

**DEPARTMENT OF LABOR****Employment and Training  
Administration****29 CFR Part 29**

RIN 1205-AB50

**Apprenticeship Programs, Labor  
Standards for Registration,  
Amendment of Regulations**AGENCY: Employment and Training  
Administration, Labor.

ACTION: Final rule.

**SUMMARY:** The Department of Labor (DOL or Department) is issuing this final rule to update regulations that implement the National Apprenticeship Act of 1937. 29 U.S.C. 50. DOL issued a notice of proposed rulemaking (NPRM) on December 13, 2007, outlining proposed updates to labor standards, policies and procedures for the registration, cancellation and deregistration of apprenticeship programs, apprenticeship agreements, and administration of the National Apprenticeship System. 72 FR 71020, Dec. 13, 2007.

**DATES:** *Effective date:* The final rule will become effective December 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** John Ladd, Administrator, Office of Apprenticeship, 200 Constitution Avenue, NW., Room N5311, Washington, DC 20210, e-mail [ladd.john@dol.gov](mailto:ladd.john@dol.gov); Telephone (202) 693-2796 (this is not a toll-free number) or (877) 889-5627 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** This preamble is divided into three sections. Section I provides general background information on the development of the final rule. Section II discusses the comments and regulatory changes in the final rule. Section III covers the administrative requirements for this final rule as mandated by statute and executive order.

**I. Background**

On December 13, 2007, the Department published an NPRM (72 FR 71020, Dec. 13, 2007) proposing to revise the regulations that implement the National Apprenticeship Act of 1937. We initially invited comments for a 60-day period through February 12, 2008. Several commenters submitted requests for an extension of the comment period. In response, we published a notice (73 FR 7693, Feb. 11, 2008) extending the comment period by 30 days. The comment period closed on March 12, 2008.

Unique, individual comments received during the comment period

following publication of the NPRM have been posted on [www.regulations.gov](http://www.regulations.gov). Although we considered all comments, duplicate copies of comments were not posted.

The National Apprenticeship Act of 1937 authorized DOL to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging their inclusion in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, and to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship.

The Department promulgated regulations for implementing the National Apprenticeship Act in 1977. The regulations govern the National Apprenticeship System in which the Department, State agencies, industry leaders, employers, employer associations, labor-management organizations (primarily consisting of labor organizations and employers), and educational institutions collaborate, develop, operate, and oversee apprenticeship programs that draw on the skills and knowledge that business and industry needs from its employees, to ensure that apprentices develop up-to-date and relevant skills. In the 30 years since, the Department and its partners in the National Apprenticeship System have recognized that technological advances, demographic changes, and globalization have significantly altered the context in which apprenticeship programs operate. The Department and its partners recognize that for registered apprenticeship to keep pace with these changes, and to continue apprenticeship's vital role in developing a skilled, competitive workforce, the regulatory framework for registration of apprenticeship programs and administration of the National Apprenticeship System must be updated. For example, many program sponsors have requested more flexibility in the requirements for provision of related technical instruction. Other program sponsors, particularly in industries that have not traditionally used registered apprenticeship, have sought flexibility in the requirements for length of time in the on-the-job learning component so that apprentices could progress toward program completion based on demonstration of competencies. The Government Accountability Office's August 2005 report, "Registered Apprenticeship Programs: Labor Can Better Use Data to Target Oversight," and the Office of

Management and Budget's Program Assessment Rating Tool (PART) review of Registered Apprenticeship, have emphasized the need to improve program quality and accountability in the National Apprenticeship System.

The December 13, 2007 NPRM proposed to revise 29 CFR part 29 based on these developments and in consultation with the Advisory Committee on Apprenticeship (ACA), the National Association of State and Territorial Apprenticeship Directors (NASTAD), and State Apprenticeship Agencies. This final rule implements changes to 29 CFR part 29 that will increase flexibility, enhance program quality and accountability, and promote apprenticeship opportunity in the 21st century, while continuing to safeguard the welfare of apprentices. In addition to the specific changes discussed below, we have made minor editorial changes throughout the final rule.

The final rule takes effect on December 29, 2008. However, States will have up to a 2-year period in which to make the changes to State law, regulation and/or policy needed to come into compliance with this final rule before having to apply for continued recognition under § 29.13(c). The Department will work with States to make as seamless as possible the transition from State laws recognized under current regulations to State laws recognized under the final rule.

**II. Discussion of the Comments and  
Regulatory Changes***Summary of Comments*

The Department received 2,660 submissions commenting on the NPRM by the close of the comment period. All comments were carefully reviewed. We found 2,437 to be cover letters, form letters or duplicates, a preponderance of which were from members of a single employer association supporting the proposed regulatory changes. Of the 223 non-duplicative comments, the majority were from labor organizations and employer associations that sponsor registered apprenticeship programs, and state government entities. All relevant comments are discussed below. In response to these comments we made several substantive changes which are discussed below.

Twenty-five commenters expressed general support for the NPRM and agreed that the proposed changes will update, improve, and advance the mission of the National Apprenticeship System to meet the needs of today's industry and economy. Other commenters generally commended the Department for improving and

promoting registered apprenticeship and the National Apprenticeship System.

Twenty-five commenters generally preferred the current regulatory framework for registered apprenticeship over the proposed changes, stating that the current regulations work well and that the proposed changes are unnecessary. We also received comments indicating disapproval of the proposed changes due to concerns over the potential impact on State agencies. Additional commenters suggested that the proposed changes may impact certain apprenticeship programs more than others. A few commenters disapproved of the proposed changes due to the potential implications for apprentices.

#### *Discussion of Comments*

##### **Purpose and Scope (§ 29.1)**

A few commenters agreed with the addition to the Purpose and Scope of the phrase “promote apprenticeship opportunity.” They noted that this addition is a fundamental objective of the National Apprenticeship Act and should be expressly included in DOL regulations.

*Response:* After review of the comments we will promulgate the rule as proposed.

##### **Definitions (§ 29.2)**

Section 29.2 clarifies and redesignates existing definitions and establishes new definitions for certain terms used in the registration of apprenticeship programs and in the ongoing operations of the National Apprenticeship System. We proposed to carry forward the following existing definitions for terms defined in the original regulations:

“administrator,” “apprentice,” “apprenticeship program,” “cancellation,” “Department,” “employer,” “Federal purposes,” “registration of an apprenticeship agreement,” “registration of an apprenticeship program,” “sponsor,” and “State.” Accordingly, we did not invite comments on these terms. Similarly, the final rule carries forward the definitions for these terms, as contained in the existing regulations. Of the proposed new and amended definitions, we did not receive comments on the definitions for “Office of Apprenticeship,” “Registration Agency,” “technical assistance,” and “State office.” We made no changes to the proposed definitions of these terms.

We received one comment about the definitions in general. The commenter argued that the definitions in § 29.2 would require State Apprenticeship

Agencies to control and direct State Apprenticeship Councils, thus reversing traditional authority without any clear explanation of why the Department wants to change the council-agency relationship. The commenter also asserted that the definitions are an unauthorized intrusion on a State’s legislative rights and priorities.

*Response:* We have determined that State Apprenticeship Agencies are the appropriate entities to receive the Department’s grant of authority to register apprenticeship programs and apprentices for Federal purposes. For reasons enumerated below, we require the State Apprenticeship Agency to determine the role of the State Apprenticeship Council. Under the existing regulatory scheme, the Department’s oversight of the National Apprenticeship System has been complicated by the fact that States in which the Registration Agencies are State Apprenticeship Councils vary considerably in their policies and procedures for the administration of registered apprenticeship for Federal purposes. For example, we have found it difficult to hold State Apprenticeship Councils accountable for conformity with the requirements of part 29 because the Councils are sometimes comprised of independent, appointed individuals, who may not be answerable to the State government agency that actually operates the daily functions of registered apprenticeship for Federal purposes in the State. In another case, the State Apprenticeship Council’s limited involvement in the full time operations of the State’s registered apprenticeship operations has impeded the Department’s working relationship with the State Apprenticeship Council. In other instances, State Apprenticeship Councils have not made determinations about approval of apprenticeship program standards in a timely manner. In order to achieve consistency within the National Apprenticeship System for the promotion of registered apprenticeship opportunities and for the registration of apprenticeship standards that meet the requirements of this part, we have determined that the relationship between the Federal government and the entities that act on our behalf must be between two government agencies: DOL and the cabinet-level government agency in each State’s government that operates and manages the functions of registered apprenticeship in that State. At the same time, we recognize the considerable value that State Apprenticeship Councils provide for the promotion and establishment of

apprenticeship programs. State Apprenticeship Council members are often closely associated with apprenticeship program sponsors and can directly facilitate linkages between apprentices and program sponsors. As explained below in the discussion of § 29.13(a)(2), States seeking recognition from the Department are still required to establish State Apprenticeship Councils for advisory and or regulatory purposes. Under the revised regulatory framework, where a State has been “recognized,” the State Apprenticeship Council must operate at the direction of the State Apprenticeship Agency. Having given full consideration to the general comment about the impact of the proposed definitions on the relationship between State Apprenticeship Councils and State Apprenticeship Agencies, we are promulgating the definitions for State Apprenticeship Agency and State Apprenticeship Council as proposed.

##### **“Apprenticeship Committee (Committee)”**

Five commenters addressed the proposed definition of “apprenticeship committee,” which clarified that an apprenticeship agreement is between an apprentice and either the apprentice’s program sponsor, or an apprenticeship committee acting as an agent for the program sponsor. One commenter supported the definition as proposed. Other commenters noted that use of the term “worker” may be confusing in the parenthetical notation in paragraph (b), which defines a non-joint committee as “a unilateral or group non-joint (may include workers) committee [which] has employer representatives but does not have a bona fide collective bargaining agent as a participant.” The commenter suggested that for consistency, the term “employee” should replace the term “worker.” Another commenter suggested that the incumbent workforce of a program sponsor is a stakeholder that should be included in the definition of “apprenticeship committee,” regardless of the status of a collective bargaining agreement in a program sponsor’s workplace. Another commenter recommended removing the terms “non-joint,” in paragraph (b), and “joint” in paragraph (a), which specifies that “a joint committee is composed of equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent.” The commenter suggested the phrase, “unilateral or group, which shall include equal numbers from employer(s) and employees.” Another commenter suggested that the proposed change in which an apprenticeship committee acts

as an agent of the apprenticeship program sponsor, is not the apprenticeship program sponsor, and is to be subordinate to the apprenticeship program sponsor, appears to be inconsistent with the core concepts of the Employee Retirement Income Security Act of 1974 (ERISA).

*Response:* We agree with the suggestion that the use of the term “workers,” in place of “employees,” may cause confusion, and so we have changed the definition by replacing “workers” with “employees” in paragraph (2). We do not agree with the suggestion to delete the terms “joint and non-joint.” The commenters suggested replacement wording does not adequately provide the flexibility needed to address the variety of circumstances faced by apprenticeship committees across the nation. Nor are we convinced that the terms “joint and non-joint” are problematic. These terms are well-recognized and used throughout the National Apprenticeship System. Accordingly, we have kept the terms “joint and non-joint.” We also do not agree with the suggestion that a program sponsor’s incumbent workforce should be required members of an apprenticeship committee. The determination to include employees on an apprenticeship committee is most appropriately addressed by the program sponsor, not DOL. As mentioned, one comment noted that the definition of “apprenticeship committee” may be inconsistent with ERISA because it might be read as requiring the apprenticeship committee to always act in the sponsor’s interest, rather than in the interest of the participants when the committee is carrying out fiduciary responsibilities. Although we do not agree with this reading of the definition, we have modified the definition to avoid confusion on this point.

#### “Certification or Certificate”

Three commenters expressed concern over the potential effect of paragraph (a) of the proposed definition of “certification or certificate” on individual programs that are currently using State-approved industry standards. Paragraph (a) provides that in order to receive certification from the Office of Apprenticeship, national guidelines for apprenticeship standards which are developed by a national committee or organization for policy or guideline use by local affiliates must conform to the standards of apprenticeship set forth in § 29.5. Commenters stated that standards approved by State Apprenticeship Agencies are more trade-specific and protective of apprentices’ safety than

any proposed national guidelines for apprenticeship standards. They also stated that it would be problematic to allow an outside “national committee or organization” to dictate the direction of individual programs and concluded that national guidelines for apprenticeship standards will “erode apprenticeship standards by trade, and blend multiple trades into one standard.” In addition, a few commenters questioned who would set the standards used in national guidelines for apprenticeship standards.

*Response:* These comments appear to reflect a misunderstanding of the current definitions of “certification or certificate.” The purpose of national guidelines for apprenticeship standards, as established by the definition of “certification” in the existing regulations, is to provide policy and guidance to local affiliates of national organizations in developing standards for approval and registration. National Guideline Standards are developed by national committees or organizations, joint or unilateral, and are certified by DOL’s Office of Apprenticeship as substantially conforming to the requirements of 29 CFR parts 29 and 30. When local affiliates develop local standards for registration, even though the local standards may be based upon the organizations’ National Guideline Standards, they must meet all the requirements of and be approved by the Registration Agency in that State. Thus, the approval of national guidelines for apprenticeship standards in no way precludes a State Apprenticeship Agency or a local sponsor from developing apprenticeship standards that are more trade-specific or protective. This flexibility does not, however, authorize a State Apprenticeship Agency to develop or approve standards that improperly restrict registered apprenticeship opportunities. Therefore, we are promulgating the definition of “certification or certificate” as proposed.

#### “Competency”

Sixteen commenters weighed in on the proposed definition of “competency,” which means “the attainment of manual or technical skills and knowledge, as specified by an occupational standard.” Many expressed apprehension over the implications of the definition, suggesting that it does not clearly articulate how competency will be measured (e.g., on a set of validated industry and trade-specific standards). Others noted that the definition does not mandate specific types of training (e.g., on-the-job, classroom) that are

often critical to meet industry accepted guidelines for journey-level status. Finally, others raised concerns that with this definition, journeyworker status will be determined in a subjective manner, without strict standards for objective program administration.

*Response:* We agree that the definition needs to address the measurement of competency with greater specificity. Therefore, we have revised the proposed definition to provide for the “attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on measurement of proficiency.” To align with the criteria for apprenticeable occupations established under § 29.4(c), the final rule adds the term “mechanical” as a descriptor of the skills and knowledge that are attained.

Regarding concerns that the definition does not require specific types of training and that journeyworker status will be determined in a subjective manner, we have concluded that apprenticeship programs need flexibility when setting the requirements for training and the attainment of journeyworker status, so that the program standards can take into account the circumstances of particular occupations and programs. Additionally, we note that the requirement for an apprenticeable occupation to include on-the-job learning as specified in § 29.4(c), and the requirements for apprenticeship program standards to include on-the-job learning as specified in § 29.5(b)(2) and related instruction specified in § 29.5(b)(4), address concerns regarding specific training. Therefore, we do not adopt the comments that favor a more prescriptive approach to those matters in the definition of “competency.”

#### “Completion Rate”

Several commenters requested a formal definition of the term “completion rate,” stating that further guidance was necessary for evaluating program performance based on a completion rate.

*Response:* We agree that a definition of “completion rate” is necessary to facilitate compliance with the requirement in § 29.6 to evaluate the performance of apprenticeship programs, which is a critical component of strengthening accountability for program outcomes. The final rule adds a definition for the term “completion rate” to mean “the percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within 1 year of the projected

completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a 1 year time frame." This definition is consistent with the methodology used by other Federal employment and training programs, which measure program outcomes by calculating rates of program participants who successfully achieve a specific outcome such as entering employment or retaining employment. Consistency in methodology will minimize the implementation burden on Registration Agencies and will further align registered apprenticeship with other workforce investment programs.

#### "Electronic Media"

Although commenters did not provide any comments specific to the proposed definition for "electronic media," many raised concerns that the use of electronic media in the proposed revision to related instruction could supplant, reduce, or eliminate an apprentice's interface with an instructor in a lab or classroom setting. They emphasized the importance of classroom and hands-on learning for the successful acquisition of skills and knowledge necessary for completion of an apprenticeship program.

*Response:* We recognize the validity of this concern, as addressed further in the discussion of § 29.5(b)(4). However, we have determined that the inclusion of electronic media in the definition of "related instruction" is necessary to align the National Apprenticeship System with technological advances in the delivery of related instruction. We have made no change to the proposed definition of "electronic media."

#### "Interim Credential"

Some commenters suggested that the proposed definition for "interim credential," which is "a credential issued by the Registration Agency, upon the request of the sponsor, as certification of competency attainment by an apprentice," does not sufficiently include requirements for the recipient to meet an objective, external standard associated with the subject matter for which an interim credential is issued. Others asserted that the definition of "interim credential" could diminish the meaning and significance of the status of "journeyworker", and that the use of interim credentials in the National Apprenticeship System may serve as a disincentive to completing an apprenticeship program.

*Response:* We recognize these concerns and address them below in our discussion of the requirements for program standards in § 29.5(b). We have

made no change to the proposed definition of "interim credential."

Issuance of interim credentials will be determined by the program sponsor's choice of approach for an apprentice's progression through an apprenticeship program: Competency-based, time-based, or hybrid. Program sponsors must identify and define all interim credentials in the program standards that are registered with the Registration Agency. Interim credentials may be issued only for industry-recognized components of an apprenticeable occupation. Therefore, if an apprenticeship program's standards do not include provisions for issuance of interim credentials for specific components of an apprenticeable occupation, the Registration Agency with which the program is registered may not issue interim credentials to apprentices registered with that program.

We reiterate that interim credentials are issued by the Registration Agency, upon request of the appropriate sponsor, as certification of an apprentice's attainment of competency. Further, the regulations do not require program sponsors to include interim credentials in their program standards, nor do they require sponsors to request that a Registration Agency issue interim credentials to apprentices registered in their apprenticeship programs. The Department also recognizes that some Registration Agencies may find the issuance of interim credentials to be unduly burdensome and beyond their capabilities. Therefore, Registration Agencies, other than the Office of Apprenticeship, may opt not to offer this additional service.

We have concluded that the revised regulatory framework does not detract from the overall goal of the National Apprenticeship System to support and enable apprentices to complete an apprenticeship program. Through the authorization of interim credentials, the National Apprenticeship System recognizes that some industries and occupations are more amenable to an incremental recognition of an apprentice's increasing skills, knowledge, and abilities. In such industries the use of interim credentials can, thereby, afford multiple opportunities for apprentices to grow and expand their knowledge and their capacity to meet current, new, and emerging industry advances. Use of interim credentials also recognizes the fact that not all apprentices will complete their apprenticeship programs and offers opportunities for recognition of what these individuals have learned. Therefore, interim credentials will also

enable apprentices to obtain portable credentials commensurate with the skills and competencies acquired and demonstrated throughout an apprenticeship. Notwithstanding the value of interim credentials, the issuance of a certificate of completion of apprenticeship, and the associated "journeyworker" status, remains the ultimate goal for the National Apprenticeship System.

#### "Journeyworker"

Ten comments were submitted on the proposed definition of "journeyworker." One commenter requested inserting the word "abilities" to the definition to read "a worker who has attained a level of skills, abilities, and competencies recognized within an industry," asserting that use of the term "abilities" provided a more thorough recognition of a journeyworker's qualifications. Multiple commenters recommended using industry standard definitions for "journeyworker," asserting that permitting employers to recognize other definitions would leave the National Apprenticeship System open to abuse. Others asserted that by expanding the term to refer to a mentor, technician, specialist or other skilled worker gives the employer the authority to determine journeyworker status. One commenter argued for retention of the term "journeyman," because in the traditional sense it is not and has not been gender-specific, and that it refers to rank or status in a skilled trade.

*Response:* We agree with the suggestion to expand the definition to include "abilities," and have revised the definition accordingly. We disagree with the assertion that by granting individual employers the authority to designate journeyworker status, the term "journeyworker" will be subject to abuse in the National Apprenticeship System. Currently, program sponsors designate an individual as a journeyworker when that individual has sufficient skills, abilities, and competencies to be recognized by the employer as a journeyworker. The revised regulatory framework carries forward this approach currently used in the National Apprenticeship System. With regard to the use of the term "journeyworker," the Department of Labor is committed to avoiding the use of terms that are or may appear to be gender-specific, even if the historic usage of the term has not been so. We disagree with the assertion that the term journeyman is not gender-specific. Accordingly, the final rule retains the term "journeyworker."

