the dollar cap calculates at \$4,000, which is \$854 below the current cap.

By way of comparison, a 250-hour cap using the new rate (\$20) calculates at \$5,000, which is only \$146 above the current cap. However, staff does not believe this provides sufficient flexibility for the economic stimulus purpose of an increased rate. Also, this does not create an adequate analytical basis for testing the concept of an hourly cap, since it results in almost the same average cost-per-trainee as under the current cap.

There is insufficient data at this time for staff to accurately project an optimum number of hours as a cap for New Hire training. For this reason, staff suggests a 260-hour cap which calculates at \$5,200, using the new rate (\$20), which is \$346 above the current cap.

This would be a “test cap” for pending regulatory action, to be applied case-by-case for a period of 6-12 months. The Panel could exceed the cap for good cause during the testing period. Afterward, the Panel could implement an hourly cap for New Hire training and Retraining, in a new regulation.

In short, the proposed amendment of existing Section 4406 would give staff time to test an hourly cap on New Hire training, prior to implementing this approach through further rulemaking.

3. Amend Section 4409, Special Employment Training.

Under the existing regulation, SET trainees must earn the statewide average hourly wage post-retention. The statewide average hourly wage (SET Wage) is currently \$23.64, as compared to the ETP Minimum Wage, which is between \$13.00 and \$14.18 for retraining (depending on the county). Under the existing regulation, there are two opportunities for wage modification:

1. For trainees with “multiple barriers” to employment, a reduction from SET Wage to ETP Minimum Wage; and,

2. For trainees in a High Unemployment Area, a reduction from SET Wage to 25% below the ETP Minimum Wage.

The underlying statute does not require the state average hourly wage; it only identifies that wage as a target for SET. In addition, the statute specifically authorizes a SET Wage modification for trainees in a High Unemployment Area.

The proposed amendment would authorize a modification of up to 25% below the SET Wage. It would be limited to training in a high-priority Industry sector, or under a Critical Proposal, as determined case-by-case. This amendment would also clarify the procedure for SET Wage modification in a High Unemployment Area.

Under existing 22 CCR 4409, SET projects are exempt from the out-of-state competition requirement for Retraining. Thus, SET funds are often used for Priority Industries such as Healthcare or the Building Trades, where jobs are regional. Entry-level frontline workers in these industries, who may benefit the most from training, especially in times of economic recession, often do not meet the relatively high SET wage.

The proposed amendment would “open up” SET for worthwhile projects, and allow the Panel to make best use of this unique funding allocation. This amendment would also clarify that SET Wage modification for trainees in a High Unemployment Area will be processed under Section 4429.

4. Amend Section 4420. Literacy Training. Literacy and other remedial skills training provide vital skills for disadvantaged workers, who are more vulnerable to lay-off. However, existing Section 4420 imposes a needs assessment on all Literacy Training, and also caps the number of hours relative to other types of training.

By eliminating a needs assessment, the proposed amendment would remove an unnecessary step -- one that is cumbersome and costly for contractors, and tends to restrict the number of eligible trainees. Also, by changing from the limitation of 45% of vocational hours to 45% of total training hours, this amendment would make the ratio less confusing to calculate.

5. Amend Section 4420.5, Safety Training. Existing Section 4420.5 prohibits the Panel from funding all safety training required by Cal-OSHA under the General Industry Safety Orders, and caps the number of hours that may be reimbursed for special safety training. The existing regulation also exempts intensive skills training in safety procedures, for specific occupations, from this cap. The special safety training, which is subject to a 10% cap, must be included in the training Curriculum, and either be approved by the Panel or by ETP staff on a case-by-case basis.

The proposed amendment would clarify the distinction between general safety training, that is, safety training that is required under Cal-OSHA, and special safety training. It would correct an outdated reference to Cal-OSHA regulations at 8 CCR Subchapter 7, remove an unnecessary reference to the level of approval for safety training, and clarify the exemption from the cap for intensive skills training.

The 10% cap only applies to special safety training, since general safety training is not funded at all, and intensive skills training is not capped. The amendment also redefines the cap to mean 10% of total training hours, in place of the present 10% of vocational training hours. Although there is only a negligible difference between 10% of vocational training hours and 10% of total training hours, the latter is less confusing to calculate.

