

Title 22. Employment Training Panel

[Notice published September 8, 2023]

NOTICE OF PROPOSED RULEMAKING

The Employment Training Panel (ETP) proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The ETP will hold a virtual public hearing on 10/24/2023 at 1:00 p.m.

Attendees may participate via the Zoom online meeting platform or telephone conferencing. To participate via the Zoom online meeting platform, please contact Melissa Roper at Melissa.Roper@etp.ca.gov, or 916-764-8295 by 4:00 p.m. on 10/23/2023, to request a link to the meeting. A link to the meeting will also be posted under the “Legislation, Regulations, and Rulemaking” heading on the homepage of the ETP website (www.etp.ca.gov) no later than 8:30 a.m. the day of the hearing. To participate by telephone, call 1-888-278-0296 and enter Meeting ID: 817 0054 5975. If needed, the Meeting Passcode is 493955, and the Conference Code is 1185529.

For those who wish to attend the hearing in person, including those who require reasonable accommodations, limited seating will be available in the Sequoia Room, ETP Headquarters, 5th Floor, 1100 J St, Sacramento, CA 95814. Please contact Melissa Roper at Melissa.Roper@etp.ca.gov, or 916-764-8295 by Noon (12:00 p.m.) on 10/17/2023, to request to attend the hearing in person, or if reasonable accommodations are necessary. Attendees will need to check in at the security desk in the main lobby of the building before proceeding to the Sequoia Room.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will proceed on the date noted above until all testimony is submitted or 3:00 p.m., whichever is later. At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. The ETP requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via email to ETPRulemakingComments@etp.ca.gov.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the ETP. The written comment period closes on **October 24, 2023 at 12:00 a.m.** The ETP will consider only comments received at the ETP offices by that time. Submit comments to:

Elisabeth Testa

The Employment Training Panel

1100 J St, 4th Floor

Sacramento, CA 95814

Comments may also be submitted by email to ETPRulemakingComments@etp.ca.gov.

When commenting, please indicate the proposed rulemaking action to which your comment refers.

AUTHORITY AND REFERENCE

Unemployment Insurance Code section 10205(l) authorizes the ETP to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific sections 10200(a) and 10200(b)(1) of the Unemployment Insurance Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the North American Industrial Classification System (NAICS) codes that qualify employers for the out-of-state competition (OSC) exemption in an ETP contract.

Unemployment Insurance Code Sections 10200(a) and 10200(b)(1) require that the ETP serve companies that are threatened by out-of-state competition (OSC). Unemployment Insurance Code section 10205(l) authorizes the ETP to adopt regulations to establish conditions relating to the conducting of ETP business, including but not limited to the review, approval, and administration of training contracts.

ETP's existing regulation, 22 CCR 4416, addresses multiple ways in which applicants can meet the OSC requirements of the ETP program. 22 CCR 4416(i) specifically lists particular NAICS codes that will automatically meet the OSC requirement. The regulation proposed in this rulemaking action would update existing NAICS codes in the regulation to match new codes created by the recent federal update to the NAICS code database; expand the out-of-state competition exemption to Internet Publishers; and remove the specific date of the NAICS database edition referenced in the existing regulation.

ETP is proposing these regulatory updates since the federal government updated the NAICS database in 2022, and our regulations therefore require some minor updates in order to remain consistent with that federal program. The federal government, when drafting their changes to the NAICS database in 2022, had as their focus new and emerging industries, and additionally specifically reviewed the benefits of using the 'mode of delivery' (i.e., online versus in-store/in-print) as a factor in delineating industries. The end result of these deliberations was that the mode of delivery should no longer be a deciding factor in industry designations – hence, for example, they have combined internet publishers and brick-and-mortar publishers into one industry classification, rather than keeping them separate. This change directly affected ETP's regulation 22 CCR 4416(i), which followed the old NAICS database delineation system, where internet publishers were in a separate industry from brick-and-mortar companies. It is this change to the federal program which necessitates these proposed regulatory updates. Specifically, the previous 511 NAICS codes for Publishing Industries have been eliminated and updated to new 513

codes. The 511 industry code no longer exists in the NAICS database. Additionally, Internet Publishers originally housed under 51913 were moved into the new 51319 code – which moves internet only publishers into the same industry (513) as brick-and-mortar publishers, in accordance with the overall policy to no longer consider the method of delivery as an industry designation, as noted above. Information regarding these NAICS changes made by the Federal Office of Management and Budget can be found in the Federal Register Volume 86 No. 125, 7/2/2021 ([here](#) and in the Documents Relied Upon area of this regulation proposal package), and in the Federal Register Volume 86 No. 242, 12/21/2021 ([here](#) and in the Documents Relied Upon area of this regulation proposal package).

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION:

The broad objective of the regulation is to update ETP's NAICS codes to match the recently updated federal codes, and thereby expand the OSC exemption to Internet Publishers. The specific benefits anticipated from the regulation are to have ETP's regulations remain consistent with the federal NAICS database; to not have any companies that currently have the OSC exemption be denied that exemption due to an outdated NAICS code; and by expanding the OSC exemption to Internet Publishers, to increase this industry's participation in and benefits from participating in the ETP program.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATION:

The ETP has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the ETP has concluded that these are the only regulations that concern the out-of-state competition requirements under Unemployment Insurance Code Sections 10200(a) and 10200(b)(1).

DISCLOSURES REGARDING THE PROPOSED ACTION

The ETP has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: None

Significant effect on housing costs: None

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The ETP concludes that 1) more Internet Publishers may choose to participate in the ETP program as a result of this proposed regulation change, bringing valuable training to participating employees, and cost savings to participating employers; and that, 2) the Internet Publishing sector may experience a small economic benefit as a result of their increased participation in the ETP program.

Benefits of the Proposed Action: The proposed regulation will benefit California residents by potentially increasing the number of Internet Publishers participating in the ETP program, thus spreading the benefits of the ETP program to more California businesses and employees; not result in any currently OSC exempt industries losing their OSC exemption in the ETP program; potentially provide a small economic benefit to the Internet Publishing sector; and potentially reduce the amount of raw materials needed to produce printed materials.

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.

SMALL BUSINESS DETERMINATION

The ETP has determined that the proposed regulation may have a small effect on small businesses.

As noted in the accompanying Initial Statement of Reasons, there is a small chance that some small businesses may benefit from this proposed regulation change by increasing their participation in the ETP program, however, no true or significant impacts will affect small businesses as a result of this proposed regulation change. In summary, since most internet publishing houses are small businesses, and since one result of this proposed regulation change may be that more publishing houses apply for ETP funding, then it is possible that 1) existing internet publishing houses may benefit from ETP training dollars; and 2) that new internet publishing small businesses may be created.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the ETP must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The ETP invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Elisabeth Testa
Employment Training Panel
1100 J St, 4th Floor
Sacramento, CA 95814
Telephone: 916-764-8295

The backup contact person for these inquiries is:

Michael Cable
Employment Training Panel
1100 J St, 4th Floor
Sacramento, CA 95814
Telephone: 916-764-8295

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Elisabeth Testa at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The ETP will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the

Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and additional documents including: two Federal Registers, an ETP Panel memo, approved ETP Panel minutes, results of an internal ETP data run, results of two external Employment Development Department Labor Market Information Division (LMID) data runs, and a PowerPoint presentation from LMID. Copies may be obtained by contacting Elisabeth Testa at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the ETP may adopt the proposed regulations substantially as described in this notice. If the ETP makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the ETP adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Elisabeth Testa at the address indicated above. The ETP will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Elisabeth Testa at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <https://etp.ca.gov/legislation-regulations/>.

***** END *****