**“Provisional Registration”**

Several comments on proposed revisions to § 29.3(g) and § 29.3(h) regarding provisional registration indicate that the proposed definition of “provisional registration” did not adequately specify the process by which a provisionally registered program would receive permanent registration, continuance of provisional registration, or rescission of registration.

*Response:* We agree with these comments and have clarified the requirements by expanding the definition of “provisional registration” to refer to the relevant criteria in § 29.3(g) and § 29.3(h), which provide for provisional registration and review of provisionally registered programs. These additions will avoid any ambiguity between the proposed definition of provisional registration in § 29.2, and the subsequent opportunity for additional review and/or removal of the provisional status after the first full training cycle. Accordingly, in the final rule “provisional registration” is defined to mean, “the 1-year initial approval of newly registered programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the Registration Agency, as provided for in the criteria described in § 29.3(g) and § 29.3(h).”

**“Quality Assurance Assessment”**

In their discussion of program performance standards in proposed § 29.6, some commenters recommended establishing a clear definition of “quality assurance assessment.”

*Response:* We agree that § 29.6 will be improved by adding a formal definition for “quality assurance assessment,” so that programs are assessed consistently and fairly across the National Apprenticeship System. Accordingly, in the final rule “quality assurance assessment” means, “a comprehensive review conducted by a Registration Agency regarding all aspects of an apprenticeship program’s performance, including but not limited to determining if apprentices are receiving: On-the-job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the Registration Agency is receiving notification of all new registrations, cancellations, and completions as required in this part.” This definition codifies the Office of Apprenticeship’s

existing practice of reviewing programs for quality based on the factors described above.

**“Registration Agency”**

A commenter asserted that by expanding the definition of “Registration Agency” to include registration of apprentices and programs, providing technical assistance, and conducting reviews for compliance with parts 29 and 30, and quality assurance assessments, the Department is attempting to retain the services of a State Apprenticeship Agency without Federal funding or State legislative approval.

*Response:* We disagree with these assertions. The definition of “Registration Agency” codifies existing practice in the National Apprenticeship System in which a Registration Agency, whether it is the Office of Apprenticeship or a recognized State Apprenticeship Agency, provides guidance and assistance to help program sponsors comply with this part; reviews registered programs; and registers apprentices and programs. We view these functions as necessary to properly administer the National Apprenticeship System. Further, the definition is intended to emphasize consistency across the National Apprenticeship System regarding the types of support and assistance that registered apprenticeship program sponsors should receive from a Registration Agency, regardless of their geographic location. It should also be noted that State Apprenticeship Agency recognition as a Registration Agency, for Federal purposes, is voluntary. We have made no change to the proposed definition of “Registration Agency.”

**“Related Instruction”**

Several commenters noted that the proposed separation of apprenticeship’s theoretical instruction into two terms, “related technical instruction” and “supplemental instruction,” creates undue complications. On the other hand, a commenter praised the addition of “supplemental instruction,” stating that such instruction will increase opportunities for learning, as well as provide additional opportunities to create and ensure equitable classroom and worksite environments. Other commenters asserted that “related instruction” should not be limited to “core” requirements. Further, the commenters noted that safety processes like CPR/first-aid training may be part of a related training for many apprenticeable occupations and expressed concern that valuable training would be marginalized.

*Response:* We agree that the commenters have raised valid concerns and we have therefore deleted the proposed definition of “supplemental instruction.” Our intent in separating the two terms was to clarify that instruction specific to a particular occupation is “related instruction,” and instruction that is relevant but not necessarily occupationally-specific is “supplemental instruction.” However, we recognize that the proposed elements of supplemental instruction, such as job site management, leadership, communications, first-aid/CPR, field trips, and new technologies/processes, and in particular those pertaining to health and safety, have been long-standing facets of the term “related instruction.” The final rule retains the existing term “related instruction” and thus carries forward existing practice in the National Apprenticeship System which incorporates the components of the proposed definition of “supplemental instruction.” We have also deleted the term “core” from the definition of “related instruction,” to indicate that all components of related instruction that are related to the occupation are important to an apprenticeship program, whether or not they are occupation-specific. We have also added a comma after the phrase “such instruction may be given in a classroom,” to make the definition consistent with the substantive provisions in § 29.5(b)(4). Therefore, in the final rule, “related instruction” means, “an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice’s occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the Registration Agency.”

**“State Apprenticeship Agency”**

We received two comments on the definition of “State Apprenticeship Agency.” One commenter stated that the proposed definition of “State Apprenticeship Agency” would allow for the State Apprenticeship Agency to assume the powers of the State Apprenticeship Council. The other commenter sought clarification on the proposed definition.

*Response:* The proposed definition of “State Apprenticeship Agency” as “an agency of a State government that has responsibility and accountability for apprenticeship within the State,” reflects the Department’s determination

that only State government entities should be recognized as Registration Agencies, in order to ensure accountability for oversight and management of a State's apprenticeship system for Federal purposes. As discussed above, where a State Apprenticeship Agency has been "recognized," the State Apprenticeship Agency must establish and maintain a State Apprenticeship Council. Additionally, as explained in the discussion of § 29.13(a)(2), we have clarified that the Council operates at the direction of the State Apprenticeship Agency. Therefore, we have made no changes to the proposed definition of "State Apprenticeship Agency" nor to the State Apprenticeship Agency's role as the only entity authorized to register and oversee apprenticeship programs and agreements for Federal purposes. "State Apprenticeship Council"

Two commenters questioned if the definition of "State Apprenticeship Council" would mean that the Council would only serve an advisory role rather than a regulatory role.

*Response:* Our intent in the proposed rule was to provide that the State Apprenticeship Council could serve in either an advisory role or regulatory role. As explained further in the discussion of § 29.13(a)(2), we have clarified that a State Apprenticeship Council operates at the direction of the State Apprenticeship Agency. Depending on how this direction is exercised, a State Apprenticeship Council could serve either a regulatory or an advisory role. The requirements for operation of a State Apprenticeship Council are set forth in §§ 29.13(a)(2) and (b)(3). We have made no change to the proposed definition of "State Apprenticeship Council."

"Transfer"

Several commenters noted that the proposed revisions regarding apprentice transfers in § 29.5(b) and the proposed new definition of "transfer" in § 29.2 raise questions about approval and consent for transfer and the potential impact on apprenticeship program sponsors. Several commenters questioned the need for apprentices to initiate requests for transfers, asserting that such latitude could enable apprentices to transfer registration without regard to negative impact on program sponsors. Other commenters suggested that program sponsors could use the provisions of this definition to transfer an apprentice to another program or to another employer without the apprentice's consent, thereby

potentially negatively impacting the safety and welfare of the apprentice.

*Response:* We do not foresee that the transfer of apprenticeship registration from one program to another or from one employer to another would occur frequently or on a regular basis. The intent of this provision is to provide flexibility for an apprentice to continue his or her apprenticeship in changing circumstances, such as the need for geographic relocation for personal reasons. However, we agree that all parties to the transfer must be in agreement in order to avoid potential negative impacts. Accordingly, we have revised the definition to clarify that in order for a transfer to occur, the affected parties (i.e., the apprentice and each apprenticeship committee or program sponsor) must reach agreement regarding the shift of the apprentice's registration from one program to another or from one employer within a program to another employer within that same program.

Eligibility and Procedure for Registration of an Apprenticeship Program (§ 29.3)

This section addresses the criteria and process used by a Registration Agency to register apprenticeship programs. In general, the comments we received supported the proposed changes which were designed to ensure high quality for registered apprenticeship programs, assist program sponsors through early intervention and technical assistance, and foster closer working relationships between the apprenticeship sponsors and Registration Agencies.

Resources

Several commenters raised concerns about the adequacy of the resources available to the DOL and the Office of Apprenticeship for follow through requirements pertaining to provisional registration. Two commenters asked who would pay for technical assistance provided to new programs.

*Response:* As under current regulations, the resources necessary to carry out the requirements of § 29.3 would be the responsibility of the Registration Agency, including provision of technical assistance. States seeking registration authority for Federal purposes must be prepared to provide resources necessary for these responsibilities.

Provisional Registration

Proposed § 29.3(g) is a new provision which establishes provisional approval for 1 year of new programs that the Registration Agency preliminarily determines comply with part 29. Most

commenters supported the concept of provisional registration for new programs, but expressed concern that DOL currently appears to be understaffed and would not have adequate resources to perform the reviews required at the end of a program's first year to determine if the program should receive full recognition. Some commenters asserted that the determination to grant provisional program approval, regardless of length, belongs to State Apprenticeship Agencies.

*Response:* As discussed in the NPRM, the "provisional registration" concept was added to enhance monitoring of the performance of apprenticeship programs registered for Federal purposes by the Office of Apprenticeship and recognized State Apprenticeship Agencies (i.e., the Registration Agencies). As we have repeatedly emphasized, the States derive any authority they exercise, for Federal purposes, from the recognition accorded by the Department. Therefore, provisional program approval does not impinge on State authority.

We recognize that adequate resources are required to successfully address the additional workload associated with provisional registration procedures. Accordingly, we are realigning resources to provide these services in States where the Office of Apprenticeship serves as the Registration Agency. As discussed below under § 29.13, Recognition of State Apprenticeship Agencies, States seeking registration authority for Federal purposes must provide sufficient resources to perform all the functions of a Registration Agency. We have revised § 29.3(g) to clarify that the Registration Agency is responsible for reviewing programs for quality and conformity with the requirements of this part at the end of the first year after registration. A program that conforms to the requirements of part 29 may be permanently approved, or the provisional approval may be extended through the end of the first training cycle. A program not in operation or not conforming to the regulations during the provisional approval period must be recommended for deregistration procedures.

Program Reviews

Proposed § 29.3(h) provides that a satisfactory review at the end of the first full training cycle will result in removal of provisional approval, and provides that subsequent reviews will be conducted no less frequently than on a five-year cycle. A few commenters questioned how this five-year cycle of program reviews, which generally

corresponds to the completion of the first full training cycle, aligns with competency-based or hybrid programs that may have training cycles of different lengths. Other commenters questioned if the five-year cycle provided in § 29.3(h) would conflict with a State Apprenticeship Agency's program review cycle that might occur more frequently.

*Response:* Competency-based and hybrid programs also have requirements for on-the-job work experience associated with program completion, but the cycles of each may vary in length from traditional apprenticeship programs. To address this, § 29.3(h) of the final rule clarifies that subsequent reviews will be completed after a satisfactory review at the end of the first full training cycle, and must be conducted no less frequently than every 5 years. Section 29.3(h) does not preclude a State Apprenticeship Agency from conducting reviews more frequently than prescribed. If a review demonstrates that a provisionally registered program has satisfactorily met the requirements of this part in a timeframe shorter than the typical 5 years, provisional registration may be transformed to permanent registration.

#### Timeframe for Approval of Proposals and Modifications

A few commenters questioned the requirement in § 29.3(i) for a Registration Agency to make a determination on whether to approve sponsor proposals or applications for modifications to registered programs within 45 days from the date of receipt. Existing regulations simply provide for "prompt" submission of requests for modification and set no timeframe for a Registration Agency and provide no guidance on what the Registration Agency must do to process the application or modification. Commenters asserted that 45 days does not provide sufficient time for review and comment. In particular, this proposed requirement would not align with schedules for State Apprenticeship Councils that only meet quarterly or every 90 days, to review proposals and modifications for registered apprenticeship programs. Other commenters did support the proposed 45-day timeframe for the Registration Agency to make a determination whether to approve such submissions.

*Response:* In light of the quarterly meeting schedule used by many State Apprenticeship Councils and State Apprenticeship Agencies for review of proposals and modifications, a 90-day timeframe is more appropriate for the Registration Agency to make

determinations whether to approve such submissions. We have also clarified that if approved, the Registration Agency will record and acknowledge the modifications within 90 days of approval. Final § 29.3(i) also clarifies that if the modifications are not approved, the Registration Agency will notify the sponsor of the disapproval, and provide reasons therefore. Final § 29.3(i) has been changed accordingly.

#### Criteria for Apprenticeable Occupations (§ 29.4)

Section 29.4 revises the criteria for determining when an occupation qualifies as apprenticeable. The revisions proposed in the NPRM align § 29.4 with changes to ways to progress through an apprenticeship program, as discussed further in the discussion of § 29.5(b)(2). Some commenters raised questions and concerns about deletion of the term "skilled trade" and inconsistency between an apprenticeable occupation's requirement for hours of on-the-job learning and the competency-based approach for completion of an apprenticeship program, provided by final § 29.5(b)(2).

#### Deletion of "Skilled Trade"

A few commenters raised concerns about the deletion of the term "skilled trade" in describing an apprenticeable occupation, asserting that the term is recognized nationally in the construction industry, and is commonly used.

*Response:* We acknowledge that the term "skilled trade" is a nationally recognized term in the construction industry, and emphasize that deletion of this term in the regulations for the National Apprenticeship System is not meant to discourage continued use of this term. However, as apprenticeship expands into new industries, we have determined that more generic approach better reflects the terminology used by a variety of industries. Accordingly, we have not added "skilled trade" to the final rule.

#### Hours of On-The-Job Learning

Some commenters suggested that requiring at least 2,000 hours of on-the-job work experience in § 29.4(c) conflicts with the competency-based approach outlined in § 29.5(b)(2).

*Response:* The 2000 hour standard in § 29.4(c) is solely for the purpose of helping to define an apprenticeable occupation. In order for an occupation to be considered apprenticeable it must be an occupation which, if learning were conducted in the traditional on-the-job manner, would require at least

2,000 hours of on-the-job learning. As is discussed more fully in the next section on standards of apprenticeship, only "time-based" apprenticeship programs will be required to provide for at least 2000 hours of actual on-the-job learning. "Competency-based" and "hybrid" programs also will be required to provide for on-the-job learning, but the required hours will vary by program.

The comments on this section have brought to light an inconsistent and interchangeable use of the terms "on-the-job training" and "work experience" throughout the proposed rule to refer to the on-the-job learning component of registered apprenticeship, as required in § 29.4(c) and § 29.5(b)(2). We have replaced the terms "on-the-job training" and "on-the-job work experience" with the term "on-the-job learning" throughout the final rule.

#### Standards of Apprenticeship (§ 29.5)

Proposed changes to § 29.5 regarding standards of apprenticeship received many comments; over 132 comments pertained to the use of a competency-based approach to progression through an apprenticeship. Other significant areas of interest centered on related instruction, apprentice instructor certification, advanced standing or credit, transfers, interim credentials, and cancellation rate.

#### Three Approaches to Completion of Apprenticeship

Section 29.5(b)(2), which is based on the existing requirement that on-the-job learning must be consistent with industry practice, presents three methods by which an individual apprentice may progress toward the industry standard for work experience. These methods are: (i) A time-based approach involving completion of at least 2,000 hours of on-the-job work experience; (ii) a competency-based approach involving successful demonstration of acquired skills and knowledge by an apprentice, as verified by the program sponsor, plus an on-the-job learning component; and (iii) a hybrid approach involving completion of a specified minimum number of hours plus the successful demonstration of competency.

Many commenters raised questions and asked for clarification about the proposed three approaches. Many commenters questioned whether the competency-based model would require on-the-job learning. Most commenters expressed concern that the proposed terms were not adequately defined, that industries should be equipped to monitor validity and achieve standardization, and that existing

minimum standards would be compromised. A community-based organization praised the proposed three approaches, citing studies that indicate that nontraditional apprentices, such as women, are more likely to complete programs if such requisites as pre-apprenticeship training programs were recognized in a competency-based or hybrid approach. Several commenters expressed concern that the competency-based and the hybrid methods for completion of an apprenticeship would allow apprentices to circumvent on-the-job learning and related technical instruction with a demonstration of acquired skills and knowledge. Other commenters expressed apprehension over the potential for safety compromise, particularly in the construction industry, and the need to "safeguard the welfare of apprentices." One commenter asserted that a competency-based apprenticeship program would not require an apprentice to demonstrate competency in a "real time, distracting, sometimes noisy, sometimes dirty, and often unpredictable environment." Many commenters interpreted proposed § 29.5(b)(2) to mean that all program sponsors would have to adopt all three approaches for completion of apprenticeship.

*Response:* This rule carries forward the traditional model because it has worked well in many occupations that have used a time-based approach for registered apprenticeship; we expect that most program sponsors in those occupations will continue using this approach. However, as part of the Department's strategic emphasis on meeting the training needs of business and workers, and our policy of expanding apprenticeship, it has become clear that the traditional time-based approach to training does not fit the norms of all industries or occupations seeking to use the registered apprenticeship model. The final rule acknowledges the needs of industries that prefer to continue to use a time-based approach for registered apprenticeship, as well as those industries that require more flexibility in how an apprentice can attain the journeyworker level of proficiency.

We agree that clarifying language is required for all three approaches to ensure that on-the-job learning is a required component of all apprenticeship programs. Paragraph (ii) of § 29.5(b)(2) has been revised to include additional language specifying that programs using the competency-based approach must still require an apprentice to complete the on-the-job learning component of registered

apprenticeship. We emphasize that on-the-job learning remains the primary method by which apprentices gain the competencies necessary for successful completion of a competency-based or hybrid apprenticeship program. An apprenticeship program's use of a competency-based or hybrid approach does not exempt apprentices from participating in the fundamental elements of registered apprenticeship: on-the-job learning and related instruction.

The Office of Apprenticeship guidance on competency-based and hybrid apprenticeship in Circular 2005-03 describes how program sponsors and apprentices can comply with the requirements for minimum on-the-job learning for each major work process using the competency-based or hybrid approach outlined in § 29.5(b)(2). Additionally, materials available on the CareerOneStop Web site (<http://www.careeronestop.org/competencymodel>) provide examples of recently approved competency-based apprenticeship programs in the advanced manufacturing and health care industries. These examples showcase the depth and breadth of the information required to define a "competency," establish a proficiency level for that competency, and develop a test and evaluation for said competency. This guidance reinforces that the competency-based model does not negate requirements for on-the-job learning and related instruction. Such requirements will ensure that all apprentices are exposed to workplace conditions and properly trained in the safety requirements essential to the industry.

Neither the proposed nor the final rule requires program sponsors or Registration Agencies to adopt all three approaches. A new paragraph (iv) has been added to § 29.5(b)(2) to clarify that the determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the Registration Agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered.

We seek to provide a variety of industries with greater flexibility and options for approaches to addressing their talent-development needs through apprenticeship. As discussed in the NPRM, business, industry, and labor have requested a more flexible and accountable National Apprenticeship System that meets their workforce development needs. Through pilot programs in which sponsors measured apprentices' attainment of certain skills and competencies rather than using the

traditional, time-based approach, many new business, labor, and industry partners in National Apprenticeship System have found that competency-based apprenticeship provides the flexibility and accountability necessary to use registered apprenticeship in their respective industries and occupations. Final § 29.5(b)(2) provides greater flexibility for registered apprenticeship programs to address career development plans of registered apprentices. As we emphasized in the NPRM, the three approaches reflect the experience of the traditional building and construction trades and industrial sectors' use of time-based apprenticeship, while addressing the needs of new and emerging industries seeking to participate in the National Apprenticeship System. Therefore, we anticipate that program sponsors will use the approach that best meets the needs of their particular industry. We do not intend to discourage the use of the time-based approach in those occupations in which it has proven successful nor for any new occupations that lend themselves to that approach.

#### Related Instruction

The majority of comments on provisions for related and supplemental instruction stated that training through the use of electronic media as proposed in § 29.5(b)(4) should not supplant or replace an apprentice's ongoing, face-to-face interaction and classroom time with an instructor. Some commenters suggested that the Department clarify that electronic media can be used to supplement classroom instruction, but that it is not a substitute for instructor/apprentice interaction. Many suggested that electronic media should not be allowed as the sole method for related technical instruction, as it would be open to widespread misuse and mismanagement. Others suggested that the regulations require that a majority of, or a significant portion of related instruction should be provided through in-person instruction. Other commenters supported the use of electronic media in related instruction, because it enhances flexibility in registered apprenticeship and recognizes new training methods and technologies.

