

Circular 72-15

May 15, 1972

U.S. DEPARTMENT OF LABOR MANPOWER ADMINISTRATION	Distribution	SUBJECT	CODE: 607
Bureau of Apprenticeship and Training Washington, D.C. 20210	BAT-3 BAT-8	29 CFR 5a	

Purpose: To provide operating instructions for 29 CFR 5a.

Background: Title 29 CFR Part 5, Subtitle A has been revised to accommodate the addition of a new Part 5a. The revisions together with the new Part 5a were published October 2, 1971 (36 F.R., 19304). Copies for field distribution were sent to Regional Offices November 12, 1971. The regulations affect contracts for Federal or federally-assisted construction in excess of \$10,000 entered into after January 30, 1972.

Trainee program approval criteria to be published in the Federal Register as a regulation, is being prepared by the Solicitor. Its provisions for trainee program approval will be identical with those adopted by BAT and will contain requirements that such programs shall operate consistent with 29 CFR 30.

In addition to responsibilities previously held under Part 5, the BAT is assigned certain new ones. Instructions and guidelines attached to this Circular are addressed to both functional responsibilities previously held and those newly assigned.

Action:

1. Except as noted in 2 below, instructions given in the attachment to this Circular are to be followed in performing functions specifically assigned to the BAT. Questions concerning these instructions and guidelines should be directed through channels to the Regional Director. Questions referred by that Office to the Administrator should be in writing.

2. Variations now in effect from the prescribed procedures for certification as to registration status of individual apprentices that have proven satisfactory at the local level, may be continued.

3. Regional Directors should take steps to insure that apprenticeship program files established in accordance with Circulars 68-1 and 68-6, code 450, July 1967, for BAT registered programs will provide current and readily available information. In addition, Regional Directors and State Supervisors must take steps to insure that information, particularly as to ratios, can be quickly obtained in SAC States.

4. Bureau representatives should not attempt to respond to inquiries on 5a matters for which the BAT does not have specific responsibility. The inquirer may be directed to the proper authority (contracting agency, ESA, RMA) or to the Secretary of Labor's Regional Director, or to the Secretary of Labor.

Effective date: This Circular including its attachment is effective immediately.

HUGH C. MURPHY
Administrator
Bureau of Apprenticeship
and Training

Attachment

INSTRUCTIONS FOR 29 CFR 5a

I. APPRENTICESHIP

A. General Rules

Title 29 CFR Part 5, Section 5.5(a) (4) and Part 5a.2(c) give general rules for permissive employment of apprentices on covered projects; namely, that they must be individually registered (or if not individually registered, certified as a person in the first 90 days of probationary employment as an apprentice) in a program registered with BAT or a SAC. With respect to apprenticeship program and apprentice certifications, BAT PERSONNEL LOCATED IN SAC STATES WILL FOLLOW PROCEDURES ESTABLISHED BY THE SAC.

B. Evidence of Registration Status

The regulations stipulate that the contractor (includes subcontractors) will be required to furnish the contracting agency with written evidence of the registration of the program and apprentices when employing apprentices on covered projects. He must also furnish evidence of appropriate ratios and wage rates for apprentices. Certification by the registration agency is required on apprentices who may not be registered but who are in the first 90 days of probationary employment. The contractor will be required to furnish evidence to the contracting agency in a manner that it prescribes. In the past, in a few instances letters by JAC's have been acceptable; more often the registration agency furnished information either to the contractor or to the contracting agency, or both. Letters, form letters, completion of contracting agency forms, and telephone verification have all been used. No change in these arrangements are directed by this Circular provided (1) they will satisfy all requirements of 5a, and (2) their continued use has supervisory approval. In all other instances the instructions given below are to be followed:

Attachment to Circular 72-15

1. For federally-registered programs the Bureau will, upon request to it by the contractor, furnish a written statement as to the registration status of a program and/or individual apprentice. Similarly, upon request of a contracting agency, written verification as to registration status of a program and/or individual apprentices will be made. Form letter formats suitable to differing purposes should be used to the extent that it is practical. Requirements of registered programs including ratio provisions and percentage wage rates shall be furnished upon request.
 - a. ATR's with construction industry account workloads should conclude arrangements with program sponsors to insure that the ATR is informed on a current basis as to the status of apprentices in the program with particular reference to those who may be in the first 90 days of probationary employment but not yet registered, and of advancements out of the first year of apprenticeship. Similar arrangements should be concluded for prompt notification to the ATR of changes in ratios and area of coverage.
 - b. The receiving office of a request for program information or certification as to registration status of a program and/or individual apprentices should respond on the basis of its program records. If the request appears directed to the wrong BAT office, i.e. an office not having coverage in the project site or nearest the contractor's principal place of employment, the inquirer should be referred to the proper office.
2. Regional Offices which have not already done so, shall establish an inventory of federally registered programs in their region so as to have available ratio information as required by 5a.5.

