

Initial Statement of Reasons

Introduction

The rulemaking provisions of the California Administrative Procedure Act (APA) (Gov. Code section 11340 *et seq.*) govern state agency rulemaking. Specifically, the APA establishes procedures with which state agencies must comply, unless exempt, to adopt regulations lawfully. Government Code section 11343, subdivisions (a) and (b) require every state agency to transmit a certified copy of every regulation adopted, amended, or repealed (except regulations that are building standards) to the Office of Administrative Law (OAL) for filing with the Secretary of State. Government Code section 11343.1 requires all regulations transmitted to OAL for filing with the Secretary of State to conform to the style prescribed by OAL.

Problem Statement

The Employment Training Panel (ETP) uses codes from the North American Industrial Classification System (NAICS) for a variety of reasons, including tracking industries that participate in our program, designating Priority Industries, and designating certain NAICS codes that will meet our legislative and regulatory requirements for companies that are deemed eligible to be affected by out-of-state competition (OSC). The federal Office of Management and Budget updates the NAICS code database every five years, most recently in 2022.

The recent 2022 updates to the NAICS code database have affected some codes that are listed in the ETP's OSC regulation (see 22 CCR 4416(i)). Therefore, the ETP's regulations now need to be updated to accommodate the recent changes to the federal NAICS database. The ETP is proposing three updates, as follows:

- 1) Remove the date referencing which year of the NAICS database is being used. Currently, our regulation reads: "The pertinent industries are classified into Sectors by the federal Office of Management and Budget under the 2002 North American Industrial Classification System (NAICS)." The ETP would like to remove the date reference "2002", so that we can use the NAICS database continually as it is updated every five years.
- 2) Update outdated codes currently in the regulation to the new codes that became effective with the most recent 2022 NAICS database update. These updates constitute only a code number change – old industries were given new numbers in the NAICS database, and the ETP wants our regulations to reflect the current and correct codes, since the original codes are no longer active. In summary, the old 511 codes are now new 513 codes. The old 511 codes are all deemed eligible as meeting OSC in our regulation 22CCR 4416(i). Therefore, in order to keep these industries as OSC eligible, the 511 codes must be updated to reflect the new 513 codes. See table below:

2017 NAICS Code/Industry Name	2022 NAICS Code/Industry Name
511 Publishing Industries (Except Internet)	513 Publishing Industries
5111 Newspaper, Periodical, Book, and Directory Publishers	5131 Newspaper, Periodical, Book, and Directory Publishers
51111/511110 Newspaper Publishers	51311/513110 Newspaper Publishers
51112/511120 Periodical Publishers	51312/513120 Periodical Publishers
51113/511130 Book Publishers	51313/513130 Book Publishers
51114/511140 Directory and Mailing List Publishers	51314/513140 Directory and Mailing List Publishers
51119/511190 Other Publishers	51319/513190 Other Publishers
511191 Greeting Card Publishers	513191 Greeting Card Publishers
5112 Software Publishers	5132 Software Publishers

- 3) As part of the 2022 NAICS database update, Internet Publishers were moved from code 51913 Internet Publishing and Broadcasting and Web Search Portals to 51319 Other Publishers (in other words, the NAICS database now houses internet only publishing along with all other publishing industries under the new 513 codes). Originally, ETP’s regulation 22 CCR 4416(i) did not extend the OSC designation to Internet Publishers (the original 511 codes expressly omitted Internet Publishing). With the new 513 codes, and the merger of the old 51913 Internet Publishers into the new 51319 Other Publishers code, the ETP is seeking to expand the OSC qualification to Internet Publishers as well, since they are now included by the NAICS database into our other 51-related OSC codes. Expanding the OSC qualification to Internet Publishers will help keep ETP’s regulations consistent with the federal NAICS program. Additionally, Internet Publishers face the same, or potentially even fiercer, competition from out-of-state publishers as brick-and-mortar publishers do, and the ETP therefore sees no reason to segregate Internet Publishers from the larger OSC exemption for publishers generally. The ETP approved expanding the OSC qualification to include Internet Publishers at its April 28, 2023 meeting (see Panel memo and Panel minutes regarding such in the Documents Relied Upon area of this regulation package and below).