*Response:* The inclusion of electronic media for related instruction is critical to aligning the National Apprenticeship System with technological advances and appropriate industry application of such advances. Section 29.5(b)(4) does not require that all industries and apprenticeship programs must use electronic media; rather, it permits use of electronic media as a tool to support

industry learning styles. Section 29.5(b)(4) retains other methods of related instruction such as classroom, occupation, or industry courses, or other instruction approved by the Registration Agency. The extent to which an apprenticeship program incorporates electronic media into the provision of related instruction depends on the learning objectives for the particular occupation associated with that program. Therefore, the regulatory framework for apprenticeship should not specify how related technical instruction will be delivered. Such decisions are most appropriately determined by program sponsors, subject to approval by the Registration Agency. Through the provisional registration process and the review of modifications to registered programs established in § 29.3(g), (h), and (i), Registration Agencies will coordinate with program sponsors to identify the appropriate method(s) of providing related technical instruction. The Registration Agency's evaluation of program performance in the quality assurance assessment process, as established in § 29.6(b), will identify and assess any changes in related technical instruction and its effect on the overall operation and quality of the program. To further address concerns regarding inappropriate, ineffective use of electronic media in the provision of related technical instruction, the Office of Apprenticeship will consult with State Apprenticeship Agencies to develop and issue further guidance illustrating the appropriate use of electronic media.

#### Apprenticeship Instructor Qualifications

Proposed requirements for an apprenticeship instructor would be similar to States' requirements such as meeting the State Department of Education's requirements for a vocational-technical instructor, and/or being recognized as a subject matter expert, and would require that instructors have training in teaching techniques and adult learning styles. A few commenters generally supported the proposed qualifications for apprenticeship instructors in § 29.5(b)(4) because they would raise the quality of apprenticeship instruction. Some commenters stated the proposed changes did not adequately define "subject matter expert" or provide guidance on how an apprenticeship program or Registration Agency should make a determination of who may be considered a "subject matter expert." Others agreed with the concept of improving the quality of apprenticeship

instructors, but stated the proposed changes would be overly restrictive by requiring all instructors to be certified as having met the state vocational education instructor requirements. Other commenters questioned whether journeyworkers would have to be certified by the State vocational education entity in order to teach the related instruction component of registered apprenticeship. Some commenters asserted that the proposed text would eliminate the use of journeyworkers as subject matter experts or technical experts. Some commenters supported the proposed requirement in § 29.5(b)(4) that apprenticeship instructors have training in teaching techniques and adult learning styles. Others requested clarification on this requirement.

*Response:* We agree that the proposed rule did not provide adequate guidance and flexibility for instruction qualifications. Accordingly, we have revised § 29.5(b)(4) to clarify that an apprenticeship instructor must either meet the State Department of Education's requirements for a vocational-technical instructor or be a subject matter expert. The rule also clarifies that subject matter experts are individuals who are recognized within an industry as having expertise in a specific occupation. Journeyworkers can be considered subject matter experts, and therefore may be appropriate instructors of related technical instruction. Provisions in § 29.5(b)(4) requiring instructors to have training in teaching techniques and adult learning styles will further ensure quality of instruction in the National Apprenticeship System. Training in and an understanding of teaching techniques and adult learning styles will enhance instructors' effectiveness, thereby improving the learning experiences of individual apprentices and the overall National Apprenticeship System. Such training may be provided by the apprenticeship program, or through an accredited institution of higher learning, and may occur before or after the apprenticeship instructor has started to provide the related technical instruction.

#### Probationary Period

Seventeen commenters expressed concern that the length of the probationary period was not defined in proposed § 29.5(b)(19), which provided simply that cancellations during an apprentice's probationary period will not adversely impact the sponsor's completion rate. The completion rate is a new factor for evaluation of program performance proposed in §§ 29.6(b) and

(c). Several commenters suggested defining a specific "not to exceed" time for probationary periods, such as 15 percent or 20 percent of a program's length. Many commenters were concerned that without a time limit on the probationary period, the proposed regulations could permit an apprenticeship program to leave apprentices in probationary status for an extended period of time in an effort to improve the program's performance ratings or conceal the program's deficiencies.

*Response:* We agree that without a limit to the probationary period, the regulation could allow the information used in calculating completion rates to be skewed, thereby impacting the evaluation of program performance. In recognition of the concerns of the commenters, we have added language to § 29.5(b)(8) limiting the length of the probationary period. Historically, national guidelines for apprenticeship standards recognized by the Office of Apprenticeship have used 25 percent of the length of the program as the benchmark. Accordingly, the final rule provides that the probationary period cannot exceed 25 percent of the length of the program, or one year, whichever is shorter.

#### Advanced Standing or Credit

Two commenters discussed § 29.5(b)(12), which provides for granting an apprentice advanced standing or credit to take into account demonstrated competencies. One commenter asserted that the proposed rule could reduce on-the-job learning, possibly compromising safety and health. The other commenter expressed concerns about how sponsors would evaluate competencies.

*Response:* The provisions for granting an apprentice advanced standing or credit would not negatively impact safety and health because, as discussed above, apprentices are still required to have on-the-job learning and related instruction that enable the apprentices to recognize and protect themselves from safety and health hazards. With regard to evaluating competency, sponsors would use the definition of "competency" in § 29.2, which provides that sponsors use an appropriate written or hands-on proficiency measurement. Provisions of final § 29.5(b)(12) are necessary to support the flexible approach to progression through apprenticeship identified in § 29.5(b)(2). Accordingly, no changes have been made to the provisions for granting advanced standing or credit.

## Transfer

Twenty-seven commenters raised questions about the proposed changes to § 29.5(b)(13) which require program sponsors or committees to: Provide the transferring apprentice with a transcript of related training and on-the-job learning completed; permit transfers to either the same or a related occupation; allow an apprentice, the employer or the program sponsor to initiate the transfer; and stipulate that a transfer must occur without adverse impact on the apprentice, the employer, or the program.

Many commenters raised concerns about how a transfer would be initiated and the process for executing the transaction. Commenters questioned whether the proposed provisions would permit an apprentice to unilaterally transfer from one program to another without the consent of program sponsors. Two commenters suggested that transfers should be amicable for all sides and that transferring apprentices should be tested to ensure proper placement in the new apprenticeship program. Other commenters asserted that an involuntary transfer could adversely impact the affected apprentice and the affected apprenticeship program sponsors or committees. Another commenter questioned whether the proposed rule requires acceptance of transfers. Three commenters stated that modifying this section of the rule should be solely a State and sponsor responsibility.

*Response:* We agree that the commenters have valid concerns about unilateral decisions for apprentices to transfer and the potential for an adverse impact on one of the affected parties. Accordingly, we have revised § 29.5(b)(13) to provide that a transfer must be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors. An apprentice cannot unilaterally transfer from one program to another or from one employer to another employer in the same program, without the consent of the affected apprenticeship committees or program sponsors.

We disagree that modifications to § 29.5(b)(13) should be solely a State and sponsor responsibility. The regulatory framework for the National Apprenticeship System, established by this part, must address the issue of transfer to ensure that all apprentices regardless of geographic location and program sponsor have equal and uniform access to the same provisions for transfer. However, procedural and administrative issues associated with

the transfer of apprentices, such as testing and determination of appropriate placement of the apprentice and the means of reaching agreement among affected parties, are more appropriately addressed in policy guidance to be issued by the Office of Apprenticeship, rather than in the regulatory framework for the National Apprenticeship System. Accordingly, the Office of Apprenticeship will consult with apprenticeship program sponsors and State Apprenticeship Agencies to develop and issue guidance that effectively addresses these concerns.

Several commenters said provisions in proposed § 29.5(b)(13)(ii) which would permit transfer to a related occupation or within the same occupation would not benefit apprentices, especially if a program sponsor or employer were to shift apprentices between jobs and tasks without ensuring proper skills and knowledge development. Three commenters suggested that transfers must be within the same occupation or trade. One commenter noted that many apprenticeship programs in the building and construction industries have provisions in their standards for transfer of apprentices to other programs within their occupations.

*Response:* The proposed revisions to the requirements for transfers were intended to benefit the apprentice by providing greater flexibility should he or she demonstrate that transferring to another apprenticeship program was necessary to accommodate variations in his or her career development plans. The proposed changes were not intended to provide program sponsors with unlimited latitude to move apprentices among different occupations to accommodate the sponsors' workforce needs. We have been persuaded by commenters' assertions that an apprentice does not become a journeyworker in a skilled trade by transferring from skilled trade to skilled trade; such as an operating engineer working as a carpenter, electrician or painter. Also, there is some validity to the concern that reference to a "related occupation" could be ambiguous and overly broad and could result in transfers to different trades or occupations for which the apprentice has no training under the guise of being "related." Further it would be unreasonable to expect an employer to pay a transferring apprentice commensurate period wages without appropriate occupational experience. Therefore, the final rule carries forward existing provisions which limit transfer to the same occupation.

Other commenters suggested that provisions in proposed § 29.5(b)(13)(i) requiring that the committee or program provide a transferring apprentice a transcript of related instruction and on-the-job learning would encourage recruitment between apprenticeship programs instead of focusing on greater outreach.

*Response:* We have not changed the requirement that the transferring apprentice must be provided a transcript. The requirement for a program sponsor or committee to provide a transferring apprentice a transcript of related instruction and on-the-job learning is necessary to further align the National Apprenticeship System with post-secondary training and education systems, and credentialing systems. Those systems provide participants with documentation of what they have learned through a particular course, series of instructions, or training program. Additionally, the provisions in the final rule requiring agreement among the apprentice and the affected apprenticeship committees or program sponsors for a transfer will mitigate the potential for program sponsors to focus on recruitment between programs. As discussed above, the program with which the apprentice is originally registered must agree to the transfer.

In addition, the final rule continues to serve the purpose of existing § 29.5(b)(13), which allows an employer to transfer its training obligation to another employer, with the consent of the apprentice and the apprenticeship committee or program sponsor. As discussed above, the Department does not foresee that transfers of apprenticeship registration from one program to another or from one employer to another would occur frequently or with regularity. The intent of this provision is to provide flexibility for an apprentice to continue his or her apprenticeship in changing circumstances.

## Interim Credentials

Changes to proposed § 29.5(b)(15) would add a provision for issuance of an interim credential in recognition that an apprentice has attained skills or satisfied certain requirements as he or she progresses through a competency-based or hybrid apprenticeship program. The proposed revision also carries forward the existing requirement for issuance of a certificate of completion in recognition of successful completion of an apprenticeship program. We received 93 comments on proposed § 29.5(b)(15). Some commenters expressed support for

interim credentials. Several commenters questioned the need for provisions on interim credentials, while others noted that program sponsors, employers, and others, already issue such credentials.

*Response:* Section 29.5(b)(15) continues to provide, as does the existing rule, for a certificate that documents the successful completion of an apprenticeship program. However, the commenters have raised some valid concerns as to the proposed requirements for interim credentials. To address these issues and to further clarify the requirement for interim credentials, the final rule separates requirements for interim credentials into a new, discrete paragraph, § 29.5(b)(16), and renumbers all subsequent paragraphs in § 29.5(b) as final § 29.5(b)(17) through final § 29.5(b)(23).

The proposed provisions for interim credentials were not intended to require all program sponsors to issue interim credentials, nor even to require that all sponsors choosing to use the competency-based approach or hybrid approach issue interim credentials. Final § 29.5(b)(16) clarifies that program standards for apprenticeship program sponsors that choose to use the competency-based or the hybrid approach for completion of an apprenticeship and that choose to issue interim credentials must clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupations, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Further, interim credentials must only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation.

Commenters expressed concern that the use of interim credentials would redefine what journeyworker status means. Over twenty commenters asserted that provisions for interim credentials would diminish the value of or deter trainees from obtaining journeyworker status. Other commenters misinterpreted the provisions for interim credentials as permitting program sponsors to reduce requirements for on-the-job learning necessary to achieve particular skills and abilities, thereby producing inadequately trained journeyworkers. Some commenters stated that these provisions could weaken the workforce by producing workers with specialized, rather than comprehensive, training for

parts of an occupation. Other commenters asserted that ultimately, issuance of interim credentials could lead to a segment of the workforce working for lower wages, with less job security.

*Response:* We disagree with the assertions that interim credentials may potentially negatively impact the workforce and the value of journeyworker status. As discussed above, in some industries program sponsors in pilots of competency-based apprenticeship programs already are using interim credentials, having determined that some apprenticeable occupations are capable of being segregated into discrete competencies or levels of skill attainment which can serve as discrete milestones on the path to journeyworker status. Providing an interim credential to show that an apprentice has reached those milestones merely acknowledges that fact. Therefore, interim credentials are not intended to narrow the breadth and depth of the training component of registered apprenticeship. Rather, they provide opportunities for apprentices to obtain portable credentials commensurate with the skills and competencies acquired and demonstrated throughout an apprenticeship. Therefore, attainment of an interim credential may provide the apprentice who must leave the program with the means to obtain a better job than he or she could without the credential.

As discussed above in the discussion of the definition of interim credentials, the issuance of a certificate of completion of apprenticeship, and the associated "journeyworker" level status, remain the ultimate goal for the National Apprenticeship System. Interim credentials do not indicate that the apprentice has met all of the requirements of the apprenticeship, nor that he or she has successfully mastered the full range of skills and competencies required for an occupation. The certificate of completion is the only credential that properly conveys that the apprentice has successfully met the requirements of the apprenticeship program. Therefore, designation of "journeyworker" and the associated status will not be affected by use of interim credentials. However, in recognition of stakeholders concerns over the impact of interim credentials, the Department will establish a process to assess implementation of interim credentials. Initially, Registration Agencies and program sponsors will use the quality assurance assessment process to identify and assess any impact of interim credentials on

program operations and outcomes. Following consultation with stakeholders of the National Apprenticeship System, the Office of Apprenticeship intends to issue policy guidance on the review of interim credentials.

Thirty commenters expressed concern about potential negative impacts for the National Apprenticeship System if interim credentials are based on sponsor standards instead of industry standards. These commenters asserted that national standards are necessary so that the credential can be portable and meaningful to employers across different regions.

*Response:* In the National Apprenticeship System, a sponsor can only register standards for apprenticeship programs that train and employ an apprentice in occupations that have been determined "apprenticeable." The Office of Apprenticeship has established criteria and procedures for recognizing an apprenticeable occupation that require industry verification and validation of the skills and knowledge necessary for the occupation. This process intentionally incorporates industry participation so that the credentials associated with progression through an apprenticeship program for an apprenticeable occupation will be portable and have meaning to employers nationwide. As discussed above, new § 29.5(b)(16) clarifies that interim credentials must only be issued for recognized components of an apprenticeship occupation. Therefore, the interim credentials associated with the specific skills and knowledge for an apprenticeable occupation are verified and validated by industry through the process of approving the apprenticeable occupation.

Numerous commenters suggested that provisions on interim credentials would place additional resource (e.g., time and documentation) burdens on Registration Agencies with no apparent provisions for verification of the credential's validity. Some commenters recommended that the use of interim credentials should not be mandated or should be left to the discretion of States to mandate.

*Response:* While we consider interim credentials to be a valuable tool for furthering apprenticeship, we emphasize that program sponsors are not required to develop and register standards of apprenticeship that include interim credentials, nor are recognized State Apprenticeship Agencies required to issue interim credentials. We anticipate that such credentials will be used most frequently by programs that

take the competency-based or hybrid approach to progression through apprenticeship. Further, in the Department's pilots with competency-based apprenticeship programs, Registration Agencies have provided technical assistance to sponsors to help identify the appropriate procedures and criteria for determining if and when an apprentice merits receiving an interim credential. The Department anticipates that Registration Agencies will continue to provide such technical assistance in the development of competency-based and hybrid apprenticeship programs, and issuance of interim credentials associated with these programs. As with certificates of completion, Registration Agencies are the entities responsible for issuing interim credentials, at the request of a program sponsor.

The Department acknowledges that instituting a process for the issuance of interim credentials would constitute an additional burden for those State Apprenticeship Agencies that currently do not issue such certifications. Based on comments expressing concern about potential time and documentation burdens, we agree that State Apprenticeship Agencies should not be required to issue interim credentials as a pre-condition for recognition. Accordingly, while recognized State Apprenticeship Agencies may choose to issue interim credentials using their own procedures in compliance with this part, the final rule does not require them to do so. However, in order to maintain uniformity across the National Apprenticeship System and further apprentices' progression through apprenticeship, the Department has determined that opportunities must be available nationwide for program sponsors to register program standards that use a competency-based or hybrid approach for completion of apprenticeship and that issue interim credentials. Therefore, the Office of Apprenticeship will offer to issue interim credentials, nationwide, where the prerequisites are met. If a recognized State Apprenticeship Agency registers program standards that use a competency-based or hybrid approach, but does not issue interim credentials, the program sponsor may request that the Office of Apprenticeship issue interim credentials to apprentices who have successfully met the requirements of an interim credential established in the program standards for their respective apprenticeship programs. If a recognized State Apprenticeship Agency does not register program standards that use a competency-based or hybrid approach, then a program

sponsor can petition to register the apprenticeship standards with the Office of Apprenticeship for Federal purposes, and the Office of Apprenticeship will issue interim credentials, when prerequisites are met.

Two commenters maintained that mandating the use of interim credentials would cause apprenticeship programs to incur the enormous costs of developing testing to determine whether apprentices are entitled to interim credentials.

*Response:* As discussed above, the final rule does not mandate use of interim credentials. Program sponsors that chose to register standards for competency-based or hybrid programs that provide for the issuance of interim credentials would bear the costs associated with developing and operating these apprenticeship programs. All registered apprenticeship program sponsors voluntarily operate apprentice programs and choose to incur the costs associated with the programs

#### Cancellation Rate

Seventeen commenters expressed concern that the length of the probationary period was not defined in proposed § 29.5(b)(19), which provided simply that cancellations during an apprentice's probationary period will not adversely impact the sponsor's completion rate. The completion rate is a new factor for evaluation of program performance proposed in §§ 29.6(b) and (c). Several commenters suggested defining a specific "not to exceed" time for probationary periods, such as 15 percent or 20 percent of a program's length. Many commenters were concerned that without a time limit on the probationary period, the proposed regulations could permit an apprenticeship program to leave apprentices in probationary status for an extended period of time in an effort to improve the program's performance ratings or conceal the program's deficiencies.

Twelve commenters believed that not counting cancellations during the probationary period, or allowing programs to adjust the length of the probationary period, could artificially improve completion rates. Others felt that cancellation rates during the probationary period, if properly categorized, can be used to evaluate program performance. Some commenters stated that it would be important to monitor programs that have a high rate of attrition during probationary period to check for abuses. Others advocated that only cancellations that were due to failure to

provide training in accordance with the sponsor's approved standards should be counted in completion rates, asserting that the proposed rule's inclusion of cancellation rates after the probationary period in calculation of completion rates did not distinguish between those cancellations that were the fault of the program and those over which the program has little if any control.

*Response:* We agree that it is important to monitor programs with a high cancellation rate during probationary periods. For many years the Office of Apprenticeship has included cancellation rates as a factor for consideration when staff members conduct quality assurance assessments, and if appropriate, has used this information in the provision of technical assistance to program sponsors. Although the final rule does not provide for inclusion of cancellations that occur during probationary periods in the calculation of completion rates, this important information is reviewed, evaluated, and addressed through the quality assurance assessment process.

We also agree that without a limit to the probationary period, the regulation could allow the information used in calculating completion rates to be skewed, thereby impacting the evaluation of program performance. In recognition of the concerns of the commenters, we have added language to § 29.5(b)(8) limiting the length of the probationary period. Historically, National Guideline for Apprenticeship Standards recognized by the Office of Apprenticeship have used 25 percent of the length of the program as the benchmark. Accordingly, the final rule provides that the probationary period cannot exceed 25 percent of the length of the program, or one year, whichever is shorter.

We disagree that only cancellations due to the failure to provide training in accordance with the sponsor's approved standards should be counted in completion rates. Program sponsors' policies and administrative procedures such as not providing steady work experience reduce the apprentices' opportunities to earn wages, and thereby can impact an apprentice's ability to remain registered in a program. Therefore, analysis of a program's cancellations rates can provide important indications of the need to further evaluate a program's operations, policies, and procedures, and if needed provide technical assistance. As discussed further in the discussion of program performance standards, we emphasize that a Registration Agency's evaluation of

completion rates will include analysis of mitigating factors. No substantive changes have been made to proposed § 29.5(b)(19); which will be promulgated as § 29.5(b)(20).

#### Program Performance Standards (§ 29.6)

Section 29.6 is a new section that focuses on the quality and performance of registered apprenticeship programs. A few commenters generally supported the proposed changes to this section, but questioned the Office of Apprenticeship's ability to successfully evaluate all of the registered programs, given current budget and staffing levels.