3. Regional Directors jointly with the appropriate State Supervisor shall conclude arrangements for referral of inquiries received in the Regional Office as to ratios and other apprenticeship program information in SAC States to the proper SAC Office, or to have such information available in the BAT Regional Office.

II. TRAINEE PROGRAMS

- A. Definition. For 29 CFR 5a purposes, a trainee program shall mean a planned and systematic sequence of instruction on the job under competent supervision, and a scheduling of the work experience in which training is given to impart a family of related job skills, knowledge and abilities to workers enrolled in that program. The objective of a trainee program shall be to produce upon completion of training, a worker competitive in skills and abilities with other workers in that occupation customarily employed at the full journeyman level.

The program shall be a written, organized plan embodying the terms and conditions of employment and training for each occupation it covers.

- B. Sponsor. The sponsor of a trainee program may be:
 1. An individual employer;
 2. A group of employers represented by an association;
 3. A group of employers joining together in the establishment and operation of a trainee program;
 4. Any of the above (1, 2 or 3) with joint participation by one or more unions in the establishment and operation of a trainee program.

The emphasis in 29 CFR 5a is for training on-the-job. "Trainee Programs" which are primarily for recruitment and referral and that may or may not include elements of pre-employment preparation, and which generally are sponsored by groups other than actual employers of trainees, are not within this meaning of sponsor. Further, a "trainee program" which provides only for off-job instruction is not approvable regardless of sponsorship.

C. Criteria for Approval. To be approved and certified under 29 CFR 5a by the BAT, trainee programs must meet the following minimum requirements:

1. Each occupation in which trainees are to be trained shall be stated. The occupation must be one commonly recognized throughout the construction industry and not one in which employment is limited to the particular sponsor or locale. Permissive occupations shall be those listed in Title 29 CFR Part 5a.1(b) and such other skilled occupations with predetermined wage rates as may be established by the Secretary of Labor.
2. The trainee program must provide for an organized sequence of job assignments and work experience in which training on the job will be given of successive more difficult and complex skill requirements by which the trainee may achieve, with successful performance, the journeyman status. The job tasks must have a recognizable training content and not be those customarily learned merely by observation and incidental work exposure. Instruction in safety shall be a part of the training given.
3. The program must provide for a progressively increasing schedule of wages to be paid trainees consistent with skill and performance levels achieved. Increments in wage rates shall be at reasonably uniform intervals and amounts throughout the period of training. Entry wage rates shall

be not less than those provided for in a registered apprenticeship program in that occupation and geographic area, or if no such registered program exists, at not less than 50% of the journeyman wage rate.

4. The term of training for each occupation must be stated. The term shall be that customarily required for an entering worker without previous applicable experience to achieve journeyman status as reflected by apprenticeship programs in the same occupation, or in the absence of such comparable programs, as may be determined by skill achievement and training time requirements set forth in the Dictionary of Occupational Titles, Supplement on Selected Characteristics of Occupations. A trainee program may not be approved where the proposed term of training in any occupation exceeds that customarily required in bona fide registered apprenticeship in that occupation.
5. The program must provide for advanced standing in the term of training and wage rate entitlement for trainees entering with previous applicable work experience. Trainee applicants shall be fairly classified with respect to previous work experience and applicable skills and knowledge. No qualification requirement for entrance into a trainee program shall be imposed other than minimum legal working age, physical fitness, a speaking, reading and language comprehension sufficient to perform the work of the trade, and Employment Service administered aptitude tests, unless each additional qualification requirement can be shown to be directly related to successful job performance in accordance with the Department of Labor, OFCC Testing and Selection Order of October 2, 1971, 41 CFR 60.3.

6. The program must provide that the sponsor shall arrange for and afford each trainee the opportunity to receive instruction or pursue a course of study in subjects related to the trade (typically identified as theory of the trade) throughout the term of training. When this requirement is to be met by instruction or study during normal work hours, the trainee shall receive his regular rate of pay for time so spent and it shall be credited toward his term of training. Except for the payment of wages for instruction and study during normal working hours, this provision shall not require the sponsor to pay costs of tuition, enrollment, books or other associated instructional or study costs, nor shall unreasonable requirements for such instruction or study be imposed with excessive costs to be paid by trainees.
7. The ratio of trainees to journeymen for each occupation shall be determined in accordance with 29 CFR 5a.5. When there is no established applicable trainee ratio, the approvable ratio shall be the same as that stated in a registered apprenticeship program for that occupation and geographic area. If neither basis exists for establishing the ratio, the approvable ratio shall be one trainee to five journeyman in each occupation covered by the program.
8. Each approved trainee program must contain the statement that employment and training of all trainees shall be without discrimination by reason of race, color, national origin, religion or sex. The program shall contain a statement of the sponsor's committal to affirmative action and his intent to exert good faith efforts to recruit and enroll minorities in the trainee program in numbers as might reasonably be expected considering the minority representation in the area in which the trainee program will operate. Provision shall be made that each trainee shall be given the opportunity to read the written program upon entrance. The sponsor, in utilizing apprentices, trainees, and journeymen under this program shall also comply