6. Amend Section 4426, Training Agency Projects. This amendment would replace certification by the now-defunct Bureau of Private Post-Secondary Vocational Education (BPPVE), with a requirement for certification on a case-by-case basis. BPPVE is no longer in operation, and the chances of legislation to create a successor agency are speculative. In the meantime, the Panel has adopted a policy that requires Training Agencies to obtain approval or certification by an independent third party whose standards are found to be satisfactory on a case-by-case basis. The proposed amendment would implement this policy. If a BPPVE successor is eventually established in legislation, the successor could be deemed satisfactory by the Panel.

The proposed amendment would also clarify the mix of public and private schools, and their certification requirements. It would eliminate unnecessary requirements for Training Agencies to act solely as the contract administrator, achieving overall clarification for this role. It would also delete the restriction against subcontracting non-ancillary training, which does not serve a clear policy purpose and is difficult to administer.

The proposed amendment would also delete an unnecessary and confusing series of requirements that must be met before a Training Agency can administer a contract, apart from training delivery; and remove a restriction on subcontracting for any but “ancillary” training.

This amendment would also make other minor clarifying revisions, such as including “public high school district” as an eligible entity, and revising “a foundation formed under Education Code Section 89900” to read “a California State University auxiliary organization” which is how the entity is described in Education Code.

Studies, Reports or Documents Relied Upon

In developing the regulatory actions summarized above, the Panel did not consider technical, theoretical, or empirical studies, reports or documents.

There is a discussion of Training Agency Certification (which relates to Section 4426) in a Memo to Panel members dated January 23, 2009, which Memo was included in the Panel's packet for the Panel meeting of January 23, 2009. There are Minutes of that portion of the panel meeting of January 23, 2009, during which the Training Agency Certification Guidelines were presented, discussed and approved. These Minutes include pages 1 and 27-28.

There is a notation that the Panel may allocate up to 15% of available funds for the SET program in a "Key Program Elements" note to the Panel. This notation was included in the Panel's packet for the Panel meeting of January 23, 2009.

There is a Memo to the Panel dated February 27, 2009, which Memo was included in the Panel's packet for the Panel meeting of February 27, 2009. This Memo addresses Critical Proposals (Section 4402.2), the Retraining Cost Cap (Section 4406), and the SET Wages (Section 4409), and other topics. There are Minutes of that portion of the panel meeting of February 27, 2009, during which the proposed ETP Economic Stimulus Initiative was presented and discussed. These Minutes include pages 1 and 20-26.

There is a Memo to the Panel dated August 11, 2009, which Memo was included in the Panel's packet for the Panel meeting of August 11, 2009. This Memo addresses increasing the New Hire rate, Amending the New Hire Cost Cap (Section 4406), Amending Criteria for Critical Proposals (Section 4402.2), Expanding SET Wage Modification (Section 4409), Amending the Literacy Training regulation (Section 4420), Streamlining the Safety Training Ration (Section 4420.5), Updating Training Agency Standards (Section 4426), and other topics. Amendments recommended by ETP staff to Sections 4402.2, 4406, 4409, 4420, 4420.5, and 4426 of Title 22 of the California Code of Regulations are attached to the Memo dated August 11, 2009. Said amendments were approved by the panel on August 11, 2009.

There is a Memo to the Panel dated August 11, 2009, entitled 2009-10 Strategic Plan. This memo was considered by the Panel at its August 11, 2009 meeting.

There are Minutes of that portion of the panel meeting of August 11, 2009, during which the proposed amendments were discussed and approved. There are Minutes of that portion of the panel meeting of August 11, 2009, during which 2009-10 Strategic Plan was discussed and approved.

The above referenced documents are included in the Rulemaking file and are accessible for review upon request.

Alternatives Considered or Rejected

No other alternatives were presented to or considered by the Panel.

Alternatives that Would Lessen Adverse Impact on Small Businesses

The proposed regulatory actions would have no adverse impact on business small or otherwise, as described in more detail below. Thus, there are no alternatives that would lessen said impact.

The panel has not identified any alternatives that would lessen any adverse impact on small businesses. The proposed regulation would not have an adverse impact on small business.

Evidence of No Significant Adverse Impact on Business

The proposed regulatory action is ultimately designed to facilitate ETP funding for training that allows various businesses to improve the skills levels of their employees located in California. Businesses are not required to apply for this funding. Intrinsicly, these regulatory actions would have no adverse economic effect on business, significant or otherwise.