*Response:* The Department agrees that a Registration Agency requires adequate resources to successfully evaluate all registered programs under the provisions of this section. The Office of Apprenticeship staff has been conducting quality assurance assessments and Equal Employment Opportunity Compliance Reviews as part of their normal responsibilities for helping to ensure that program sponsors comply with the requirements of these regulations and part 30. The processes for conducting these reviews currently include assessing a program's performance against key indicators including completion and cancellations rates. Therefore, the functions of calculating completion rates, conducting quality assurance assessments and Employment Opportunity Compliance Reviews, and providing technical assistance, as required by final § 29.6 have effectively been a part of the Office of Apprenticeship's current practices for evaluating and monitoring programs. To the extent that the Office of Apprenticeship's current resources may become constrained by requirements of this section, we may realign resources internally to effectively and efficiently conduct these activities.

#### At Least One Registered Apprentice

Section 29.6(a) provides that every program must have at least one registered apprentice in order to be designated and retain designation as a registered apprenticeship program for Federal purposes. Commenters observed concern that there may be times when a program is between training cycles and has no apprentices for a short period of time. Other commenters asserted that this provision does not adequately address apprenticeship programs with one or a few apprentices who never graduate. Some commenters suggested establishing time frames for determining if programs have an active apprentice or apprentices.

*Response:* We agree that there may be times when a sponsor may have a lag between training cycles and be without a registered apprentice for a short period of time. However, when a program lies dormant for a substantial period of time, it is appropriate to consider the program as no longer viable. Therefore, we agree with the suggestion to establish time frames for determining if a program has an active apprentice to account for the short lag times mentioned in the comment and other reasonable periods of inactivity that may occur in otherwise active programs. We consider a period of up to 1 year to be a reasonable period of inactivity. We have determined that the time frame for a program to not have an apprentice registered with a Registration Agency should not exceed 1 year. We have revised § 29.6(a) accordingly.

With regard to commenters assertion that this provision does not adequately address programs that never graduate an apprentice, the requirements set forth in 29.6(b) will hold those programs accountable.

#### Evaluation of Program Performance

Twenty-eight comments addressed § 29.6(b), which provides a non-exclusive list of tools and factors that must be considered in evaluating the performance of a registered apprenticeship program. Nine commenters expressed concern that there is no proposed definition of "quality assurance assessment," one of the tools and factors to be considered in evaluating performance. Many requested a definition of "completion rate." Other commenters requested that the Department clarify the intended purpose of each of the performance tools and factors and how they are to be used. One commenter suggested adding a requirement that the "tools and factors" be consistent with Federal standards and goals so that States could not add factors that conflicted with this part, 29 CFR part 30, or the National Apprenticeship Act.

*Response:* We agree that definitions for the terms "completion rate" and "quality assurance assessment" would provide greater clarity to the proposed performance accountability framework established by the final rule. Accordingly, as discussed above, we have added definitions for the terms "completion rate" and "quality assurance assessment" to § 29.2.

The three performance factors specifically required are quality assurance assessments, Equal Employment Opportunity Compliance Reviews, and completion rates. As discussed above in the discussion of the

definitions in § 29.2, quality assurance assessments are comprehensive reviews conducted by a Registration Agency to determine if an apprenticeship program is addressing its program standards and meeting the requirements of this part. Equal Employment Opportunity Compliance Reviews are required under part 30. Data on a program's completion rates are intended to provide Registration Agencies with information useful to support technical assistance efforts to improve program performance. We emphasize that any additional tools and factors used by Registration Agencies in evaluating program performance must adhere to the goals and policies of the Department articulated in this part and in guidance issued by the Office of Apprenticeship.

#### Completion Rate

A Registration Agency's use of completion rates in evaluating program performance, provided by proposed §§ 29.6(b) and (c), received mixed reviews. One commenter asserted that the proposed rule will likely result in an annual effect on the economy of \$100 million or more, and therefore the proposed rule qualifies as a major rule under Executive Order 12866 and the Small Business Regulatory Enforcement Act (SBREFA). The commenter asserted that State and local governments are including bid provisions that require contractors to have apprentices who have successfully completed an apprenticeship program approved by the Department or a recognized State Apprenticeship Agency as a condition of bidding and participating on a project. The commenter asserted that such bid requirements will likely foreclose unilateral apprenticeship program sponsors from being able to bid on, and be awarded State and local construction projects, which will likely have an annual adverse impact on the economy exceeding \$100 million. Although the comment did not mention a particular section of the rule, we have determined that the commenter's estimate of anticipated impact was primarily based on the expected costs of compliance with §§ 29.6 (b) and (c). The commenter recommended that the Department withdraw the proposed provisions for completion rates, so that the Office of Apprenticeship can conduct further study and discussion with interested stakeholders.

Many commenters noted that evaluating apprenticeship programs on the basis of completion rates would align the National Apprenticeship System with other Federal education programs that make eligibility for receipt of Federal funding dependent, in

part, on the program's achievement of minimal graduation rates. Others stated that the evaluation would improve program accountability, ensure high-quality training, or reflect the effectiveness of programs. However, another commenter asserted that reference to completion rates could unfairly penalize programs that make an affirmative effort to recruit apprentices from non-traditional pools, as the drop-out rate for those recruited from riskier groups may be higher than normal. Other commenters stated that use of completion rates could also penalize small programs, whose completion rates could be affected dramatically by the cancellation of only one or two apprenticeship agreements.

Some commenters opposed provisions of proposed § 29.6(c) that provide for evaluation of completion rates of programs located in the same geographical areas, and as necessary, further review and provision of technical assistance to maintain and improve program performance. One commenter asserted that it was onerous and short-sighted to compare programs, rather than individually evaluate programs based on their merits. Another commenter characterized this particular proposed provision as highly subjective and ambiguous, suggesting that the standard should set a minimum completion rate above which a program's completion rate will not be deemed a negative factor. Another remarked on the absence of firm standards in this proposed regulation. Others asserted that this proposed requirement would favor union-operated programs and do nothing to improve apprenticeship programs.

*Response:* The Department does not agree that evaluating completion rates as an indicator of program quality would unfairly penalize programs that recruit from non-traditional applicant pools, nor do we agree that completion rates would penalize small programs whose completion rates could be affected dramatically by cancellation of one or two apprenticeship agreements. The primary purpose of the completion rate evaluation is not to penalize programs. As described below, our goal is to establish an assessment mechanism to identify programs that will benefit from technical assistance to become high performing programs. Only when programs demonstrate a persistent and significant failure to perform successfully will poor completion rates factor into potential deregistration proceedings.

We agree that comparing like programs, particularly when there may only be one comparable program in a

geographical area, may not be a feasible, effective approach for the evaluation of completion rates. We also agree with the suggestion to establish a minimum completion rate above which a program's completion rate will not be deemed a negative factor. We have determined that the national average for apprenticeship completions would be a reasonable benchmark to use in evaluating the performance of registered apprenticeship programs for purposes of identifying programs in need of technical assistance. Accordingly, we have revised § 29.6(c) to require that a Registration Agency review a program's completion rates in comparison to the national average for completion rates. Programs with completion rates lower than the national average will receive technical assistance from a Registration Agency. As stated in the NPRM, the use of completion rates in program reviews is not intended to limit or terminate existing apprenticeship programs that are receiving technical assistance from a Registration Agency and demonstrating improved program performance, or to impede prospective apprenticeship program sponsors. Rather, the use of completion rates is intended to strengthen the program outcomes and quality in the National Apprenticeship System by setting a benchmark that identifies programs that could benefit from technical assistance.

In order to reflect the focus on technical assistance for programs with completion rates below that national average, we have dropped the reference that appeared in proposed § 29.6(c) for the Registration Agency to "take other appropriate action" against such programs. Deletion of this phrase is meant to clarify that simply falling below that national average for completion rates does not lead to deregistration procedures. Completion rates may potentially factor into deregistration procedures only when they demonstrate an ongoing pattern of very low completion rates over a period of several years (see discussion of "persistent and significant failure to perform" below).

Rather than specifying the details for implementation of program performance standards in registered apprenticeship, we believe the best use of § 29.6 is to establish a regulatory framework that provides the basis for the Office of Apprenticeship to issue more detailed guidance. The Office of Apprenticeship will consult with apprenticeship program sponsors and recognized State Apprenticeship Agencies to develop and issue guidance regarding program performance standards and accountability in the National

Apprenticeship System. This consultation process would also be responsive to a commenter's recommendation to further discuss provisions for completion rates with interested stakeholders. This approach is similar to the Department's regulatory framework and performance management system established for the programs under the Workforce Investment Act.

The Department disagrees with assertions that there is a relationship between bid requirements for State and local construction projects and provisions for completion rates in §§ 29.6(b) and (c) which will likely have an annual impact on the economy exceeding \$100 million. None of the provisions in final § 29.6 nor any other provision in the final rule provide for or relate to the establishment bid requirements for State and local construction projects.

#### Cancellation of Apprenticeship Agreements During Probationary Period

Many commenters opposed provisions of § 29.6(d) which provided that the cancellation of apprenticeship agreements during the probationary period would not have an adverse impact on a sponsor's completion rate. One commenter stated that all cancellations should be considered in program reviews, particularly to deter program sponsors who register programs primarily to meet contract requirements for Federal works projects under the Davis-Bacon Act.

*Response:* Existing regulations provide for a probationary period, in recognition that both the apprenticeship sponsor and the apprentice should have sufficient time to determine if the apprenticeship agreement is beneficial. During the probationary period, apprentices may have many reasons for cancelling their agreements, which may have nothing to do with the program. Including apprenticeship agreement cancellations during the probationary period in the calculation of completion rates may inadvertently cause program sponsors to adopt more stringent selection requirements, in an effort to minimize being penalized. More stringent selection requirements could reduce or limit apprenticeship opportunities that would otherwise have been available. We seek to avoid a regulatory framework that would unintentionally reduce apprenticeship opportunities. However, Registration Agencies do include cancellation rates as important information in their oversight of registered apprenticeship programs. Cancellation rates, including those that occur during the probationary

period, are reviewed in conjunction with the Equal Employment Opportunity compliance reviews. If appropriate, Registration Agencies use this information for the provision of technical assistance. Therefore, we have determined that the proposal for the cancellation of an apprenticeship agreement not to have an adverse impact on a sponsor's completion rate if the cancellation occurs during the apprentice's probationary period is an appropriate balance between the need to hold program sponsors accountable and the need to promote apprenticeship opportunities. We have made no changes to § 29.6(d).

#### Apprenticeship Agreement (§ 29.7)

We received three comments on proposed § 29.7, regarding requirements for apprenticeship agreements, none of which advocated for major changes to the proposed provisions. The proposed changes update terminology, align the apprenticeship agreement with the three approaches to apprenticeship progression (time-based, competency-based, or hybrid), and add space on the agreement in which apprentices would voluntarily provide their Social Security Number. The Registration Agency will use apprentices' Social Security Numbers for performance management and Davis-Bacon Act purposes; in particular, for use in calculating employment outcomes of the National Apprenticeship System as defined in the Department's common measures for Federal job training programs. The Department has an approved information collection request for the use of Social Security Number information on an apprenticeship agreement (OMB Control Number 1205-0223). One commenter suggested that the proposed changes will result in an undue time and financial burden for State Apprenticeship Agencies. Two commenters suggested additional requirements for collection of equal employment opportunity information, which are beyond the scope of revisions to part 29.

*Response:* While revising forms will require the expenditure of resources, the changes and resulting revisions to the form will be minimal. Moreover, the changes are necessary for the National Apprenticeship System to continue to align with changes in approaches to on-the-job learning, as well as the broader environment in which apprenticeship programs operate.

We note that the non-discrimination provisions in § 29.7 are limited to the prohibitions that are applicable under part 30, regulations for Equal Employment Opportunity in

Apprenticeship and Training, and do not describe the full range of Equal Employment Opportunity protections that may be applicable to registered apprenticeship programs. Registered apprenticeship programs are subject to other Federal, State and local laws and regulations regarding Equal Employment Opportunity in employment and training, such as the Americans with Disabilities Act, the Age Discrimination in Employment Act, and Title VII of the Civil Rights Act of 1964.

Upon further review, we have determined that there are three minor changes necessary to align this section with revisions to the definitions and standards of apprenticeship discussed above. With the deletion of the definition for "supplemental instruction," as discussed above in the discussion of definitions, this term is no longer appropriate for requirements in § 29.7(e)(2) regarding number of hours in related instruction. We have revised § 29.7(e)(2) accordingly. For consistency with final § 29.5(b)(2)(ii), which specifies that competency-based programs must still require an apprentice to complete the on-the-job learning component of registered apprenticeship, we have revised the requirement in § 29.7(e) for competency-based programs to include statements about on-the-job learning. We have also replaced the term "school time" in § 29.7(g) with a more appropriate term, "related instruction," to describe whether or not the apprentice is compensated during the related instruction component of registered apprenticeship.

#### Deregistration of a Registered Program (§ 29.8)

Section 29.8 clarifies the provisions for deregistration of registered apprenticeship programs. We have corrected a mistake in proposed § 29.8(b)(1) by replacing "and" with "or" to clarify that the Registration Agency may undertake deregistration proceedings when a program is not conducted, operated or administered in accordance with the program's registered provisions or with the requirements of 29 CFR part 29.

Five commenters addressed proposed changes in § 29.8, which clarifies existing § 29.7 provisions for deregistration of registered apprenticeship programs. One commenter requested clarification as to whether a program would automatically enter the deregistration process if it is without an apprentice for 15 or more days. Two comments expressed concern about the Department's ability to

sufficiently address the burdens associated with deregistration procedures, emphasizing that deregistration should be conducted at the local level rather than the Federal level. Three commenters asserted that the proposed rule would usurp power from State Apprenticeship Agencies.

*Response:* A program that is without an apprentice for 15 days is not subject to deregistration. As discussed with regard to Program Performance Standards above, revised § 29.6(a) allows for a time lag of up to 1 year between training cycles, during which a program could be without a registered apprentice. To address ambiguity regarding a relationship between failure to meet the new program performance standards established in § 29.6 and requirements for deregistration of a registered program established in § 29.8, we have also revised in the final rule § 29.8(b)(1) to clarify the circumstances in which deregistration proceedings may be undertaken for failure to conduct, operate or administer the program in accordance with the requirements of part 29. These circumstances include: the failure to meet longstanding standards of the National Apprenticeship System, such as failure to provide on-the-job learning, failure to provide related instruction, and failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentice's skills. In addition, the persistent and significant failure to perform successfully under the new performance standards established in section 29.6 may also lead to deregistration. However, a persistent and significant failure to perform successfully does not occur simply when a program's completion rate falls below the national average. Deregistration proceedings apply to programs with severe performance problems. A persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the Registration Agency during a review process as requiring corrective action.

With regard to concerns about burdens associated with deregistration procedures and usurping power from the State Apprenticeship Agency, § 29.8 deletes the term "Bureau (Office of Apprenticeship) registered programs" and uses the term "Registration Agency" to clarify that program

deregistration procedures outlined in §§ 29.8(a) and (b) are conducted at the State level, by the Registration Agency. In States where the State Apprenticeship Agency is the Registration Agency, deregistration proceedings will be conducted by the State Apprenticeship Agency. Any such proceeding would be required to comply with § 29.8.

We emphasize that final § 29.8 carries forward existing practice that has evolved under current regulations, in which the Department has deferred to recognized State Apprenticeship Agency authority in matters of program deregistration. Therefore, the Department anticipates having sufficient resources to address any burdens associated with deregistration procedures, as these matters will primarily pertain to deregistration proceedings in States where the Department is the Registration Agency.

Final § 29.8(b)(7) clarifies that if a sponsor requests a hearing, the Administrator refers the matter to an Administrative Law Judge, who will convene a hearing and issue a decision in accordance with § 29.10(c). This clarification aligns the final rule with Secretary's Order 1-2002, 67 FR 64272, Oct. 17, 2002, which provides that an Administrative Law Judge's decision in a program deregistration is only subject to discretionary review by the Administrative Review Board.

#### Reinstatement of Program Registration (§ 29.9)

The Department received one comment on this section. The commenter agreed with the proposed text on reinstatement of program registration.

*Response:* We are promulgating final § 29.9 as proposed.

#### Hearings for Deregistration (§ 29.10)

Four commenters addressed proposed changes to § 29.10, which sets the requirements for deregistration hearings. One commenter agreed with the proposed changes. Another commenter opposed the provisions in this section on the basis that hearings for deregistration should be kept at the State level. A third commenter asked if this section applies to programs registered with State Apprenticeship Agencies. Another commenter indicated that the public had not been allowed sufficient time to review the Office of Administrative Law Judges hearing rules at 29 CFR part 18, which will apply to deregistration hearings. This commenter also suggested that the proposed changes to the method of appeal in existing § 29.9 would reduce

access to due process of law. The commenter suggested that a hearing before an Administrative Law Judge, as established in § 29.10, differs considerably from proceedings before a hearing officer or a trial by jury.

*Response:* We disagree with the commenter's assertions that the Administrative Law Judge procedures would reduce access to due process and that the public has not been allowed sufficient time to review the Office of Administrative Law Judges hearing rules at 29 CFR part 18. The applicable rules of procedure at 29 CFR part 18 provide uniform rules for the conduct of hearings for a wide range of Department of Labor programs. These rules are consistent with the Administrative Procedure Act's requirements for the conduct of agency adjudications. However, upon review further, we have determined that it is more appropriate for the notice from the Administrative Law Judge to refer to the request as a request for a hearing, rather than a request for a review, as proposed in the NPRM. We have revised 29.10(b) accordingly.

We disagree with the commenter's assertion that hearings for reinstatement of program registration should be kept at the State level. Under existing § 29.9 such hearings are conducted at the Federal level. Final § 29.10 merely changes the Federal official conducting the hearing.

We note that the requirements for hearings for deregistration apply to all programs that have been registered for Federal purposes, regardless of whether the program is registered with the Office of Apprenticeship or for Federal purposes with a recognized State Apprenticeship Agency.

Except as noted, we will promulgate final § 29.10 as proposed.

#### Limitations (§ 29.11) and Complaints (§ 29.12)

One comment was received on each of these two proposed provisions, both expressing support.

The Department will promulgate § 29.11 and § 29.12 as proposed.

#### Recognition of State Apprenticeship Agencies (§ 29.13)

Proposed § 29.13 revises the provisions in existing § 29.12 that address the recognition of State Apprenticeship Agencies for Federal purposes and clarifies how the Office of Apprenticeship oversees the National Apprenticeship System. We received 125 comments on this section overall, 110 of which addressed specific provisions, including limiting recognition to the State Apprenticeship

Agency; role of the State Apprenticeship Council; linkages with economic development and workforce investment systems; location of a State Apprenticeship Agency; requirements for resources to carry out the functions of a Registration Agency; reciprocal approval of programs and standards in the building and construction industries; Departmental review and approval of State apprenticeship legislation, regulations, policies, and operational procedures; application for recognition; and renewal and maintenance of recognition. Several commenters strongly opposed the revisions, asserting that the proposed changes were overly prescriptive and would significantly limit a State's authority to oversee registered apprenticeship functions within its jurisdiction. It is our responsibility to ensure that States recognized as having such authority continue to conform to the Federal requirements on which the recognition is based. As described below, the Department's recognition of a State Apprenticeship Agency pertains to granting Federal-State partnership in which the Department grants the State authority to act on our behalf as a Registration Agency. The provisions of parts 29 and 30 set the conditions for a State to obtain and maintain that authority; these provisions are not meant to impact State authority to regulate apprenticeship for State purposes.

#### Roles of State Apprenticeship Agencies

Twelve comments focused on proposed § 29.13(a), which provides for "recognition" only of a State Apprenticeship Agency, and not a State Apprenticeship Council, and provides that the Department's recognition of the State Apprenticeship Agency confers "non-exclusive authority" to determine whether an apprenticeship program meets published standards and is eligible for those Federal purposes which require such a determination. Some commenters asserted that these changes conflict with their States' current law, whereby a State Apprenticeship Council oversees the State's apprenticeship system or promulgates regulations that oversee a State Apprenticeship Agency's work. Thus, the proposed changes would require revisions to State apprenticeship law and regulation. Another suggested that the Department should not dictate to the States the nature and structure of their government.

