

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendments to Parts 600 and 601 of Title 12 NYCRR.

Statutory Authority: Labor Law section 811(1)(j).

Subject: Apprenticeship Training Programs

Purpose: To revise Apprenticeship Training Program regulations to ensure consistency and conformity with Federal regulations applicable to State Apprenticeship Agencies.

Substance of proposed rule (Full text is posted at the following State website: [www.labor.ny.gov](http://www.labor.ny.gov)): The proposed revisions to 12 NYCRR Parts 600 and 601 represent the second phase of regulatory reforms adopted to clarify Apprenticeship Training Program procedures and standards, enhance the evaluation and performance of registered programs and ensure conformity with Federal regulations applicable to State Apprenticeship Agencies.

The proposed amendment to Part 600 of Title 12 modifies the provision allowing sponsors of existing programs to charge apprentices a fee for processing their applications for employment by allowing both new and existing programs to charge a fee, subject to approval by the Department.

The proposed amendments to Part 601 of Title 12 add definitions for new terms that have been introduced or clarify expressions that have been in common usage but not incorporated in previous versions of this Part. New subsections have been added to provide guidance for registration and approval of program applications. The traditional

approach to apprenticeship has been to require each apprentice to complete a specified number of hours of on-the-job training. Section 601.7 has been revised to reflect changes in the Federal rule by adding two new methods for an apprentice to progress through the apprenticeship program by demonstrating proficiency in the skills acquired by using either a competency-based approach or a hybrid method which combines both the time-based approach and the successful demonstration of competency used in a competency-based approach. A new section 601.8 has been added to outline program standards for performance and to advise registered sponsors of the requirements and procedure for recertification. Provisions for program probation and inactive status (applicable to sponsors experiencing difficulties in hiring or retaining apprentices because of harsh economic conditions), previously contained in separate unrelated provisions, have been added to this section for clarity and uniformity. Amendments to sections providing for the voluntary and formal deregistration of programs prescribe time limitations for reinstatement of those programs and outline protections for the transfer of apprentices enrolled in programs that have been cancelled. Procedures for the determination of complaints submitted to the Commissioner of Labor have been clarified. Section 601.15 has been added to address the Federal requirement that, for Federal purposes, State Agencies must accord reciprocal approval to apprentices and programs registered in other states or by USDOL's Office of Apprenticeship. Finally, corrections in the usage of terms, capitalization, punctuation and plain language have been inserted where appropriate.

Sections 601.1 and 601.2 contain technical and grammatical revisions only.

New definitions to subsections 601.3(a), (b), (e), (g), (i), (l), (n), (o), (p), (q), (r), (s), (t), (u), (v), (x), and (y) for the terms “Active Program,” “Apprentice,” “Apprenticeship Program,” “Department,” “Inactive Program,” “Journeyworker,” “Probation,” “Projected Completion Date,” “Recertification,” “Reciprocal Approval,” “Reinstatement of a Program,” “Reinstatement of an Apprentice,” “Signatory,” “State,” and “Substantially Owned Affiliated Entity” have been added to provide better understanding of terms that are regularly used by the Department and Program participants or clarification of new provisions that were adopted by the Department on September 29, 2009 during its initial phase of regulatory reform.

New definitions to sections 601.3 (c), (h), (j), (k), (s) and (z) for “Apprentice Probation,” “Approach,” “Competency,” “Completion Rate,” “Reciprocal Approval,” and “Transfer” were added to conform to Federal regulatory requirements.

Amendments to sections 601.3 (f), (i) and (m) contain technical or grammatical revisions only. Amendments to section 601.3(d) add new text to the definition of “Apprenticeable Occupation” incorporating the alternative approaches to apprentice training contained in the Federal rule.

Section 601.4 of the regulations setting forth the requirements for eligibility and procedure for registration is amended, repealed in part and reordered by adding the location of a permanent facility within the State [601.4(a)]; outlining the application process including requirements for group programs and provision for an appeal following denial of a program application [601.4(b)]; clarifying documentation required for proof of the Department’s approval of applications [601.4(c)]; providing a time-frame for modifications to essential elements of existing programs [601.(d)]; simplifying

procedures for programs which provide for union participation [601.4(e)]; adding trade updates, program approaches and programs seeking reciprocal approval to the list of proposals subject to public comment after being posted on the Department's website [601.4(f)]; and requiring newly approved programs to register an apprentice within six months of approval [601.4(g)].

Former sections 601.4(c), (d) and (h) are repealed.

Section 601.5 of the regulations outlining program standards is amended, repealed in part and reordered by adding technical and grammatical revisions to subsections 601.5(a), (b), (c), (d), (e), (f) and (g). Additional provisions to program standards require identification of the approach to be used in apprentice training [601.5(c)(2)]; enhance the requirements for providing related and supplemental instruction [601.5(c)(4)]; clarify the means a sponsor may use to credit an apprentice with advanced standing [601.5(c)(11)]; add the new Federal requirement that all related and supplemental instructors meet the Department of Education's qualifications training in teaching techniques and adult learning styles [601.5(c)(13)]; amend procedures and time-frames for notifying the Department of modifications to programs [601.5(c)(15)], and provide requirements for documentation of apprentice registrations, cancellations, transfers or graduations [601.5(c)(16)], as well as the apprentice's progress under the approach used [601.5(e)]. Section 601.5(g) requires sponsors of group programs to provide copies of their membership agreements or submit a signed agreement authorized by the Department. Former sections 601.5(h) and (i) are repealed, while a new section 601.5(h) sets forth the minimum amount of time an apprentice must work in on-the-job training in order to complete the program.

