

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**ASBESTOS UNIT**

2211 Park Towne Circle, Suite 1

Sacramento, CA 95825

Tel: (916) 574-2993 Fax: (916) 483-0572

DIR HOME PAGE: Page: www.dir.ca.govUnit Email Address: actu@dir.ca.gov

Title 8. Division of Occupational Safety and Health

Notice of Proposed Rulemaking

The Division of Occupational Safety and Health (Division) proposes the adoption of amendments to Sections 341.13 Denial of Registration; 341.14 Revocation and Suspension of Registration; 341.15 Certification of Asbestos Consultants and Site Surveillance Technicians; 341.16 Approval of Courses and Course Providers; and 341.17 Asbestos Cement Pipe Training to adopt the current Division procedures for Administrative Hearings. The Division further proposes the adoption of amendments to Section 341.16 Approval of Courses and Course Providers that will enable California to issue accreditation that satisfies the requirements established in the federal Toxic Substance Control Act (TSCA) under the United States Environmental Protection Agency (USEPA) Asbestos Model Accreditation Plan (MAP).

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health ("the Division") of the Department of Industrial Relations is proposing to take the action described in the Informative Digest/Policy Statement Overview ("the Proposed Rulemaking"). Any person interested may present statements or arguments orally or in writing relevant to the Proposed Rulemaking at a hearing to be held in the Exam Room at 2211 Park Town Circle, Suite 1, Sacramento CA, on Monday, February 28, 2011, between 1:30 and 3:30.

The facilities for the public hearing are accessible to persons with mobility impairments, and other disability accommodations are available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the programs of the Division of Occupational Safety and Health, should contact the Disability Accommodation Coordinator or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests

should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

Written Comment Deadline: Any interested person may submit written comments relevant to the Proposed Rulemaking to the contact person mentioned below by 3:30 p.m. on February 28, 2011. Interested persons may submit written or verbal comments at the public hearing. Persons who are unable or who do not wish to attend the public hearing may mail or FAX comments to:

Jeff Ferrell, Cal/OSHA Asbestos Unit
2211 Park Towne Circle, Suite 1, Sacramento CA 95825-0414
FAX: (916) 483-0572

The official record of the rulemaking proceeding will be closed at the conclusion of the public hearing. The Division will not consider written comments received after the close of the public hearing unless an extension of time in which to receive written comments is announced at the public hearing.

The Division may thereafter adopt the Proposed Rulemaking substantially as described below or may modify it if such modifications are sufficiently related to the original text. With the exception of technical, grammatical or other non-substantive changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the persons designated in this Notice as contact persons and will be mailed to those persons who submit written or oral testimony related to the Proposed Rulemaking or who request notification of any changes to the Proposed Rulemaking.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 60.5, 6308, 6501.5, 6501.8, 6505.5, 9021.5, 9021.9 of the Labor Code, and to implement, interpret or make more specific Sections 6505.5 and 6506 of the Labor Code, the Division is considering changes to Division 1 of Title 8 of the California Code of Regulations as follows: Amendment of Chapter 3.2, Section 344.13 and 341.14 to modify the procedures for denial and revocation of registration of persons doing asbestos-related work.

Pursuant to the authority vested by Sections 60.5, 6308, 6501.8, 6501.9, 6505.5, 6509.5, 9021.5, 9021.9 of the Labor Code, and Sections 7180 through 7189.7 of the Business and Professions Code and to implement, interpret or make specific Section 9021.5 of the Labor Code and Sections 7183 and 7183.5 of the Business and Professions Code, the Division is considering changes to Division 1 of Title 8 of the California Code of Regulations as follows: Amendment of Chapter 3.2, Section 341.15 to modify the procedures for denial and revocation of certifications of asbestos consultants and site surveillance technicians.

Pursuant to the authority vested by Sections 60.5, 6308, 6501.5, 6501.8 and 9021.9 of the Labor Code, and 40 CFR Part 763 and to implement, interpret or make specific Section 9021.9 of the Labor Code the Division is considering changes to Division 1 of Title 8 of the California Code of Regulations as follows: Amendment of Chapter 3.2,

Section 341.16 to modify the procedures for denial and revocation of approvals of providers of asbestos classes.

Pursuant to the authority vested by Sections 60.5, 6308, 6501.5, 6501.8 and 9021.9 of the Labor Code, and to implement, interpret or make specific Section 9021.9 of the Labor Code, the Division is considering changes to Division 1 of Title 8 of the California Code of Regulations as follows: Amendment of Chapter 3.2, Section 341.17 to modify the procedures for denial and revocation of approvals of providers of asbestos cement pipe classes for all employees and their supervisors.

Further, pursuant to the authority vested by Sections 60.5, 6308, 6501.5, 6501.8 and 9021.9 of the Labor Code, and 40 CFR Part 763 and to implement, interpret or make specific Section 9021.9 of the Labor Code, the Division is considering changes to Division 1 of Title 8 of the California Code of Regulations as follows: Amendment of Chapter 3.2, Section 341.16 to adopt changes to approval of asbestos courses and course providers that will enable California to issue accreditation that fully satisfies the requirements established in the federal Toxic Substance Control Act (TSCA) under the United States Environmental Protection Agency (USEPA) Asbestos Model Accreditation Plan (MAP).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Labor Code sections 60.5 and 6308, the Division is charged with the administration and enforcement of the provisions of the California Occupational Safety and Health Act, commencing with Labor Code section 6300, as well as other provisions of law impacting upon the health and safety of employees and the public in the State of California.