*Response:* Our experience has shown that a government-to-government relationship with a State Apprenticeship Agency facilitates the

smooth functioning of the National Apprenticeship System, thus best protecting apprentices' interests. Although the members of a State Apprenticeship Council represent diverse employer, labor, and public interests and have knowledge and experience that enables them to be strong advocates for apprenticeship, many of them are not State officials. Therefore, members of the State Apprenticeship Council are not, ultimately, accountable to the State or to the Department for their actions. Such accountability is essential to the functioning of the National Apprenticeship System, especially where it comes to safeguarding the welfare of apprentices and promoting apprenticeship opportunity. State officials represent the interests of the entire State and are accountable for their actions. Accordingly, our proposal to extend recognition only to State Apprenticeship Agencies is necessary to ensure that the entity that is held accountable for conformity with part 29 is clearly identified. This proposal does not dictate the nature and structure of State government; it merely identifies the State government entity to which the Department will grant authority to act on our behalf as a Registration Agency. The existing regulations do not specify that a recognized Registration Agency must be a government cabinet-level agency. Changes to § 29.13(a) clarify this requirement and further align the proposed regulations for the National Apprenticeship System with the National Apprenticeship Act, which states that the Department is to "cooperate with *State agencies* engaged in the formulation and promotion of standards of apprenticeship." Therefore, we have made no changes to § 29.13(a)(1).

#### Role of State Apprenticeship Councils

We received twenty (20) comments regarding proposed § 29.13(a)(2), which consolidates the provisions on State Apprenticeship Councils. Several commenters asserted that the current roles and responsibilities of State Apprenticeship Councils and State Apprenticeship Agencies work well, and questioned the need to adjust this system. Many expressed concern that we are eliminating State Apprenticeship Councils. One commenter suggested that removing a State Apprenticeship Council's decision-making role would significantly reduce the level of participation from key stakeholders, potentially creating far-reaching negative effects for apprenticeship programs. Another commenter questioned why the proposed

regulations do not identify acceptable State Apprenticeship Council membership, as provided in existing part 29.

*Response:* As described above, we have determined that the effective functioning of the Federal-State partnership in the registered apprenticeship system requires a direct relationship between Federal and State agencies. However, while we no longer recognize State Apprenticeship Councils for registration purposes, we are not eliminating the requirement to establish a State Apprenticeship Council for regulatory or advisory purposes. Members of State Apprenticeship Councils will continue to be critical stakeholders, whose active participation is essential for the successful operation of registered apprenticeship programs in their States. Based on the new organizational system, we are limiting our direct regulation to requirements applicable to recognized State Apprenticeship Agencies. Given that the final rule makes recognized State Apprenticeship Agencies responsible for registered apprenticeship for Federal purposes in their States, we have determined that it is appropriate for such Registration Agencies to direct the operations of the corresponding State Apprenticeship Councils. Accordingly, we have revised § 29.13(a)(2) to clarify that a State Apprenticeship Council operates under the direction of the State Apprenticeship Agency. We reiterate that §§ 29.13(a)(2)(i) and (ii) carry forward provisions from the existing regulations pertaining to State Apprenticeship Council membership criteria. Except as noted, we are promulgating § 29.13(a)(2) as proposed.

#### Linkages With Economic Development and Workforce Investment

Two commenters asserted that the Department lacked statutory authority to require or mandate that the State Apprenticeship Agency integrate with the State's economic development strategies and public workforce investment system, as provided in § 29.13(a)(6). Another commenter expressed support for this provision, and suggested that the Department also should encourage registered apprenticeship programs to develop agreements with community colleges.

*Response:* The National Apprenticeship Act's broad mandate to safeguard the welfare of apprentices fully authorizes the proposed requirement for integration of registered apprenticeship into economic and workforce development efforts. This requirement is part of a broader trend

among Federal and State workforce development programs to increase coordination across programs in an effort to more effectively meet the needs of businesses, workers, and regional areas. As part of the workforce investment system, registered apprenticeship programs should align closely with regionally coordinated talent development strategies aimed at providing workers with the 21st century skills that businesses and industries demand. However, upon review, we have concluded that the terms of proposed § 29.13(a)(6) regarding linkages and coordination with economic development and the workforce investment system fit within proposed § 29.13(a)(4), which pertains to basic standards, criteria, and requirements for program registration and/or approval. Therefore, proposed § 29.13(a)(6) has been consolidated into § 29.13(a)(4). Further, we have revised terminology that refers to the workforce system so it includes the phrase "publicly-funded workforce investment system," to clarify that public funding can support these linkages and coordination across State Apprenticeship Agencies and the States' workforce investment and economic development strategies. This revision aligns with efforts to expand apprenticeship into high-growth, high-demand occupations.

#### Location of State Apprenticeship Agency

We received ten comments opposing the proposed deletion of existing § 29.12(b)(1), which sets requirements for the location of the State Apprenticeship Agency in the State Department of Labor or in the agency of State government having jurisdiction of laws and regulations governing wages, hours, and working conditions. Eight commenters suggested that relocating a State Apprenticeship Agency would likely diminish the safety, health, and welfare of apprentices in the workplace. One commenter stated that as a result of the rule change, the apprenticeship program could be placed within a department or division of State government that is not familiar with or qualified to address issues pertaining to registered apprenticeship. Another commenter stated that the rule change is counter to the integration of apprenticeship into the public workforce development system and would interfere with seamless integration of worker protection considerations. One commenter stated that as a result of the rule change, the apprenticeship program could be placed within a department or division of State

government that is not familiar with or qualified to address issues pertaining to registered apprenticeship.

*Response:* We disagree that the proposed deletion of regulatory provisions specifying the location of a State Apprenticeship Agency will negatively impact the welfare of apprentices, and that it counters efforts to integrate registered apprenticeship with the public workforce development system. Historically, registered apprenticeship functions have resided in the area of State government that oversees wage and hour functions, and this approach has functioned very well for most States. However, many State governments have reorganized, and the various State governments function differently. In light of these organizational changes, the final rule affords the flexibility necessary for States to determine the most appropriate location for registered apprenticeship, based on their organizational configuration. Regardless of that location, a recognized State Apprenticeship Agency still must meet the requirements of this part, including provisions in § 29.5 that safeguard the welfare of the apprentice, and provisions in § 29.13(a)(4) requiring demonstration of linkages with the State's economic development strategies and public workforce system. Further, the effective functioning of the Federal-State partnership for registered apprenticeship does not require specificity for the organizational location of the State government agency.

#### Resources

Proposed § 29.13(b)(2), which required that State Apprenticeship Agencies provide sufficient budget and staff to carry out the functions of a Registration Agency, also generated considerable opposition. Four commenters stated that the proposed requirements in § 29.13(b)(2) are worthwhile guidelines for Registration Agencies, but asserted that the Department does not allocate sufficient staff and budget to carry out its responsibilities in the twenty-five States where the Office of Apprenticeship is the Registration Agency. Four commenters indicated that the Department does not have the authority to dictate budget mandates to the States.

*Response:* The Department is currently the Registration Agency in 25 States, and provides dedicated staff and resources sufficient to fulfill its responsibilities for registered apprenticeship for Federal purposes in those States. In the other 25 States, where we have conferred recognition to States to register apprentices and

apprenticeship programs for Federal purposes under the current regulations, it is our responsibility to ensure that we provide recognition to States that have dedicated the necessary resources for such functions. The proposed rule's provisions for sufficient resources do not dictate budget mandates; the responsibility for establishing budget mandates remains with State governments. However, we have been persuaded by comments that it is more appropriate to use language that is less prescriptive than "allocate sufficient budget and staff" to describe how a Registration Agency will address these functions. Therefore, we have revised final rule § 29.13(b)(2) to require simply that the State provide "sufficient resources" to carry out the functions of a Registration Agency. In the final rule, provisions establishing that the functions of a Registration Agency, which include outreach and education, registration of programs and apprentices, provision of technical assistance, and monitoring, as required to fulfill the requirements of this part are unchanged.

#### Reciprocal Approval

We received thirty-eight comments about proposed § 29.13(b)(7), which would expand current provisions for reciprocal approval by eliminating the exception for programs and standards in the building and construction industries. The majority of comments opposed the proposal, and many requested that DOL reinstate the exception for building and construction industries. Two commenters asked DOL to clarify why the exemption was originally granted, why the proposed revisions would eliminate the exemption, and how this action will impact other related regulations, such as those pertaining to Federal works projects subject to the Davis-Bacon Act.

More than a dozen commenters raised issues associated with variations among State Apprenticeship Agency requirements for program registration. One set of commenters addressed variations in wage rates, asserting that it is unfair and economically disruptive to allow trades from one State to use the pay scale from their own State to bid on work in other States, particularly for apprentices employed on projects subject to the Davis-Bacon Act. Other commenters asserted that States have different quality (e.g., training hours) and licensing standards, which the proposed rule fails to recognize. A commenter stated that the proposed rule lacks language that would require a visiting sponsor registered in another State to meet or exceed existing local

requirements for apprenticeship registration. A State asked DOL to clarify whether the host State's laws or the home State's laws would apply to the apprentice.

*Response:* The exemption for reciprocal approval for apprenticeship programs in the construction industry in the current regulations was based on the view that the seasonality of construction work could potentially interrupt an apprentice's on-the-job learning, require that an apprentice be supervised by several employers, and require provision of related instruction in several places, rather than one location, thereby negatively impacting the quality of apprenticeship programs in the construction industry. With advances in technology to assist in the provision of related instruction and supervision of apprentices, the Department believes that these arguments for exempting construction industry programs from reciprocal approval are no longer valid. In particular, the use of electronic media in related instruction, as permitted by final § 29.2, will provide construction apprenticeship programs with the ability to ensure consistency in related technical instruction across the country, regardless of geographic location. High quality standards for apprenticeship programs can be attained in the construction industry, regardless of the seasonal nature of construction work. Therefore, the extension of reciprocal approval to construction industry programs, as well as to non-construction programs, will enable the National Apprenticeship System to further address the apprenticeship needs of businesses and labor.

We acknowledge that commenters have raised important concerns about differences between the home States' and the host States' requirements. Revisions to § 29.13(b)(7) were intended to provide program sponsors registered for Federal purposes in one State with fairness in contractor bidding on Federal public works projects in another State that are subject to the Davis-Bacon Act, while still safeguarding the welfare of registered apprentices. We agree that the application of a home State's wage and hour and apprentice ratios in a host State could confer an unfair advantage to an out-of-state contractor bidding on a Federal public works project. Such an outcome would be unacceptable. That is why, in all instances where we have negotiated memoranda of understanding with recognized States to arrange for reciprocal approval of apprenticeship programs in the building and construction trades, we have consistently required that the wage and hour and apprenticeship ratio

requirements of the host State apply. As stated in the Federalism section of the Administrative Requirements discussion in the NPRM, the extension of reciprocal approval to the construction industry programs allows a State Registration Agency to retain authority to enforce its State labor law, such as provisions covering apprentice wage rates and ratios. For further explanation, we have added language to the final rule to clarify that the program sponsor seeking reciprocal approval must comply with the host State's wage and hour and apprentice ratio standards. With this clarification, final § 29.13(b)(7) prohibits an out-of-state program sponsor seeking reciprocal approval from a host State from gaining a competitive advantage in registering and operating apprenticeship programs for Federal purposes. Extension of reciprocal approval in final § 29.13(b)(7) will not impact a State's implementation of regulations pertaining to Federal works projects subject to the Davis Bacon Act. We further emphasize that final § 29.13(b)(7) does not address other aspects of a host State's legislative, regulatory, or procedural requirements for registered apprenticeship for State or local purposes because part 29 pertains to registered apprenticeship for Federal purposes. Issues such as licensure requirements and contributions to a State apprenticeship training fund are State matters and are not covered by the requirements for reciprocal approval for Federal purposes in final § 29.13(b)(7).

#### State Apprenticeship Legislation, Regulations, Policies, and Operational Procedures

Twenty-seven commenters expressed concerns about proposed § 29.13(b)(9), which explicitly requires State Apprenticeship Agencies to submit proposed modifications in the State's apprenticeship legislation, regulations, policies, and/or operational procedures for Departmental review and approval, prior to implementation, for conformity with the National Apprenticeship Act and the implementing regulations in 29 CFR parts 29 and 30.

Many comments expressed concern that proposed § 29.13(b)(9) ignores a State's authority to set policy and establish law to meet the unique needs of its industry and citizens. One commenter asserted that this change usurps States' authority and exceeds the authority granted by the National Apprenticeship Act. Other commenters asserted that the Office of Apprenticeship's required review will inhibit the State regulatory process and

decrease State government's responsiveness to the public.

*Response:* Given the National Apprenticeship Act's broad mandate for the Department to safeguard the welfare of apprentices, the proposed requirement for Departmental review, prior to implementation, of a State's revision to an approved apprenticeship law is within our authority under the Act.

Further, the requirement is necessary for the Department's management of the National Apprenticeship System. Before it is permitted to register apprentices and apprenticeship programs, for Federal purposes, a State wishing to participate in the National Apprenticeship System must submit its apprenticeship law and other information (§§ 29.13(a) and (b)) to the Department for a determination that they conform to the requirements of Federal apprenticeship law. But, the State Apprenticeship Agency's responsibility to follow Federal law does not end there. Rather, a recognized State Apprenticeship Agency must continue to conform with the requirements of Federal law, particularly when the Agency wants to make changes to its own laws or regulations. Recent experience with reviews of recognized State Apprenticeship Agencies has underscored the need for the Department to monitor States' efforts to modify their apprenticeship laws, as they pertain to registered apprenticeship for Federal purposes. The Office of Apprenticeship's reviews have repeatedly identified provisions of State laws and regulations that were not consistent with Federal apprenticeship law; this has led to our requiring State Apprenticeship Agencies to take the corrective action necessary for them to attain conformity with parts 29 and 30 and with the National Apprenticeship Act.

Notice to the Office of Apprenticeship and an opportunity to review proposed changes to a State's apprenticeship law, regulation, and policies are necessary for Departmental oversight. However, the effect of purpose of proposed § 29.13(b)(9) will be to facilitate the Department's management of the National Apprenticeship System, not to usurp State authority to establish State law and policy. Accordingly, and in recognition of the concerns raised by commenters, we have revised § 29.13(b)(9) to provide that a State must submit all proposed modifications in apprenticeship legislation, regulations, policies and/or operational procedures for Office of Apprenticeship review and *concurrence*, rather than *approval*. The

Office of Apprenticeship's "concurrence" will simply reflect a finding that the proposed modification conforms to part 29 and that implementation of the proposal will not affect the State's recognition status. If the Office of Apprenticeship finds that a proposed modification does not conform to part 29, it will notify the State of its concerns and work with the State to resolve them, providing technical assistance as appropriate. This will provide the State and Office of Apprenticeship with an opportunity to identify and work out issues that potentially affect a State's recognition status before the proposals take effect and must be undone to preserve recognition. The State will be notified of the Office of Apprenticeship's findings as to conformity within 45 days from the date that the Office of Apprenticeship receives the proposed modification, as provided by § 29.13(e)(4).

Although the process for Office of Apprenticeship review and concurrence of a State's apprenticeship legislation, regulations, policies, and/or operational procedures may extend the time necessary for modifications, the potential imposition of additional time is justified by the need to ensure that revisions to State apprentice law, regulations, policies, and procedures conform to parts 29 and 30 and the National Apprenticeship Act.

Registration Agencies can help to maximize the efficiency of the process by notifying the Department of any modifications under consideration at the earliest opportunity. Further, States that proceed with revisions prior to completion of the Department's review and concurrence process can minimize the disruption that would result from subsequent Departmental non-concurrence through the inclusion of a saving clause. Such a clause could, for example, revive the text which was superseded by a modification to which the Department did not concur, or place the reader on notice that the revision would take effect only if or when the Department concurred with the change.

#### Application for Recognition

Three commenters raised concerns about proposed § 29.13(c), which establishes requirements for State Apprenticeship Agencies to apply for recognition from the Department. One commenter suggested that State Apprenticeship Agencies recognized by the Department under the current regulations should only be required to renew their status, not reapply for recognition. Another commenter asserted that requiring State

Apprenticeship Agencies to reapply for recognition diverts resources from program implementation and would interfere with funding and budget planning. Another stated that DOL currently has the authority to withdraw its recognition of State Apprenticeship Agencies for failure to conform to this part, and there is no need to place further reporting and oversight requirements on State Apprenticeship Agencies to reapply for recognition within 1 year of the effective date of the rule.

*Response:* This rulemaking significantly revises the substantive provisions of part 29. Although the reapplication process for recognition will require use of resources to prepare and submit materials specified in § 29.13(c), we have determined that it is absolutely essential to ensure that State Apprenticeship Agencies comprehensively conform to the new requirements of part 29, as a pre-condition for recognition. However, we acknowledge that an adequate and reasonable response to these new requirements will likely require more than the 1 year provided by the NPRM. Therefore, final § 29.13(c) establishes a 2-year time frame from the effective date of the final rule for currently recognized States seeking continued recognition to submit required documentation to the Office of Apprenticeship. This means that States seeking continued recognition will have 2 years from the effective date of this final rule to make any changes necessary for compliance with this part. We also recognize that circumstances may arise which provide good cause for extension of this 2 year time frame. Final § 29.13(c) carries forward a proposed provision that allows States to submit written requests for extension of time within which to comply with the requirements of this part. Except as noted, final § 29.13(c) is promulgated as proposed.

#### Renewal and Maintenance of Recognition

Five commenters addressed proposed § 29.13(d), which establishes a 5 year period for recognition of a State Apprenticeship Agency by the Department and provides a process for renewal and maintenance of recognition. Four commenters stated that DOL currently has the authority to withdraw recognition of a State Apprenticeship Agency for failure to conform to part 29 so there is no need to place further requirements on State Apprenticeship Agencies to renew their recognition every 5 years. One commenter asserted that requiring State Apprenticeship Agencies to renew their

recognition diverts resources from program implementation and would interfere with funding and budget planning.

*Response:* Existing regulations confer open-ended recognition on State Apprenticeship Agencies for Federal purposes and do not clearly specify that a State Apprenticeship Agency must continue to meet regulatory requirements for continued recognition. When the Department confers recognition on a State Apprenticeship Agency to register apprenticeship programs for Federal purposes, it is our responsibility to ensure that the basis for recognition, State apprenticeship law, regulation, policies, plans, and procedures, continues to conform to Federal requirements. We anticipate periodic change, as State Apprenticeship Agencies respond to the changing workforce needs of business, industry, and labor. Section 29.13(d) establishes requirements for renewal and maintenance of recognition to ensure that the Department has the opportunity to review and determine if the State apprenticeship laws, regulations, policies, plans, and procedures continue to conform to Federal requirements.

In the Department's view, a 5 year period provides a reasonable level of continuity for State Apprenticeship Agencies, while providing an efficient way to ensure that State Apprenticeship Agencies remain in conformity with Federal requirements. As discussed in the NPRM, the monitoring and reviews outlined in § 29.13(e) will form the basis for the Office of Apprenticeship's decision whether to continue recognition every 5 years. Therefore, the burden on State Apprenticeship Agencies for this 5 year renewal and maintenance of recognition will be minimal. We have revised final § 29.13(d) to clarify that the notification to States regarding conformity with this part will be based on the Office of Apprenticeship's monitoring of a State Registration Agency's compliance, as provided by § 29.13(e). We have revised § 29.13(d) accordingly.

#### Compliance

No comments were received on proposed § 29.13(e), which is a new provision that provides for on-site review, self-assessment, and monitoring of the State's apprenticeship law and procedures, and is based on the Department's existing procedures for determining if State Apprenticeship Agencies are complying with part 29. However, upon further review we noted two non-substantive changes were necessary to correct grammatical errors,

and we have revised final § 29.13(e) accordingly.

#### Accountability/Remedies for Non-conformity

One comment was received on proposed § 29.13(f), a new provision which provides for the steps to be taken if a State Apprenticeship Agency is found to be out of compliance with part 29. Those steps, which are based on the Department's current practice of compliance assistance, include the provision of technical assistance, and, where problems are found, conferral of "Conditional Recognition" for 45 days during which the State Apprenticeship Agency must submit a corrective action plan to remedy the conforming activity for failure to maintain compliance. The commenter suggested extending the period of "Conditional Recognition" to 90 days, asserting that additional time might be necessary to change State law that was found to be out of conformity with 29 CFR part 29.