with other equal employment opportunity requirements of Executive Order 11246, as amended, 29 C.F.R. Part 30 and State plans approved by the U. S. Department of Labor pursuant thereto, and 29 C.F.R. Part 31.

9. The program shall contain a statement by the sponsor that he shall, insofar as he has available employment, endeavor to provide a continuity of employment and training for his enrolled trainees on both Federal or federally assisted projects and non-covered projects.
 10. The program shall provide that the sponsor shall furnish the BAT approving office with a list identifying trainees by name, social security number, occupation in which enrolled, and credit or advanced standing, if any, granted on entrance. It shall further provide that the sponsor shall promptly notify the BAT of termination, transfers between occupations, completions, and new enrollments of trainees. The sponsor is responsible for maintaining records of the training, work experience and progress made by each trainee, and such other records as required by Title 29 CFR 5a. Trainee program records shall be made available upon request by an authorized representative of the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training.
- D. Review and Approval Procedures. Procedures for review and approval or disapproval of trainee program shall be the same as for apprenticeship programs. Approval shall be by letter to the sponsor with copies to the appropriate field offices. If the proposed trainee program does not meet the criteria as given in II-C above, the sponsor shall be informed in writing as to specific reasons for disapproval with copies to appropriate field offices. Trainee program files should be maintained in the appropriate local field office with summary program information at the Regional Office level.

E. Terminating Approvals. BAT approval of a trainee program sponsored by an individual employer with or without joint participation by a union(s) shall be terminated:

1. Upon recommendation made by the contracting agency based upon its determination that the sponsor is in violation of contract provisions including those relating to manpower on any covered project where trainees are or have been employed.
2. Upon the determination and recommendation of a responsible compliance agency that the sponsor is discriminatory in his employment and training practices.
3. Upon the recommendation made by the Manpower Administration based upon its finding that training is not actually afforded consistent with provisions of the approved trainee program and corrective action has not been taken.
4. Upon a finding by BAT that the program is not being operated in accordance with requirements for continued approval. Such a finding may arise from routine observation of transfers of trainees from one occupational objective to another as reflected in sponsor supplied lists; undue retention of trainees in entry wage level rates; receipt of complaints from trainees; and other factual indications of the sponsors failure to meet his obligations in operation of the program.

BAT approval of a trainee program of the multi-employer type (association or group of employers) may be continued but certification for 29 CFR 5a purposes with respect to an individual participant employer in such program shall not be made when one or more of the above reasons for terminating the program approval is applicable with respect to the practices of that individual employer. In this

situation, the sponsor is to be notified of the finding with respect to the individual participant employer and that such participant shall no longer be considered as covered by the BAT in its program approval.

- F. Appeal of Decision to Disapprove or Terminate Approval. Within 30 days after the date of the decision to disapprove or terminate a previously approved trainee program, the sponsor may obtain review of the decision by filing a request for review with the Assistant Secretary of Labor for Manpower, U. S. Department of Labor, Washington, D. C.
- G. Reporting. In terms of BAT internal reporting, work performed in connection with trainee programs under 29 CFR 5a, will be classified under SIP. BAT Form 106 will be used as the Account Status form for approved trainee programs. No exception memorandum for change in AWP or quarterly targets is required. Changes in the reports handbook will be issued at a later date.
- H. Other General Guidelines. The occupational objective in BAT approved trainee programs is to produce journeymen, the same objective as found in apprenticeship. In the two systems, structure of the actual training itself will be very similar if not identical and such differences between the two systems as do occur will be in other matters.

The regulations do not provide, as they do in the case of apprenticeship, for trainee program approvals under 29 CFR 5a by State Apprenticeship Councils or Agencies.

The regulations provide for exemptions. The BAT does not have the authority to act upon nor to grant exemptions. Inquiries in this regard should be referred to the Secretary of Labor.

Enforcement of proper job classification and wage payment is the primary responsibility of the contracting agency. Investigations may be made by ESA (Wage-Hour) as well as the contracting agency. Complaints on these matters should be referred to these authorities. The BAT will cooperate in any such investigations and make available any of its records with respect to trainee programs it has approved.