Benefits

There are multiple benefits to the above three changes, including:

- 1) By removing the date reference to a specific NAICS database edition, the ETP’s regulation 22 CCR 4416(i) will not need to be updated to reflect the new year of the NAICS database edition every five years.
- 2) By adopting the new 513 codes, in place of the old 511 codes which are no longer active, the ETP will be able to maintain the benefit of the OSC exemption for companies in industries that have long been eligible for that same OSC exemption. Put another way, by updating our regulations to match the new NAICS code updates, no industries previously considered eligible for the OSC exemption will lose their exemption.

- 3) By updating our regulations to match the current NAICS database, our regulations remain consistent with the federal NAICS program.
- 4) By expanding the OSC exemption to Internet Only publishers, there is the potential that more companies that are part of the Internet Only publishing industry will now apply for ETP funding. See the Technical, Theoretical, and/or Empirical Study, Reports, or Documents Relied Upon area and the Economic Impact Analysis area below.

Purpose

22 CCR 4416(i): The purpose of this regulation is to implement and make specific the meaning of “challenged by competition from other states” and “result in the growth of the California economy by stimulating exports from the state and the production of goods and services that would otherwise be imported from outside the state” as used in Unemployment Insurance Code 10200(a) and 10200(b)(1), by clarifying which industries are deemed to automatically meet this out-of-state competition requirement because of their NAICS codes.

Necessity

22 CCR 4416(i): This regulation is necessary, as a performance standard, in order to define what ways a company can be deemed to be threatened by out-of-state competition, specifically by holding a NAICS code for an industry that is deemed to automatically meet this standard. The proposed revisions to this regulation are required in order to:

- 1) Keep the state regulation in compliance and agreement with the federal NAICS database;
- 2) Prevent companies with the prior 511 NAICS code that has been made obsolete by the federal NAICS database changes from being automatically deprived of the benefit of being deemed eligible under ETP’s out-of-state competition definition;
- 3) Eliminate the need to change the state regulation every five years when the NAICS database updates to show the new year of the NAICS database in the state regulation;
- 4) Expand the benefit of being deemed eligible under the out-of-state competition definition to internet only publishers, again in alignment with the federal NAICS database, and to no longer delineate a difference between internet only publishers and other publishers for the purpose of determining whether they are threatened by out-of-state competition.

Technical, Theoretical, and/or Empirical Study, Reports, or Documents Relied Upon

- 1) [Federal Register Volume 86 No. 125, 7/2/2021](#). Last accessed 7/18/2023.
- 2) [Federal Register Volume 86 No. 242, 12/21/2021](#). Last accessed 7/18/2023.
- 3) [ETP Panel Memo, Subject: Revision of Out-of-State Competition Regulation \(22 CCR 4416\), 4/28/2023](#). Last accessed 7/17/2023.
- 4) [April-2023-Panel-Meeting-Minutes-Final](#). Last accessed 7/17/2023.
- 5) Internal ETP Data Run: Internet Publishers Data Run Request, 6/1/2023
- 6) Employment Development Department, Labor Market Information Division (LMID) Data Run: Data Deliverable_ETP_June 2023
- 7) Employment Development Department, LMID Data Run: SMALL BUSINESS DATA_1_Emp. Training Panel Data Request_519130_513191_513199 060523
- 8) [Employment Development Department, LMID Presentation to Panel, April 28, 2023: LMID Industry Analysis 2023 Final](#). Last accessed 7/17/2023.
- 9) [North American Industry Classification System](#), Last accessed 8/3/2023.