*Response:* We disagree with the recommendation to extend the period of Conditional Recognition to 90 days. The period of Conditional Recognition established by 29.13(f)(ii) pertains to the time frame during which the State Apprenticeship Agency must submit its corrective action plan. Paragraph (f)(ii) does not establish the time frame in which a State must actually remedy the non-conforming activity. The 45 day period is consistent with current practice, and provides sufficient time to submit a corrective action plan. However, upon further review we have noted that the requirements for submission of a corrective action plan did not specify where the corrective action plan should be submitted. Therefore, we have revised § 29.13(f) to clarify that a State Apprenticeship Agency that was placed on Conditional Recognition must submit a corrective action plan to the Office of Apprenticeship.

#### Denial of State Apprenticeship Agency Recognition

No comments were received on proposed § 29.13(g), which is based on existing § 29.12(d) and simplifies and clarifies the process for determining whether to deny a State Apprenticeship Agency recognition and provides the procedures for appeal of that decision. However, upon further review we have determined that further clarification was needed with regard to informing a State Apprenticeship Agency about a request for administrative review of a denial of recognition. We have revised § 29.13(g) to clarify that the written notice to a State Apprenticeship Agency denying

recognition must also specify that a request for administrative review of a denial of recognition may be made within 30 calendar days of receipt of a notice of denial from the Department. We have also added provisions to paragraph (4) to clarify that the Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record and that, if not so decided, the Administrative Law Judge's decision constitutes final agency action. This clarification aligns final § 29.13(g) with provisions for administrative review in final § 29.10(c).

#### State Apprenticeship Programs

No comments were received on proposed § 29.13(h), which carried forward provisions for registration with the Office of Apprenticeship in the event that a State Apprenticeship Agency is not recognized by the Office of Apprenticeship for Federal purposes, that such recognition has been withdrawn, or that no State Apprenticeship Agency exists. Section 29.14(e) also establishes requirements for registration with the Office of Apprenticeship for program sponsors affected by derecognition of a State Apprenticeship Agency. To avoid duplication in the final rule, we have deleted proposed § 29.13(h)(2) and revised final § 29.14(e) to incorporate provisions from proposed § 29.13(h)(2) that provide opportunities for a program sponsor to request registration with the Office of Apprenticeship where a State Apprenticeship Agency does not exist or a State Apprenticeship Agency is not recognized by the Office of Apprenticeship for Federal purposes.

No comments were received on proposed § 29.13(i) and § 29.13(j). Therefore, we are promulgating 29.13(i) and 29.13(j) as proposed.

#### Derecognition of State Agencies (§ 29.14)

The Department received one comment on proposed revisions to the rules on derecognition of State Apprenticeship Agencies (existing § 29.13, proposed § 29.14). The commenter generally supported the Department's proposed changes to § 29.14, but suggested new penalties such as clarification that Federal funds will be withheld from State Apprenticeship Agencies that unfairly restrict apprenticeship opportunities in a manner inconsistent with parts 29 and 30 and the National Apprenticeship Act.

*Response:* The commenter did not provide sufficient justification for the establishment of an additional penalty beyond derecognition. Further, since the

Department provides no funds to State Apprenticeship Agencies, the Department does not have the statutory authority to withhold Federal funds from State Apprenticeship Agencies.

Upon further review, we have also added provisions to § 29.14(c)(3)(i) to clarify that the Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record and that, if not so decided, the Administrative Law Judge's decision constitutes final agency action. This clarification aligns final § 29.14(c) with provisions for administrative review in final § 29.10(c).

Also, as discussed above § 29.14(e) has been revised to incorporate provisions for a program sponsor to request registration with the Office of Apprenticeship where a State Apprenticeship Agency does not exist or a State Apprenticeship Agency is not recognized by the Office of Apprenticeship for Federal purposes.

#### III. Administrative Requirements for the Rule

##### *Executive Order (E.O.) 12866*

This final rule to revise 29 CFR part 29 is a significant regulatory action under § 3(f) of Executive Order 12866 because it raises "novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles" set forth in the E.O. Accordingly, pursuant to the Executive Order, it was reviewed by OMB. Revisions to 29 CFR part 29 pertain to the terms and conditions for an apprenticeship program sponsor to register program standards and apprentices for Federal purposes, and for the Department to grant authority to a State Registration Agency to act on behalf of the Department to register apprenticeship programs and standards for Federal purposes. The benefits of recognition of an apprenticeship program and apprentices for Federal purposes are to meet requirements of a Federal contract, grant, agreement or arrangement dealing with apprenticeship; and requirements for any Federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship. Since this final rule is the first revision to regulations for the National Apprenticeship System since the Department first promulgated the rule in 1977, it raises novel policy issues. However, the Department has determined that the costs to program sponsors and State Registration Agencies associated with registering apprenticeship programs and apprentices under these revised terms

and conditions are only minimally different from those pertaining to the current requirements of the current 29 CFR part 29. These revisions will not have an annual effect on the economy of \$100 million or more nor will they adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in any material way. Therefore, we conclude that this final rule is not economically significant and it is not subject to § 6(a)(3)(C) of the Executive Order.

##### *Paperwork Reduction Act*

This final rule requires Registered Apprenticeship Program Sponsors and apprentices to submit Apprenticeship Agreement forms to DOL or to the appropriate State Registration Agency. These requirements were previously reviewed and approved for use by OMB under 29 U.S.C. 50 and 29 CFR 29.1, and assigned OMB control number 1205-0223 under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (PRA). Additionally, OMB previously approved the Department's information collection request for the Apprenticeship Agreement in § 29.7, including collection of the apprentice's Social Security Number (OMB Control Number 1205-0223, expiration date of October 31, 2008. The Department is in the process of obtaining an extension of this form for three additional years). The Department has determined that this final rule contains no new information collection requirements, nor that any of these requirements are substantively or materially modified by the changes contained herein.

##### *Executive Order 13132: Federalism*

The Department has reviewed the final rule in accordance with E.O. 13132 and has determined that it has Federalism implications because it has substantial direct effects on States and the relationship between the National government and the States. As noted in the NPRM, the Department developed the proposed rule based upon advice from the Advisory Committee on Apprenticeship (ACA), and in consultation with State Apprenticeship Agencies and the National Association of State and Territorial Apprenticeship Directors (NASTAD), the organization representing apprenticeship officials from the District of Columbia, 27 States, and three Territories. The ACA, which contains representatives of two associations of State labor and apprenticeship officials (including NASTAD), offered specific suggestions on matters relating to apprenticeship

program standards, and registration and deregistration of apprenticeship programs. The proposed rule incorporated the ACA's recommendations, and as discussed above in the comments and regulatory changes, the final rule carries forward these recommendations.

Although NASTAD and State Apprenticeship Agencies did not have direct input into the development of sections in the proposed and final rule that directly affect States and the relationship between the National government and the States, the Department gave thorough consideration to NASTAD's recommendations on existing regulations submitted in a letter from the President of NASTAD in December 2006, in response to a request from the Office of Apprenticeship. NASTAD's recommendations for the proposed rule pertained to the roles of State Apprenticeship Councils and State Apprenticeship Agencies, composition of State Apprenticeship Councils, requirements for reciprocal approval for programs registered in one State seeking recognition in another State, the final rule's effect on recognition status for currently recognized States Registration Agencies, and the name of the DOL entity responsible for oversight of the National Apprenticeship System.

As stated in the NPRM and discussed further below, we considered this input and adopted most of NASTAD's recommendations in developing the proposed and final rule. Additionally, in our review of comments submitted by NASTAD and States on the proposed rule, we have identified six areas of concern for States, some of which are consistent with NASTAD's recommendations for revisions. The areas are: increased administrative burdens on States; impact on a State's internal organizational structure; requirements for linkages with the workforce investment system; expansion of reciprocal approval for programs and standards in the building and construction industries; Departmental review of State apprenticeship laws, regulations, policies and procedures; and recognition status of currently recognized States Registration Agencies.

Where appropriate and feasible for the effective functioning of the Federal-State partnership over registered apprenticeship for Federal purposes, we have revised the final rule to ease the administrative burdens on States. For other issues pertaining to this Federal-State partnership, we have determined that proposed requirements in the final rule are necessary to ensure conformity

with Federal law, and consistency across the National Apprenticeship System.

As noted in the NPRM and in discussions above, the final rule affects internal State organizational structures with regard to State Apprenticeship Agencies and State Apprenticeship Councils. Although no changes have been made to the final rule regarding limiting recognition to State Apprenticeship Agencies, we have set forth further explanation for this requirement. We have determined that because a direct relationship between Federal and State agencies is necessary for the smooth functioning of the National Apprenticeship System, the Department will only grant recognition to a State Apprenticeship Agency to act as a Registration Agency for registered apprenticeship for Federal purposes. The final rule requires recognized States to establish and continue to use a State Apprenticeship Council, which may serve either an advisory or a regulatory role. Accordingly, compliance with the final rule may require a State seeking recognition as a Registration Agency to modify its internal organizational structures pertaining to its State Apprenticeship Agency and its State Apprenticeship Council.

We recognize that the National Apprenticeship Act and the Workforce Investment Act do not authorize the Department to mandate that a State's workforce investment system and economic development strategies include registered apprenticeship. Although the Department encourages integration, and a State Apprenticeship Agency may seek such integration, the authority for internal State organizational issues remains with the State. Therefore, the final rule simply requires a State Apprenticeship Agency seeking recognition to demonstrate how it is pursuing linkages and coordination with the State's publicly funded workforce investment system and economic development strategies. As discussed in the NPRM, through increased coordination, State Apprenticeship Agencies can promote registered apprenticeship to a broader audience and further expand apprenticeship into high growth, high demand occupations.

The NPRM also noted that the proposed extension of requirements for reciprocal approval of programs in building and construction industries registered in other States may also raise questions regarding which States' registration requirements would apply. As discussed above, the final rule clarifies that program sponsors seeking reciprocal approval from a "host" State

must meet the host State's wage and hour provisions and apprenticeship ratio standards. Therefore, State Registration Agencies retain the authority to enforce wage and hour provisions and apprenticeship ratio standards in their respective State's labor law.

Commenters asserted that the requirement for Office of Apprenticeship review and approval of proposed modifications to State apprenticeship legislation, regulation, policies and procedures prior to implementation usurps State authority. The final rule clarifies that the National Apprenticeship Act's broad mandate for the Department to safeguard the welfare of apprentices provides the Department with authority to ensure that a recognized State Apprenticeship Agency remains accountable for its conformity with Federal law. However, we recognize that a State has sovereign power and authority to establish State law and policy. To balance the interests of these two authorities (State authority to promulgate State law and policy, with the Department's authority to ensure that a recognized State remains accountable for conformity with Federal law), the final rule provides for the Office of Apprenticeship's concurrence on proposed modifications to State apprenticeship legislation, regulation, policies and procedures for Federal purposes. Provisions for review and concurrence are intended to provide a reasonable opportunity for the Department to inform recognized States of areas of nonconformity; the provisions are not intended to diminish or restrict a State's authority to establish State law and policy. A State's decision to establish State law or policy that does not conform to requirements of Federal apprenticeship law or regulations has consequences, which may include the derecognition of the State Apprenticeship Agency as the Registration Agency authorized to register apprenticeship programs and standards for Federal purposes. However, such recognition does not affect the State's authority to register apprenticeship programs and standards for State purposes.

We have also extended the time frame for States seeking new or continued recognition as a Registration Agency to submit documentation specified in § 29.13(a). The NPRM provided 1 year from the effective date of the final rule; the final rule provides 2 years from the effective date of the final rule in recognition of the burdens associated with transition period.

Finally, we reiterate that the final rule pertains to registered apprenticeship for

Federal purposes. As with existing regulations, the final rule remains silent on matters pertaining to a State's registration and oversight of apprenticeship programs and apprentices for State or local purposes. The distinction between registered apprenticeship for Federal purposes and registered apprenticeship for State and local purposes serves to limit the scope of the Federal government's role in State government functions.

#### *Unfunded Mandates Reform Act of 1995*

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, and E.O. 12875. The Department has determined that this rule does not include any Federal mandate that may result in increased expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, adjusted by the rate of inflation between 1995 and 2008 (\$130 million). Accordingly, the Department has not included a budgetary impact estimate.

#### *Assessment of Federal Regulations and Policies on Families*

The Department certifies that this final rule has been assessed according to § 654 of Public Law 105-277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the Nation's families. Rather, it should have a positive effect by safeguarding the welfare of registered apprentices.

#### *Regulatory Flexibility Act (RFA)/ Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)*

The Department has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the RFA at 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities. Under the RFA, no regulatory flexibility analysis is required where the rule will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small not-for-profit organization, or small governmental jurisdiction. 5 U.S.C. 601(3)-(5). The definition of the term "small entity" does not include States or individuals. This rule revises and updates procedures for labor standards for registered apprenticeship programs administered by the States and the Department, and not by small governmental jurisdictions. There are

approximately 250,000 separate employers who participate in roughly 29,000 registered apprenticeship programs. There are an estimated 468,000 apprentices in the National Apprenticeship System.

Although there may be a substantial number of small businesses impacted by this rulemaking (at the most 250,000 employers), the Department does not believe that there will be a significant economic impact to these entities. Small businesses will not incur additional incremental costs from this rulemaking because the aspect of the rule most likely to impact small entities, program oversight, primarily applies to the responsibilities of Registration Agencies to monitor registered apprenticeship programs rather than imposing requirements on the registered apprenticeship programs. For example, final § 29.5 carries forward current program oversight requirements for program sponsors to comply with 29 CFR part 30, Equal Employment Opportunity regulations, which includes compliance reviews conducted by Registration Agencies. Final § 29.6 imposes on Registration Agencies a new regulatory requirement to perform quality assurance assessments on registered apprenticeship programs as part of the Agencies' performance accountability responsibilities. While this is a new provision in part 29, the requirement to perform quality assurance assessments is long-standing. Pursuant to Circular 92-02, the Office of Apprenticeship guidance on quality assurance assessments issued in 1991, Registration Agencies have assessed apprenticeship program performance to identify areas of strength and opportunities for improvement. The final rule's provisions for Equal Employment Opportunity Compliance Reviews and quality assurance assessments impose no assessment responsibilities on small programs or other programs. Compliance costs to program sponsors associated with program oversight will be the same as under current regulations.

However, through comments on the NPRM, it has come to our attention that the program performance provisions in § 29.6 may place an unintended burden on small apprenticeship program sponsors such as small businesses by potentially increasing the cost of maintaining conformity with this part or by potentially leading to deregistration of small apprenticeship programs. In particular, we are aware of concerns that the requirement in § 29.6(c) that Registration Agencies evaluate program performance by comparing completion rates of programs in like industries,

occupations, and geographic areas could possibly unfairly penalize programs operated by small businesses. We are also aware of concerns that the proposed § 29.6(a) requirement that every program must have at least one registered apprentice could unfairly impact small apprenticeship programs that may experience short periods of time without any apprentices. To avoid such unintended consequences, the Department has made changes to these provisions in the final rule discussed below.

As discussed above in the definitions in § 29.2, program performance standards in § 29.6, and program deregistration in § 29.8, the Department has clarified the relevant provisions in the final rule to address concerns about compliance costs and burdens on small entities potentially associated with a Registration Agency's evaluation of programs' performance. In § 29.6(a), the NPRM provided that every program must have at least one registered apprentice in order to be designated and retain designation as a registered apprenticeship program for Federal purposes. We are persuaded that there may be times when a sponsor may have a lag between training cycles and be without a registered apprentice for a short period of time and we recognize that small programs with fewer apprentices may encounter such situations more frequently than larger programs. Therefore, the final rule establishes a 1 year time frame during which a program sponsor may be without a registered apprentice so that normal program cycles will not lead to deregistration of small apprenticeship programs. By providing a period of up to one year so that the rule will not affect small programs that are without apprentices during the periods between training cycles, the revised § 29.6(a) reduces administrative costs and burdens associated with small program sponsors potentially having to re-register their program(s) that could have otherwise been cancelled for nonconformity with proposed § 29.6(a).

We have revised § 29.6(c) to address potential concerns that the requirement that Registration Agencies evaluate program performance by comparing completion rates of programs in like industries, occupations, and geographic areas could negatively impact small apprenticeship programs if Registration Agencies used these comparisons of completion rates to unfairly penalize programs operated by small businesses. To address these concerns and to minimize any potential unfair impact from the performance accountability provisions on small apprenticeship

programs, final § 29.6(c) removes comparisons of completion rates across geographic areas, industries, and occupations; drops the reference that appeared in proposed § 29.6(c) for the Registration Agency to “take other appropriate action” against such programs; and provides for evaluation of performance of registered apprenticeship programs based on comparison to the national average for completion rates. The preamble discussion of these provisions clearly explains that completion rate information is intended for a Registration Agency’s use in identifying programs that may benefit from technical assistance and will not automatically lead to program deregistration. The final rule clarifies that completion rates may potentially factor into deregistration procedures only when the program demonstrates an ongoing pattern of very low completion rates over several years. The function of calculating completion rates and the provision of technical assistance by discussing ways to improve a program’s completion rates has effectively been a part of a Registration Agency’s oversight operations. These requirements will not create new compliance costs to program sponsors and the changes made to the final rule minimize burdens on programs sponsored by small entities by eliminating the risk of unnecessary program deregistration proceedings that may have been possible under proposed § 29.6(c).

With the addition of definitions for quality assurance assessment and completion rate in the definitions in final § 29.2; and clarifications and revisions to program performance in final § 29.6 and program deregistration in final § 29.8, the final rule minimizes compliance costs and reduces any potential burdens on small entities that may have resulted from the NPRM. Therefore, the Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities, and as a result no regulatory flexibility analysis is required.

As discussed above with regard to program performance standards in final § 29.6, one commenter asserted the impact of the provisions for evaluation of apprenticeship programs qualifies the rule as a major rule under E.O. 12866 and SBREFA. The Department disagrees. As noted above, provisions for evaluation of program performance are necessary to ensure program quality and accountability in the National Apprenticeship System, and do not pertain to the establishment bid requirements for State and local

construction projects. Therefore, the Department certifies that this final rule is not a major rule as defined by § 804 of the SBREFA. 5 U.S.C. 804.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

The Department has reviewed this final rule in accordance with E.O. 13175 and has determined that it does not have “tribal implications.” The proposed rule does not “have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

*Executive Order 12988: Civil Justice*

This final rule has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

*Plain Language*

The Department drafted this Final Rule in plain language.

*Catalogue of Federal Domestic Assistance Number*

This program is listed in the Catalog of Federal Domestic Assistance at Number 17.201.

**List of Subjects in 29 CFR Part 29**

Apprentice agreement and complaints, Apprenticeability criteria, Program standards, registration and deregistration, Sponsor eligibility, State Apprenticeship Agency recognition and derecognition.

Signed at Washington, DC, on October 15, 2008.

**Brent R. Orrell,**

*Deputy Assistant Secretary, Employment and Training Administration.*

■ For reasons stated in the preamble, the Department of Labor revises 29 CFR part 29 to read as follows:

**PART 29—LABOR STANDARDS FOR THE REGISTRATION OF APPRENTICESHIP PROGRAMS**

Sec.

- 29.1 Purpose and scope.
- 29.2 Definitions.
- 29.3 Eligibility and procedure for registration of an apprenticeship program.
- 29.4 Criteria for apprenticeable occupations.

- 29.5 Standards of apprenticeship.
- 29.6 Program performance standards.
- 29.7 Apprenticeship agreement.
- 29.8 Deregistration of a registered program.
- 29.9 Reinstatement of program registration.
- 29.10 Hearings for deregistration.
- 29.11 Limitations.
- 29.12 Complaints.
- 29.13 Recognition of State apprenticeship agencies.
- 29.14 Derecognition of State apprenticeship agencies.

**Authority:** Section 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301) Reorganization Plan No. 14 of 1950, 64 Stat. 1267 (5 U.S.C. App. P. 534).

**§ 29.1 Purpose and scope.**

(a) The National Apprenticeship Act of 1937, section 1 (29 U.S.C. 50), authorizes and directs the Secretary of Labor “to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare \* \* \*.” Section 2 of the Act authorizes the Secretary of Labor to “publish information relating to existing and proposed labor standards of apprenticeship,” and to “appoint national advisory committees \* \* \*.” (29 U.S.C. 50a).

(b) The purpose of this part is to set forth labor standards to safeguard the welfare of apprentices, promote apprenticeship opportunity, and to extend the application of such standards by prescribing policies and procedures concerning the registration, for certain Federal purposes, of acceptable apprenticeship programs with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. These labor standards, policies and procedures cover the registration, cancellation and deregistration of apprenticeship programs and of apprenticeship agreements; the recognition of a State agency as an authorized agency for registering apprenticeship programs for certain Federal purposes; and matters relating thereto.