Sections 601.6(a),(b),(c),(d),(f),(g),(h),(i) and (j) contain technical and grammatical revisions to apprenticeship agreements. Section 601.6(d) addresses the Federal requirement that sponsors identify the approach used in apprentice training, including the period of time it would take to complete the program. Section 601.6(e) satisfies the Federal requirement that Apprenticeship Agreements include a period of apprentice probation and adds the methods to be used in measuring an apprentice's progress in the competency and hybrid approaches to the traditional time-based approach. Section 601.6(k) is amended to include provisions for cancellation of the Apprenticeship Agreement and a procedure for adjustment of controversies.

A new section 601.7 is added to address the Federal requirement that State Agencies offer the competency-based and hybrid approaches to apprentice training in addition to the traditional time-based method. Subsection (b) allows the program sponsor to select an appropriate method used for each trade, subject to the Commissioner's approval. The sponsor's plan for utilizing each approach, the required documentation and means for measuring each apprentice's progress are set forth in subsections (c) [time-based]; (d) [competency-based] and (e) [hybrid].

Section 601.8 is repealed and amended by adding new subsections (a),(b),(c),(d) and (e) conforming to the Federal standard that registered programs have at least one apprentice during any twelve month period; providing a period of probation for sponsors of new programs; outlining guidelines for monitoring program performance, including methods for calculating completion rates; adding requirements for re-certification of existing programs and a provision for inactive status for programs without an apprentice for extended periods of time because of current economic conditions.

Section 601.9 is amended by incorporating provisions of former section 601.7 governing the voluntary and formal deregistration of apprenticeship programs, adding the failure to register an apprentice for a period of twelve consecutive months to the categories of programs that may be deregistered.

Section 601.10 amended by adding new text to subsections (a), and (b) and new subsection (c) prohibiting sponsors, their members, participants, signatories, successors or substantially-owned affiliates of any Program formally deregistered from re-applying for Program registration for a period of three years [601.10(a)]; imposing a one-year ban on sponsors, their members, participants, signatories, successors or substantially-owned affiliates of Programs that have been either voluntarily deregistered after having been served with a Notice of Proposed Deregistration or deemed deregistered for not having registered an apprentice for a consecutive twelve month period [601.10(b)]; and allowing programs approved for voluntary deregistration to apply for reinstatement at any time [601.10(c)].

Section 601.11 incorporates and amends the provisions formerly contained in 601.9 describing the procedure for hearings conducted to formally deregister an apprenticeship program.

Section 601.12 incorporates the provisions of former section 601.10 providing that nothing in this Part shall invalidate (a) applicable standards in collective bargaining agreements or (b) special provisions for veterans, minority persons or females.

Section 601.13 is amended by incorporating the provisions of former section 601.11 expanding the categories of petitioners authorized to file a complaint with the Commissioner and adding the requirement that the complaint be submitted in writing.

Section 601.13 (b) clarifies the categories of petitioners authorized to file complaints relating to discrimination or equal opportunity, adding the requirement that the complaint be submitted in writing and relate to the subject of the apprenticeship program while section 601.13(c) provides that complaints relating to matters covered by a collective bargaining agreement shall be determined in accordance with the terms of that agreement and are not subject to review under this section. Section 601.13(d) describes the format for registering a complaint; section 601.13(e) provides an extension of time for the investigation of complaints involving violations of the Labor Law while section 601.13(f) provides that all complaints shall be acknowledged within ten business days of receipt, that interested parties will be provided with updates on the status of the investigation, as necessary, and outlines the procedure for resolution of the complaint.

Section 601.14 incorporates and amends the provisions of former section 601.12 with new text requiring sponsors to maintain records for all phases of the apprenticeship program and to provide those records for field inspections and review by the Department as necessary.

A new section 601.15 is added to meet the Federal requirement that, for Federal purposes, State Agencies must accord reciprocal approval to apprentices and programs registered in other states or by USDOL's Office of Apprenticeship. Section 601.15(a) provides that upon request, the Department will grant reciprocal approval to programs registered in other states or with USDOL's Office of Apprenticeship which have been made permanent or passed probation provided they submit proof of their registration and meet requirements for good standing applicable to programs registered in New York. Program sponsors who meet these standards and their apprentices will be registered for

federally funded projects in the State [601.15(c) and (d)]. Applicants who have been denied reciprocity may appeal the denial in an Article 78 proceeding [601.15(b)].

Section 601.16 is added to provide for consultation with the Apprenticeship Training Council in the construction or revision of 12 NYCRR Parts 600 and 601.

Section 601.17 contains a severability clause providing that in the event any single provision of this Part is held invalid, the remaining provisions shall not be affected.

Section 601.18 provides these proposals shall become effective upon adoption in the State Register.