Economic Impact Assessment/Analysis

The first two aspects of this proposed regulation change, namely, removing the specific date of the NAICS database and updating old NAICS codes to their new version as a result of the most recent federal NAICS database update, will have no economic impact. This is because nothing of substance in the regulation is being altered by this regulation change. No new rules or requirements are being proposed. No company previously eligible under regulation 4416(i) will have their eligibility status changed in any way. These proposed edits simply keep ETP's regulation in agreement with the federal NAICS database.

The third aspect of this proposed regulation change, namely, expanding the ability to be deemed eligible for the out-of-state competition exemption to internet only publishers may have a small economic impact, in the following ways:

- 1) In the past five years, the ETP has served 27 employers across 20 contracts that have the old NAICS code of 51913 Internet Publishers and Broadcasting and Web Search Portals. These 27 employers successfully trained and retained in employment 22,722 individuals, and earned a total of \$9,855,943 dollars in ETP funding for those individuals over that time period. (See Internal Data Run: Internet Publishers Data Run Request, 6/1/2023, referenced above).

If the ETP's proposed regulation change, expanding the OSC exemption to the new 51319 Other Publishers NAICS code (in which Internet Publishers are now included, having been removed from the old 51913 wider-reaching NAICS code), is approved, there is the possibility that over the next five years, internet publishers may decide to participate more fully in the ETP program, since being deemed eligible for the OSC exemption under Regulation 4416 provides some benefits for companies participating in ETP contracts.

This means that the ETP may see a larger number of internet publishers applying for our program. This means that potentially thousands more individuals at internet publishing houses may receive valuable job training, which can result in higher wages for the employees, as well as in benefits for the employers such as a lower turnover rate, more highly skilled employees, cost-cutting efficiencies in the workplace, a lower cost for their employee training programs, and potentially a higher volume of published materials being available for public consumption. Please note that, even if the ETP receives more requests for funding for internet publishers, our overall budget remains stable, and since the ETP exhausts all of its training funds every year, the overall number of trainees and companies we serve is unlikely to vary that much, in other words, our funds may be redistributed in different ways, but our overall funding levels will remain fairly constant.

One last note: since internet publishers were previously housed under a NAICS code which also included broadcasters and web search portals, it is impossible to discern exactly how many of the 27 companies referenced above were truly internet publishers and not broadcasters or web search portals. However, the difference in the proposed economic impact would then only be one of a lesser degree. The analysis qualitatively remains the same. Additionally, please note that there is no requirement or mandate that any company participate in the ETP program – it is fully voluntary – and hence future participation in ETP by any given industry can only be loosely predicted.

2) Per the Employment Development Department's Labor Market Information Division (LMID):

- a. At the end of 2021, 3,450 businesses employing 129,210 individuals were classified with the original 51913 NAICS code for Internet Publishing and Broadcasting and Web Search Portals. This includes not only Internet Publishers, but also Broadcasting and Web Search Portals. Therefore, the actual number of businesses and number of employees for Internet Publishers only is lower than the above figures. LMID was not able to provide data on only the Internet Publishers included in the old 51913 code.

Of the 3,450 businesses with this old 51913 code, 3,223 were small businesses – defined as businesses with 100 or less employees. Therefore, nearly all of these businesses are small businesses.

- b. At the end of the 3rd Quarter of 2022, 1,088 businesses employing 7,262 individuals were classified with the new 51319 code for Other Publishers, where Internet Publishers are now housed. This number includes other business types than only Internet Publishers. Therefore, the actual number of businesses and number of employees for Internet Publishers only is lower than the above figures. LMID was not able to provide data on only the Internet Publishers included in the new 51319 code. Also note: since the 51319 NAICS code is a new code, this 1,088 figure can include both new businesses, and existing businesses that used to have the old 51913 code and who have updated their code to the correct new code with the EDD.