**§ 29.2 Definitions.**

*Administrator* means the Administrator of the Office of Apprenticeship, or any person specifically designated by the Administrator.

*Apprentice* means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn an apprenticeable occupation as provided in § 29.4 under standards of apprenticeship fulfilling the requirements of § 29.5.

*Apprenticeship Agreement* means a written agreement, complying with § 29.7, between an apprentice and either the apprentice's program sponsor, or an apprenticeship committee acting as agent for the program sponsor(s), which contains the terms and conditions of the employment and training of the apprentice.

*Apprenticeship Committee (Committee)* means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(1) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s).

(2) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.

*Apprenticeship Program* means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, as required under 29 CFR parts 29 and 30, including such matters as the requirement for a written apprenticeship agreement.

*Cancellation* means the termination of the registration or approval status of a program at the request of the sponsor, or termination of an Apprenticeship Agreement at the request of the apprentice.

*Certification or Certificate* means documentary evidence that:

(1) The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, for policy or guideline use by local affiliates, as conforming to the standards of apprenticeship set forth in § 29.5;

(2) A Registration Agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

(3) A Registration Agency has registered an apprenticeship program as evidenced by a Certificate of Registration or other written indicia;

(4) A Registration Agency has determined that an apprentice has

successfully met the requirements to receive an interim credential; or

(5) A Registration Agency has determined that an individual has successfully completed apprenticeship.

*Competency* means the attainment of manual, mechanical or technical skills and knowledge, as specified by an occupational standard and demonstrated by an appropriate written and hands-on proficiency measurement.

*Completion rate* means the percentage of an apprenticeship cohort who receive a certificate of apprenticeship completion within 1 year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a 1 year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been cancelled during the probationary period.

*Department* means the U.S. Department of Labor.

*Electronic media* means media that utilize electronics or electromechanical energy for the end user (audience) to access the content; and includes, but is not limited to, electronic storage media, transmission media, the Internet, extranet, lease lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic media and/or interactive distance learning.

*Employer* means any person or organization employing an apprentice whether or not such person or organization is a party to an Apprenticeship Agreement with the apprentice.

*Federal Purposes* includes any Federal contract, grant, agreement or arrangement dealing with apprenticeship; and any Federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

*Interim credential* means a credential issued by the Registration Agency, upon request of the appropriate sponsor, as certification of competency attainment by an apprentice.

*Journeyworker* means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. (Use of the term may also refer to a mentor, technician, specialist or other skilled worker who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.)

*Office of Apprenticeship* means the office designated by the Employment and Training Administration to administer the National Apprenticeship System or its successor organization.

*Provisional registration* means the 1-year initial provisional approval of newly registered programs that meet the required standards for program registration, after which program approval may be made permanent, continued as provisional, or rescinded following a review by the Registration Agency, as provided for in the criteria described in § 29.3(g) and (h).

*Quality Assurance Assessment* means a comprehensive review conducted by a Registration Agency regarding all aspects of an apprenticeship program's performance, including but not limited to, determining if apprentices are receiving: on-the-job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the registration agency is receiving notification of all new registrations, cancellations, and completions as required in this part.

*Registration Agency* means the Office of Apprenticeship or a recognized State Apprenticeship Agency that has responsibility for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR parts 29 and 30 and quality assurance assessments.

*Registration of an apprenticeship agreement* means the acceptance and recording of an apprenticeship agreement by the Office of Apprenticeship or a recognized State Apprenticeship Agency as evidence of the apprentice's participation in a particular registered apprenticeship program.

*Registration of an apprenticeship program* means the acceptance and recording of such program by the Office of Apprenticeship, or registration and/or approval by a recognized State Apprenticeship Agency, as meeting the basic standards and requirements of the Department for approval of such program for Federal purposes. Approval is evidenced by a Certificate of Registration or other written indicia.

*Related instruction* means an organized and systematic form of instruction designed to provide the apprentice with the knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence

courses of equivalent value, electronic media, or other forms of self-study approved by the Registration Agency.

*Secretary* means the Secretary of Labor or any person designated by the Secretary.

*Sponsor* means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

*State* means any of the 50 States of the United States, District of Columbia, or any Territory or possession of the United States.

*State Apprenticeship Agency* means an agency of a State government that has responsibility and accountability for apprenticeship within the State. Only a State Apprenticeship Agency may seek recognition by the Office of Apprenticeship as an agency which has been properly constituted under an acceptable law or Executive Order, and authorized by the Office of Apprenticeship to register and oversee apprenticeship programs and agreements for Federal purposes.

*State Apprenticeship Council* is an entity established to assist the State Apprenticeship Agency. A State Apprenticeship Council is ineligible for recognition as the State's Registration Agency. A regulatory State Apprenticeship Council may promulgate apprenticeship law at the direction of the State Apprenticeship Agency. An advisory State Apprenticeship Council provides advice and guidance to the State Apprenticeship Agency on the operation of the State's apprenticeship system.

*State office* means that individual office or division of State government designated as the point of contact for the State Apprenticeship Agency.

*Technical assistance* means guidance provided by Registration Agency staff in the development, revision, amendment, or processing of a potential or current program sponsor's Standards of Apprenticeship, Apprenticeship Agreements, or advice or consultation with a program sponsor to further compliance with this part or guidance from the Office of Apprenticeship to a State Apprenticeship Agency on how to remedy nonconformity with this part.

*Transfer* means a shift of apprenticeship registration from one program to another or from one employer within a program to another employer within that same program, where there is agreement between the apprentice and the affected apprenticeship committees or program sponsors.

### § 29.3 Eligibility and procedure for registration of an apprenticeship program.

(a) Eligibility for registration of an apprenticeship program for various Federal purposes is conditioned upon a program's conformity with the apprenticeship program standards published in this part. For a program to be determined by the Secretary as being in conformity with these published standards, the program must apply for registration and be registered with the Office of Apprenticeship or with a State Apprenticeship Agency recognized by the Office of Apprenticeship. The determination by the Secretary that the program meets the apprenticeship program standards is effectuated only through such registration.

(b) Only an apprenticeship program or agreement that meets the following criteria is eligible for Office of Apprenticeship or State Apprenticeship Agency registration:

(1) It is in conformity with the requirements of this part and the training is in an apprenticeable occupation having the characteristics set forth in § 29.4 of this part; and

(2) It is in conformity with the requirements of the Department's regulation on Equal Employment Opportunity in Apprenticeship and Training in 29 CFR part 30, as amended.

(c) Except as provided under paragraph (d) of this section, apprentices must be individually registered under a registered program. Such individual registration may be affected:

(1) By filing copies of each individual apprenticeship agreement with the Registration Agency; or

(2) Subject to prior Office of Apprenticeship or recognized State Apprenticeship Agency approval, by filing a master copy of such agreement followed by a listing of the name, and other required data, of each individual when apprenticed.

(d) The names of persons in probationary employment as an apprentice under an apprenticeship program registered by the Office of Apprenticeship or a recognized State Apprenticeship Agency, if not individually registered under such program, must be submitted within 45 days of employment to the Office of Apprenticeship or State Apprenticeship Agency for certification to establish the apprentice as eligible for such probationary employment.

(e) The appropriate Registration Agency must be notified within 45 days of persons who have successfully completed apprenticeship programs; and of transfers, suspensions, and cancellations of apprenticeship

agreements and a statement of the reasons therefore.

(f) Operating apprenticeship programs, when approved by the Office of Apprenticeship, are accorded registration evidenced by a Certificate of Registration. Programs approved by recognized State Apprenticeship Agencies must be accorded registration and/or approval evidenced by a similar certificate or other written indicia. When approved by the Office of Apprenticeship, National Apprenticeship Guideline Standards for policy or guidance will be accorded a certificate.

(g) Applications for new programs that the Registration Agency determines meet the required standards for program registration must be given provisional approval for a period of 1 year. The Registration Agency must review all new programs for quality and for conformity with the requirements of this part at the end of the first year after registration. At that time:

(1) a program that conforms with the requirements of this part:

(i) may be made permanent; or

(ii) may continue to be provisionally approved through the first full training cycle.

(2) a program not in operation or not conforming to the regulations during the provisional approval period must be recommended for deregistration procedures.

(h) The Registration Agency must review all programs for quality and for conformity with the requirements of this part at the end of the first full training cycle. A satisfactory review of a provisionally approved program will result in conversion of provisional approval to permanent registration. Subsequent reviews must be conducted no less frequently than every five years. Programs not in operation or not conforming to the regulations must be recommended for deregistration procedures.

(i) Any sponsor proposals or applications for modification(s) or change(s) to registered programs or certified National Guidelines for Apprenticeship Standards must be submitted to the Registration Agency. The Registration Agency must make a determination on whether to approve such submissions within 90 days from the date of receipt. If approved, the modification(s) or change(s) will be recorded and acknowledged within 90 days of approval as an amendment to such program. If not approved, the sponsor must be notified of the disapproval and the reasons therefore and provided the appropriate technical assistance.

(j) Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provides for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgement of union agreement or no objection to the registration is required. Where no such participation is evidenced and practiced, the employer or employers' association must simultaneously furnish to an existing union, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeship program. The Registration Agency must provide for receipt of union comments, if any, within 45 days before final action on the application for registration and/or approval.

(k) Where the employees to be trained have no collective bargaining agreement, an apprenticeship program may be proposed for registration by an employer or group of employers, or an employer association.

#### **§ 29.4 Criteria for apprenticeable occupations.**

An apprenticeable occupation is one which is specified by industry and which must:

(a) Involve skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning;

(b) Be clearly identified and commonly recognized throughout an industry;

(c) Involve the progressive attainment of manual, mechanical or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least 2,000 hours of on-the-job learning to attain; and

(d) Require related instruction to supplement the on-the-job learning.

#### **§ 29.5 Standards of apprenticeship.**

An apprenticeship program, to be eligible for approval and registration by a Registration Agency, must conform to the following standards:

(a) The program must have an organized, written plan (program standards) embodying the terms and conditions of employment, training, and supervision of one or more apprentices in an apprenticeable occupation, as defined in this part, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program.

(b) The program standards must contain provisions that address:

(1) The employment and training of the apprentice in a skilled occupation.

(2) The term of apprenticeship, which for an individual apprentice may be measured either through the completion of the industry standard for on-the-job learning (at least 2,000 hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).

(i) The time-based approach measures skill acquisition through the individual apprentice's completion of at least 2,000 hours of on-the-job learning as described in a work process schedule.

(ii) The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of Registered Apprenticeship. The program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

(iii) The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

(iv) The determination of the appropriate approach for the program standards is made by the program sponsor, subject to approval by the Registration Agency of the determination as appropriate to the apprenticeable occupation for which the program standards are registered.

(3) An outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate amount of time to be spent in each major process.

(4) Provision for organized, related instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the Registration Agency. Every apprenticeship instructor must:

(i) Meet the State Department of Education's requirements for a vocational-technical instructor in the

State of registration, or be a subject matter expert, which is an individual, such as a journeyworker, who is recognized within an industry as having expertise in a specific occupation; and

(ii) Have training in teaching techniques and adult learning styles, which may occur before or after the apprenticeship instructor has started to provide the related technical instruction.

(5) A progressively increasing schedule of wages to be paid to the apprentice consistent with the skill acquired. The entry wage must not be less than the minimum wage prescribed by the Fair Labor Standards Act, where applicable, unless a higher wage is required by other applicable Federal law, State law, respective regulations, or by collective bargaining agreement.

(6) Periodic review and evaluation of the apprentice's performance on the job and in related instruction; and the maintenance of appropriate progress records.

(7) A numeric ratio of apprentices to journeyworkers consistent with proper supervision, training, safety, and continuity of employment, and applicable provisions in collective bargaining agreements, except where such ratios are expressly prohibited by the collective bargaining agreements. The ratio language must be specific and clearly described as to its application to the job site, workforce, department or plant.

(8) A probationary period reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship. The probationary period cannot exceed 25 percent of the length of the program, or 1 year, whichever is shorter.

(9) Adequate and safe equipment and facilities for training and supervision, and safety training for apprentices on the job and in related instruction.

(10) The minimum qualifications required by a sponsor for persons entering the apprenticeship program, with an eligible starting age not less than 16 years.

(11) The placement of an apprentice under a written Apprenticeship Agreement that meets the requirements of § 29.7 or the State apprenticeship law of a recognized Registration Agency. The agreement must directly, or by reference, incorporate the standards of the program as part of the agreement.

(12) The granting of advanced standing or credit for demonstrated competency, acquired experience, training, or skills for all applicants equally, with commensurate wages for any progression step so granted.

(13) The transfer of an apprentice between apprenticeship programs and within an apprenticeship program must be based on agreement between the apprentice and the affected apprenticeship committees or program sponsors, and must comply with the following requirements:

(i) The transferring apprentice must be provided a transcript of related instruction and on-the-job learning by the committee or program sponsor;

(ii) Transfer must be to the same occupation; and

(iii) A new apprenticeship agreement must be executed when the transfer occurs between program sponsors.

(14) Assurance of qualified training personnel and adequate supervision on the job.

(15) Recognition for successful completion of apprenticeship evidenced by an appropriate certificate issued by the Registration Agency.

(16) Program standards that utilize the competency-based or hybrid approach for progression through an apprenticeship and that choose to issue interim credentials must clearly identify the interim credentials, demonstrate how these credentials link to the components of the apprenticeable occupation, and establish the process for assessing an individual apprentice's demonstration of competency associated with the particular interim credential. Further, interim credentials must only be issued for recognized components of an apprenticeable occupation, thereby linking interim credentials specifically to the knowledge, skills, and abilities associated with those components of the apprenticeable occupation.

(17) Identification of the Registration Agency.

(18) Provision for the registration, cancellation and deregistration of the program; and for the prompt submission of any program standard modification or amendment to the Registration Agency for approval.

(19) Provision for registration of apprenticeship agreements, modifications, and amendments; notice to the Registration Agency of persons who have successfully completed apprenticeship programs; and notice of transfers, suspensions, and cancellations of apprenticeship agreements and a statement of the reasons therefore.

(20) Authority for the cancellation of an apprenticeship agreement during the probationary period by either party without stated cause; cancellation during the probationary period will not have an adverse impact on the sponsor's completion rate.

(21) Compliance with 29 CFR part 30, including the equal opportunity pledge prescribed in 29 CFR 30.3(b); an affirmative action plan complying with 29 CFR 30.4; and a method for the selection of apprentices authorized by 29 CFR 30.5, or compliance with parallel requirements contained in a State plan for equal opportunity in apprenticeship adopted under 29 CFR part 30 and approved by the Department. The apprenticeship standards must also include a statement that the program will be conducted, operated and administered in conformity with applicable provisions of 29 CFR part 30, as amended, or, if applicable, an approved State plan for equal opportunity in apprenticeship.

(22) Contact information (name, address, telephone number, and e-mail address if appropriate) for the appropriate individual with authority under the program to receive, process and make disposition of complaints.

(23) Recording and maintenance of all records concerning apprenticeship as may be required by the Office of Apprenticeship or recognized State Apprenticeship Agency and other applicable law.

#### § 29.6 Program performance standards.

(a) Every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed 1 year:

(1) Between the date when a program is registered and the date of registration for its first apprentice(s); or

(2) Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

(b) Registration Agencies must evaluate performance of registered apprenticeship programs.

(1) The tools and factors to be used must include, but are not limited to:

- (i) Quality assurance assessments;
- (ii) Equal Employment Opportunity (EEO) Compliance Reviews; and
- (iii) Completion rates.

(2) Any additional tools and factors used by the Registration Agency in evaluating program performance must adhere to the goals and policies of the Department articulated in this part and in guidance issued by the Office of Apprenticeship.

(c) In order to evaluate completion rates, the Registration Agency must review a program's completion rates in comparison to the national average for completion rates. Based on the review, the Registration Agency must provide technical assistance to programs with

completion rates lower than the national average.

(d) Cancellation of apprenticeship agreements during the probationary period will not have an adverse impact on a sponsor's completion rate.

#### § 29.7 Apprenticeship agreement.

The apprenticeship agreement must contain, explicitly or by reference:

(a) Names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor.

(b) The date of birth and, on a voluntary basis, Social Security number of the apprentice.

(c) Contact information of the Program Sponsor and Registration Agency.

(d) A statement of the occupation in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship.

(e) A statement showing:

(1) The number of hours to be spent by the apprentice in work on the job in a time-based program; or a description of the skill sets to be attained by completion of a competency-based program, including the on-the-job learning component; or the minimum number of hours to be spent by the apprentice and a description of the skill sets to be attained by completion of hybrid program; and

(2) The number of hours to be spent in related instruction in technical subjects related to the occupation, which is recommended to be not less than 144 hours per year.

(f) A statement setting forth a schedule of the work processes in the occupation or industry divisions in which the apprentice is to be trained and the approximate time to be spent at each process.

(g) A statement of the graduated scale of wages to be paid to the apprentice and whether or not the required related instruction is compensated.

(h) Statements providing:

(1) For a specific period of probation during which the apprenticeship agreement may be cancelled by either party to the agreement upon written notice to the registration agency, without adverse impact on the sponsor.

(2) That, after the probationary period, the agreement may be:

(i) Cancelled at the request of the apprentice, or

(ii) Suspended or cancelled by the sponsor, for good cause, with due notice to the apprentice and a reasonable opportunity for corrective action, and with written notice to the apprentice and to the Registration Agency of the final action taken.

(i) A reference incorporating as part of the agreement the standards of the apprenticeship program as they exist on the date of the agreement and as they may be amended during the period of the agreement.

(j) A statement that the apprentice will be accorded equal opportunity in all phases of apprenticeship employment and training, without discrimination because of race, color, religion, national origin, or sex.

(k) Contact information (name, address, phone, and e-mail if appropriate) of the appropriate authority designated under the program to receive, process and make disposition of controversies or differences arising out of the apprenticeship agreement when the controversies or differences cannot be adjusted locally or resolved in accordance with the established procedure or applicable collective bargaining provisions.

#### **§ 29.8 Deregistration of a registered program.**

Deregistration of a program may be effected upon the voluntary action of the sponsor by submitting a request for cancellation of the registration in accordance with paragraph (a) of this section, or upon reasonable cause, by the Registration Agency instituting formal deregistration proceedings in accordance with paragraph (b) of this section.

(a) Deregistration at the request of the sponsor. The Registration Agency may cancel the registration of an apprenticeship program by written acknowledgment of such request stating the following:

(1) The registration is cancelled at the sponsor's request, and the effective date thereof;

(2) That, within 15 days of the date of the acknowledgment, the sponsor will notify all apprentices of such cancellation and the effective date; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration of the program removes the apprentice from coverage for Federal purposes which require the Secretary of Labor's approval of an apprenticeship program, and that all apprentices are referred to the Registration Agency for information about potential transfer to other registered apprenticeship programs.

(b) Deregistration by the Registration Agency upon reasonable cause.

(1)(i) Deregistration proceedings may be undertaken when the apprenticeship program is not conducted, operated, or administered in accordance with the program's registered provisions or with the requirements of this part, including

not but limited to: failure to provide on-the-job learning; failure to provide related instruction; failure to pay the apprentice a progressively increasing schedule of wages consistent with the apprentice skills acquired; or persistent and significant failure to perform successfully. Deregistration proceedings for violation of equal opportunity requirements must be processed in accordance with the provisions under 29 CFR part 30.

(ii) For purposes of this section, persistent and significant failure to perform successfully occurs when a program sponsor consistently fails to register at least one apprentice, shows a pattern of poor quality assessment results over a period of several years, demonstrates an ongoing pattern of very low completion rates over a period of several years, or shows no indication of improvement in the areas identified by the Registration Agency during a review process as requiring corrective action.

(2) Where it appears the program is not being operated in accordance with the registered standards or with requirements of this part, the Registration Agency must notify the program sponsor in writing.

(3) The notice sent to the program sponsor's contact person must:

(i) Be sent by registered or certified mail, with return receipt requested;

(ii) State the shortcoming(s) and the remedy required; and

(iii) State that a determination of reasonable cause for deregistration will be made unless corrective action is effected within 30 days.

(4) Upon request by the sponsor for good cause, the 30-day term may be extended for another 30 days. During the period for corrective action, the Registration Agency must assist the sponsor in every reasonable way to achieve conformity.

(5) If the required correction is not effected within the allotted time, the Registration Agency must send a notice to the sponsor, by registered or certified mail, return receipt requested, stating the following:

(i) The notice is sent under this paragraph;

(ii) Certain deficiencies were called to the sponsor's attention (enumerating them and the remedial measures requested, with the dates of such occasions and letters), and that the sponsor has failed or refused to effect correction;

(iii) Based upon the stated deficiencies and failure to remedy them, a determination has been made that there is reasonable cause to deregister the program and the program may be deregistered unless, within 15 days of

the receipt of this notice, the sponsor requests a hearing with the applicable Registration Agency; and

(iv) If the sponsor does not request a hearing, the entire matter will be submitted to the Administrator, Office of Apprenticeship, for a decision on the record with respect to deregistration.

(6) If the sponsor does not request a hearing, the Registration Agency will transmit to the Administrator a report containing all pertinent facts and circumstances concerning the nonconformity, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences will include the time, date, place, and persons present. The Administrator will make a final order on the basis of the record presented.

(7) If the sponsor requests a hearing, the Registration Agency will transmit to the Administrator a report containing all the data listed in paragraph (b)(6) of this section, and the Administrator will refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with § 29.10, and issue a decision as required in § 29.10(c).

(8) Every order of deregistration must contain a provision that the sponsor must, within 15 days of the effective date of the order, notify all registered apprentices of the deregistration of the program; the effective date thereof; that such cancellation automatically deprives the apprentice of individual registration; that the deregistration removes the apprentice from coverage for Federal purposes which require the Secretary of Labor's approval of an apprenticeship program; and that all apprentices are referred to the Registration Agency for information about potential transfer to other registered apprenticeship programs.

#### **§ 29.9 Reinstatement of program registration.**

Any apprenticeship program deregistered under § 29.8 may be reinstated upon presentation of adequate evidence that the apprenticeship program is operating in accordance with this part. Such evidence must be presented to the Registration Agency.

#### **§ 29.10 Hearings for deregistration.**

(a) Within 10 days of receipt of a request for a hearing, the Administrator of the Office of Apprenticeship must contact the Department's Office of Administrative Law Judges to request the designation of an Administrative

Law Judge to preside over the hearing. The Administrative Law Judge shall give reasonable notice of such hearing by registered mail, return receipt requested, to the appropriate sponsor. Such notice will include:

- (1) A reasonable time and place of hearing;
- (2) A statement of the provisions of this part pursuant to which the hearing is to be held; and
- (3) A concise statement of the matters pursuant to which the action forming the basis of the hearing is proposed to be taken.

(b) The procedures contained in 29 CFR part 18 will apply to the disposition of the request for hearing except that:

(1) The Administrative Law Judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request.

(2) Technical rules of evidence will not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) The Administrative Law Judge should issue a written decision within 90 days of the close of the hearing record. The Administrative Law Judge's decision constitutes final agency action unless, within 15 days from receipt of the decision, a party dissatisfied with the decision files a petition for review with the Administrative Review Board, specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically urged is deemed to have been waived. A copy of the petition for review must be sent to the opposing party at the same time. Thereafter, the decision of the Administrative Law Judge remains final agency action unless the Administrative Review Board, within 30 days of the filing of the petition for review, notifies the parties that it has accepted the case for review. The Administrative Review Board may set a briefing schedule or decide the matter on the record. The Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record. If not so decided,

the Administrative Law Judge's decision constitutes final agency action.

#### **§ 29.11 Limitations.**

Nothing in this part or in any apprenticeship agreement will operate to invalidate:

- (a) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or
- (b) Any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, Executive Order, or authorized regulation.

#### **§ 29.12 Complaints.**

(a) This section is not applicable to any complaint concerning discrimination or other equal opportunity matters; all such complaints must be submitted, processed and resolved in accordance with applicable provisions in 29 CFR part 30, or applicable provisions of a State Plan for Equal Employment Opportunity in Apprenticeship adopted pursuant to 29 CFR part 30 and approved by the Department.

(b) Except for matters described in paragraph (a) of this section, any controversy or difference arising under an apprenticeship agreement which cannot be adjusted locally and which is not covered by a collective bargaining agreement, may be submitted by an apprentice, or the apprentice's authorized representative, to the appropriate Registration Authority, either Federal or State, which has registered and/or approved the program in which the apprentice is enrolled, for review. Matters covered by a collective bargaining agreement are not subject to such review.

(c) The complaint must be in writing and signed by the complainant, or authorized representative, and must be submitted within 60 days of the final local decision. It must set forth the specific matter(s) complained of, together with relevant facts and circumstances. Copies of pertinent documents and correspondence must accompany the complaint.

(d) The Office of Apprenticeship or recognized State Apprenticeship Agency, as appropriate, will render an opinion within 90 days after receipt of the complaint, based upon such investigation of the matters submitted as may be found necessary, and the record before it. During the 90-day period, the Office of Apprenticeship or recognized State Apprenticeship Agency will make

reasonable efforts to effect a satisfactory resolution between the parties involved. If so resolved, the parties will be notified that the case is closed. Where an opinion is rendered, copies will be sent to all interested parties.

(e) Nothing in this section precludes an apprentice from pursuing any other remedy authorized under another Federal, State, or local law.

(f) A State Apprenticeship Agency may adopt a complaint review procedure differing in detail from that given in this section provided it is submitted for review and approval by the Office of Apprenticeship.

#### **§ 29.13 Recognition of State apprenticeship agencies.**

(a) *Recognition.* The Department may exercise its authority to grant recognition to a State Apprenticeship Agency. Recognition confers non-exclusive authority to determine whether an apprenticeship program conforms to the published standards and whether the program is, therefore, eligible for those Federal purposes which require such a determination by the Department. Such recognition shall be accorded upon the State's submission of, the Department's approval of, and the State's compliance with the following:

(1) The State Apprenticeship Agency must submit a State apprenticeship law, whether instituted through statute, Executive Order, regulation, or other means, that conforms to the requirements of 29 CFR parts 29 and 30;

(2) The State Apprenticeship Agency must establish and continue to use a State Apprenticeship Council, which operates under the direction of the State Apprenticeship Agency. The State Apprenticeship Council may be either regulatory or advisory and must meet the following requirements:

(i) It must be composed of persons familiar with apprenticeable occupations, and

(ii) It must include an equal number of representatives of employer and of employee organizations and include public members who shall not number in excess of the number named to represent either employer or employee organizations;

(3) The State Apprenticeship Agency must submit a State Plan for Equal Employment Opportunity in Apprenticeship that conforms to the requirements published in 29 CFR part 30;

(4) The State Apprenticeship Agency's submission must include a description of the basic standards, criteria, and requirements for program registration and/or approval, and

demonstrate linkages and coordination with the State's economic development strategies and publicly-funded workforce investment system; and

(5) The State Apprenticeship Agency's submission must include a description of policies and operating procedures which depart from or impose requirements in addition to those prescribed in this part.

(b) *Basic requirements.* In order to obtain and maintain recognition as provided under paragraph (a) of this section, the State Apprenticeship Agency must conform to the requirements of this part. To accomplish this, the State must:

(1) Establish and maintain an administrative entity (the State Apprenticeship Agency) that is capable of performing the functions of a Registration Agency under 29 CFR part 29;

(2) Provide sufficient resources to carry out the functions of a Registration Agency, including: Outreach and education; registration of programs and apprentices; provision of technical assistance, and monitoring as required to fulfill the requirements of this part;

(3) Clearly delineate the respective powers and duties of the State office, the State Apprenticeship Agency, and the State Apprenticeship Council;

(4) Establish policies and procedures to promote equality of opportunity in apprenticeship programs pursuant to a State Plan for Equal Employment Opportunity in Apprenticeship which adopts and implements the requirements of 29 CFR part 30, and to require apprenticeship programs to operate in conformity with such State Plan and 29 CFR part 30;

(5) Prescribe the contents of apprenticeship agreements, in conformity with § 29.7;

(6) Ensure that the registration of apprenticeship programs occurs only in apprenticeable occupations, as provided in § 29.4, including occupations in high growth and high demand industries;

(7) Accord reciprocal approval for Federal purposes to apprentices, apprenticeship programs and standards that are registered in other States by the Office of Apprenticeship or a Registration Agency if such reciprocity is requested by the apprenticeship program sponsor. Program sponsors seeking reciprocal approval must meet the wage and hour provisions and apprentice ratio standards of the reciprocal State;

(8) Provide for the cancellation and/or deregistration of programs, and for temporary suspension, cancellation, and/or deregistration of apprenticeship agreements; and

(9) Submit all proposed modifications in legislation, regulations, policies and/or operational procedures planned or anticipated by a State Apprenticeship Agency, either at the time of application for recognition or subsequently, to the Office of Apprenticeship for review and obtain the Office of Apprenticeship's concurrence prior to implementation.

(c) *Application for recognition.* A State Apprenticeship Agency desiring new or continued recognition as a Registration Agency must submit to the Administrator of the Office of Apprenticeship the documentation specified in paragraph (a) of this section. A currently recognized State desiring continued recognition by the Office of Apprenticeship must submit to the Administrator of the Office of Apprenticeship the documentation specified in paragraph (a) of this section within 2 years of the effective date of the final rule. The recognition of a currently recognized State shall continue for up to 2 years from the effective date of this regulation and during any extension period granted by the Administrator. An extension of time within which to comply with the requirements of this part may be granted by the Administrator for good cause upon written request by the State, but the Administrator shall not extend the time for submission of the documentation required by paragraph (a) of this section. Upon approval of the State Apprenticeship Agency's application for recognition and any subsequent modifications to this application as required under paragraph (b)(9) of this section, the Administrator shall so notify the State Apprenticeship Agency in writing.

(d) *Duration of recognition.* The recognition of a State Apprenticeship Agency shall last for 5 years from the date recognition is granted under paragraph (c) of this section. The Administrator shall notify each State Registration Agency at least 180 days prior to the expiration of the 5-year period whether the Registration Agency is in conformity with this part, based on reviews conducted by the Office of Apprenticeship, as required by paragraph (e) of this section. If the notification states that the State Apprenticeship Agency is in conformity, recognition will be renewed for an additional 5-year period. If the notification states that the State Apprenticeship Agency is not in conformity, the notification shall specify the areas of non-conformity, require corrective action, and offer technical assistance. After the Administrator determines that a State Apprenticeship Agency has corrected

the identified non-conformities, recognition will be renewed for an additional 5-year period.

(e) *Compliance.* The Office of Apprenticeship will monitor a State Registration Agency for compliance with the recognition requirements of this part through:

(1) On-site reviews conducted by Office of Apprenticeship staff.

(2) Self-assessment reports, as required by the Office of Apprenticeship.

(3) Review of State Apprenticeship Agency legislation, regulations, policies, and/or operating procedures required to be submitted under paragraphs (a)(1), (a)(5) and (b)(9) of this section for review and approval as required under § 29.13(a).

(4) Determination whether, based on the review performed under paragraphs (e)(1), (2), and (3) of this section, the State Registration Agency is in compliance with part 29. Notice to the State Registration Agency of the determination will be given within 45 days of receipt of proposed modifications to legislation, regulations, policies, and/or operational procedures required to be submitted under paragraphs (a)(1), (a)(5) and (b)(9) of this section.

(f) *Accountability/Remedies for non-conformity.* (1) State Registration Agencies that fail to maintain compliance with the requirements of this part, as provided under paragraph (e) of this section, will:

(i) Receive technical assistance from the Office of Apprenticeship in an effort to remedy the non-conforming activity; and

(ii) Be placed on "Conditional Recognition" for a period of 45 days during which the State Apprenticeship Agency must submit a corrective action plan to remedy the non-conforming activity to the Office of Apprenticeship. Upon request from the State Apprenticeship Agency, for good cause, the 45-day period may be extended.

(2) Failure to comply with these requirements will result in rescission of recognition, for Federal Purposes as provided under § 29.14.

(g) *Denial of State Apprenticeship Agency Recognition.* A denial by the Office of Apprenticeship of a State Apprenticeship Agency's application for new or continued recognition must be in writing and must set forth the reasons for denial. The notice must be sent by certified mail, return receipt requested. In addition to the reasons stated for the denial, the notice must specify the remedies which must be undertaken prior to consideration of a resubmitted request, and must state that a request for

administrative review of a denial of recognition may be made within 30 calendar days of receipt of the notice of denial from the Department. Such request must be made by mail and addressed to the Chief Administrative Law Judge for the Department. The mailing address is Office of Administrative Law Judges, U.S. Department of Labor, Suite 400 North, 800 K Street, NW., Washington, DC 20001-8002. Within 30 calendar days of the filing of the request for review, the Administrator must prepare an administrative record for submission to the Administrative Law Judge designated by the Chief Administrative Law Judge.

(1) The procedures contained in 29 CFR part 18 will apply to the disposition of the request for review except that:

(i) The Administrative Law Judge will receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof will be made available by the party submitting the documentary evidence to any party to the hearing upon request.

(ii) Technical rules of evidence will not apply to hearings conducted under this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination will be applied, where reasonably necessary, by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence.

(2) The Administrative Law Judge should submit proposed findings, a recommended decision, and a certified record of the proceedings to the Administrative Review Board within 90 calendar days after the close of the record.

(3) Within 20 days of the receipt of the recommended decision, any party may file exceptions. Any party may file a response to the exceptions filed by another party within 10 days of receipt of the exceptions. All exceptions and responses must be filed with the Administrative Review Board with copies served on all parties and *amici curiae*.

(4) After the close of the period for filing exceptions and responses, the Administrative Review Board may issue a briefing schedule or may decide the matter on the record before it. The Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record. If not so decided, the

Administrative Law Judge's decision constitutes final agency action. The decision of the Administrative Review Board constitutes final action by the Department.

(h) *Withdrawal from recognition.*

Where a State Apprenticeship Agency voluntarily relinquishes its recognition for Federal purposes, the State must:

(1) Send a formal notice of intent to the Administrator of the Office of Apprenticeship;

(2) Provide all apprenticeship program standards, apprenticeship agreements, completion records, cancellation and suspension records, Equal Employment Opportunity Compliance Review files and any other documents relating to the State's apprenticeship programs, to the Department; and

(3) Cooperate fully during a transition period.

(i) *Retention of authority.*

Notwithstanding any grant of recognition to a State Apprenticeship Agency under this section, the Office of Apprenticeship retains the full authority to register apprenticeship programs and apprentices in all States and Territories where the Office of Apprenticeship determines that such action is necessary to further the interests of the National Apprenticeship System.

(j) *State apprenticeship programs.* (1) An apprenticeship program submitted to a State Registration Agency for registration must, for Federal purposes, be in conformity with the State apprenticeship law, regulations, and with the State Plan for Equal Employment Opportunity in Apprenticeship as submitted to and approved by the Office of Apprenticeship pursuant to 29 CFR part 30.

(2) In the event that a State Apprenticeship Agency is not recognized by the Office of Apprenticeship for Federal purposes or that such recognition has been withdrawn, or if no State Apprenticeship Agency exists, registration with the Office of Apprenticeship may be requested. Such registration must be granted if the program is conducted, administered and operated in accordance with the requirements of this part and the equal opportunity regulation in 29 CFR part 30, as amended.

#### **§ 29.14 Derecognition of State Apprenticeship Agencies.**

The recognition for Federal purposes of a State Apprenticeship Agency may be withdrawn for the failure to fulfill, or operate in conformity with, the requirements of parts 29 and 30.

Derecognition proceedings for reasonable cause will be instituted in accordance with the following:

(a) Derecognition proceedings for failure to adopt or properly enforce a State Plan for Equal Employment Opportunity in Apprenticeship must be processed in accordance with the procedures prescribed in 29 CFR part 30.

(b) For causes other than those under paragraph (a) of this section, the Office of Apprenticeship must notify the respondent and appropriate State sponsors in writing, by certified mail, with return receipt requested. The notice must set forth the following:

(1) That reasonable cause exists to believe that the respondent has failed to fulfill or operate in conformity with the requirements of this part;

(2) The specific areas of nonconformity;

(3) The needed remedial measures; and

(4) That the Office of Apprenticeship proposes to withdraw recognition for Federal purposes unless corrective action is taken, or a hearing request mailed, within 30 days of the receipt of the notice.

(c) If, within the 30-day period, the State Apprenticeship Agency:

(1) Acknowledges that the State is out of conformity, specifies its proposed remedial action and commits itself to remedying the identified deficiencies, the Office of Apprenticeship will suspend the derecognition process to allow a reasonable period of time for the State Apprenticeship Agency to implement its corrective action plan.

(i) If the Office of Apprenticeship determines that the State's corrective action has addressed the identified concerns, the Office of Apprenticeship must so notify the State and the derecognition proceedings shall be terminated.

(ii) If the Office of Apprenticeship determines that the State has not addressed or failed to remedy the identified concerns, the Administrator must notify the State, in writing, of its failure, specifying the reasons therefore, and offer the State an opportunity to request a hearing within 30 days.

(2) Fails to comply or to request a hearing, the Office of Apprenticeship shall decide whether recognition should be withdrawn. If the decision is in the affirmative, the Administrator must begin the process of transferring registrations in paragraph (d).

(3) Requests a hearing. The Administrator shall refer the matter to the Office of Administrative Law Judges. An Administrative Law Judge will convene a hearing in accordance with

§ 29.13(g) and submit proposed findings and a recommended decision to the Administrative Review Board for final agency action. The Administrative Review Board must decide any case it accepts for review within 180 days of the close of the record. If not so decided, the Administrative Law Judge's decision constitutes final agency action.

(d) If the Administrative Review Board determines to withdraw recognition for Federal purposes or if the Office of Apprenticeship has decided that recognition should be withdrawn under paragraph (c)(2) of this section, the Administrator must:

(1) Notify the registration agency and the State sponsors of such withdrawal and effect public notice of such withdrawal.

(2) Notify the sponsors that, 30 days after the date of the order withdrawing recognition of the State's registration agency, the Department shall cease to recognize, for Federal purposes, each apprenticeship program registered with the State Apprenticeship Agency, unless within that time, the sponsor requests registration with the Office of Apprenticeship.

(e) In the event that a State Apprenticeship Agency is not recognized by the Office of Apprenticeship for Federal purposes or that such recognition has been withdrawn, or if no State Apprenticeship Agency exists, apprenticeship program sponsors may request registration with the Office of Apprenticeship in accordance with the following:

(1) The Office of Apprenticeship may grant the request for registration on an interim basis. Continued recognition will be contingent upon its finding that the State apprenticeship program is operating in accordance with the requirements of this part and of 29 CFR part 30.

(2) The Office of Apprenticeship must make a finding on this issue within 30 days of receipt of the request.

(3) If the finding is in the negative, the State sponsor must be notified in writing that the interim registration with the Office of Apprenticeship has been revoked and that the program will be deregistered unless the sponsor requests a hearing within 15 days of the receipt of the notice. If a hearing is requested, the matter will be forwarded to the Office of Administrative Law Judges for a hearing in accordance with § 29.10.

(4) If the finding is in the affirmative, the State sponsor must be notified in writing that the interim registration with the Office of Apprenticeship has been made permanent based upon compliance with the requirements of this part.

(f) If the sponsor fails to request registration with the Office of Apprenticeship, the written notice to such State sponsor must further advise the recipient that any actions or benefits applicable to recognition for Federal purposes are no longer available to the participants in its apprenticeship program as of the date 30 days after the date of the order withdrawing recognition.

(g) Such notice must also direct the State sponsor to notify, within 15 days,

all its registered apprentices of the withdrawal of recognition for Federal purposes; the effective date thereof; and that such withdrawal removes the apprentice from coverage under any Federal provision applicable to their individual registration under a program recognized or registered by the Secretary of Labor for Federal purposes. Such notice must direct that all apprentices are referred to the Office of Apprenticeship for information about potential transfer to other registered apprenticeship programs.

(h) Where a State Apprenticeship Agency's recognition for Federal purposes has been withdrawn; the State must:

(1) Provide all apprenticeship program standards, apprenticeship agreements, completion records, cancellation and suspension records, Equal Employment Opportunity Compliance Review files and any other documents relating to the State's apprenticeship programs, to the Department; and

(2) Cooperate fully during a transition period.

(i) A State Apprenticeship Agency whose recognition has been withdrawn under this part may have its recognition reinstated upon presentation of adequate evidence that it has fulfilled the requirements established in § 29.13(i) and § 29.14(g) and (h) and is operating in conformity with the requirements of this part.

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