- c. Additionally, LMID reports that the old 511 sector for Publishing Industries (Except Internet), which are now housed under the new 513 sector, is projected to have a 2.3% growth over the time period from 2022 – 2024.
- d. Therefore, given all of the above, it seems likely that Internet Publishers are mostly small businesses, and that they are experiencing a small percentage in growth over the next few years.
- e. If the ETP’s proposed regulation change to expand the OSC exemption to Internet Only publishers is approved, then it is possible that more of these companies will apply to the ETP program – thus providing further support to this industry and its growth within the state of California. While ETP cannot say with certainty if the proposed regulation change will create new businesses, new employment positions, or expand the reach of existing businesses within California, given the above data and information in the following section below, there is no reason to believe that the proposed regulation change will have a negative effect on any of these economic areas – and in fact, will most likely have at least some small positive effect on California’s economy, and as such, will also provide at least some small benefit to the welfare of California residents. It is possible that there may even be a small positive effect on the environment – if being able to receive the OSC exemption from ETP will increase the activities of internet only publishers, then it is possible that less raw materials will be needed to produce physically printed products.

Creation or Elimination of CA Jobs: potential for a very small increase in the number of jobs available in internet publishing companies as a result of the similarly small potential increase in the number of internet publishers who may choose to apply for ETP funding;

Creation or Elimination of CA Businesses: a very small potential for an increase in the number of internet publishing companies as a result of the expansion of the OSC exemption to these companies;

Expansion of Businesses Currently Doing Business in CA: a small potential for an increase in the business activities of internet publishing companies, if they choose to apply for and receive ETP funding.

Benefits on Health and Welfare of CA Residents: The ETP foresees no net impact on the health and welfare of CA residents, on worker safety, or on the state’s environment as a result of this proposed regulation change.

Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business

The overall intent and purpose of the ETP program is to foster job creation and the retention of high-wage, high-skilled jobs that are threatened by out-of-state competition. (U.I. Code section 10200(a).) The Panel must give funding priority to projects that would train new employees of firms locating or expanding in the state, train displaced workers, and develop workers with skills that prepare them for

the challenges of a high performance workplace of the future. (U.I. Code section 10200(b).) Thus, the Panel has made an initial determination that the proposed amendment may encourage the retention of jobs and businesses in California, in the sense that it would enhance the Panel's ability to implement the purpose of the ETP program. Additionally, since the ETP program is fully voluntary and provided at no cost to participating employers, who are actually reimbursed for their eligible training activities, the ETP program does not have any "significant statewide adverse economic impact directly affecting businesses."

Reasonable Alternatives to the Regulation and the Agency's Reasons for Rejecting Those Alternatives

Alternative 1: Not to update regulation 4416(i) to correspond to the recent updates to the federal NAICS database, and not expanding the out-of-state competition exemption to internet publishers.

Analysis: If the ETP decided not to update this regulation, then:

- 1) The state regulation would be inconsistent with the federal NAICS database;
- 2) Industries previously identified as eligible for the OSC exemption would no longer be eligible;
- 3) The out-of-state competition exemption would not be expanded to internet only publishers.

Since the federal government now groups internet only publishers with other publishers under the 513 NAICS codes, if ETP decided not to include internet publishers, we would be inconsistent with the federal NAICS database. Additionally, the ETP recognizes that, while internet publishers do publish "only" online, internet publishers that are located in and registered to do business in California face extreme out-of-state competition, since their customers could decide to use an internet publisher from any state, or indeed, from anywhere in the world, instead of from the California-based internet publisher.

Duplication or Conflict with Federal Regulations

The ETP is not a department, board, or commission within the EPA, the Resources Agency, or the Office of the State Fire Marshall, and thus is not mandated "to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues." See Government Code section 11346.2 subdivision (b)(7).

Mandated by Federal Law or Regulations

While ETP is not mandated to update regulation 4416(i) to match the federal NAICS database, as discussed above failure to do so would result in industries who were under the now-obsolete 511 code series to no longer be deemed to face out-of-state competition. By updating regulation 4416(i) to match the federal NAICS database, that benefit is preserved and extended to internet-only publishers.