As part of its mandate, the Division regulates the registrations of contractors that engage in asbestos-related work of quantities in excess of 100 square feet, the certification of asbestos consultant and asbestos site surveillance technicians, the approval of asbestos training courses and course providers as specified in 40 CFR Part 763, and the approval of training courses for the safe handling of asbestos containing cement pipe.

The registration of contractors that engage in asbestos related work, the certification asbestos consultants and asbestos site surveillance technicians and the approval of asbestos training courses and training providers are all subject to varying procedures for the denial or revocation of Division approvals. The Division is proposing to change these procedures so that they are all consistent with the Division's standard procedures for administrative hearings as found in Title 8 of the California Code of Regulations 340.40 through 340.52.

The Division's authority to regulate asbestos training courses and course providers is pursuant to 40 CFR Part 763. The Division's activities in this regard are overseen by the United States Environmental Protection Agency (USEPA). The Division's asbestos training course and training provider approval program is currently operating with an interim approval from USEPA. The proposed changes to Title 8 of the California Code of

Regulations 341.16, exclusive of those listed above regarding denial and revocation of approvals, are to meet the USEPA requirements for final approval of the Division's program.

Thus, the purpose of the Proposed Rulemaking is to simplify procedures for administrative hearing and to gain final approval from USEPA for the asbestos training course and training provider program.

Section 341.13 – Registration--Asbestos- Related Work-Denial of Registration.

Section 341.13 establishes procedures for denial of registration for employers that conduct asbestos-related work. These administrative procedures would be replaced with those found in Title 8 of the California Code of Regulations 340.40 through 340.52.

Section 341.14 – Registration--Asbestos- Related Work-Revocation or Suspension of Registration.

Section 341.14 establishes procedures for revocation or suspension of registration for employers that conduct asbestos-related work. These administrative procedures would be replaced with those found in Title 8 of the California Code of Regulations 340.40 through 340.52.

Section 341.15 – Certification of Asbestos Consultants and Site Surveillance Technicians.

Section 341.15 establishes procedures for denial or revocation of certification of consultants and site surveillance technicians that conduct asbestos-related work. These administrative procedures would be replaced with those found in Title 8 of the California Code of Regulations 340.40 through 340.52.

Section 341.16(h) – Approval of Asbestos Training and Course Providers for Training Requirements Relating to Asbestos-Related Work and AHERA.

Section 341.16(h) establishes procedures for denial or revocation of approval of asbestos training and course providers for training requirements relating to asbestos-related work. These administrative procedures would be replaced with those found in Title 8 of the California Code of Regulations 340.40 through 340.52.

Section 341.17 – Approval of Asbestos Cement Pipe Training and Asbestos Cement Pipe Course Providers for the Purpose of Employer Exemption from Registration Requirements.

Section 341.17(g) establishes procedures for denial or revocation of approval of asbestos training and course providers for training requirements relating to asbestos containing cement pipe. These administrative procedures would be replaced with those found in Title 8 of the California Code of Regulations 340.40 through 340.52.

Section 341.16– Approval of Asbestos Training and Course Providers for Training Requirements Relating to Asbestos-Related Work and AHERA.

The changes proposed in this section will satisfy the requirements established by the USEPA for final approval of the Division’s program.

(b)(1)(D) gathers examples of “substantive changes” from various locations in T8CCR 341.16a (MAP) section (I)(F). These changes clarify when a training provider is required to notify the Division that substantive changes have been made to their training program.

(b)(1)(E) eliminates ambiguity regarding who is eligible to take an AHERA refresher class. This change clarifies the requirement that someone seeking to take an AHERA refresher class has previously taken an AHERA initial class and currently holds a valid training certificate for that AHERA discipline. This is from T8CCR 341.16a (MAP) section (I)(D).

(b)(1)(G) is being added to allow trainers of non-AHERA craft classes to combine students from different classes for those portions of the classes where the classes have the same course content. This coincides with the elimination of the note at (b)(2)(A)(2). This change makes it clear that it is acceptable to combine student from non-AHERA classes. This clarifies language in T8CCR 341.16a (MAP) section (I)(B), which states that AHERA classes cannot be combined.

(b)(1)(H) is being added to clarify that the recordkeeping requirements in section (I)(F) of T8CCR 341.16a (MAP) are mandatory. USEPA intended that the contents of T8CCR 341.16a (MAP) to be mandatory. This change makes the recordkeeping requirements of T8CCR 341.16a (MAP) section (I)(F) explicitly mandatory.

(b)(2)(A)(2) This note is being eliminated as redundant due to the changes being made to (b)(1)(G).

(b)(2)(D)(2) clarifies that valid certificates for both Building Inspector and Management Planner are required prerequisites for entry into Management Planner Refresher courses. This change makes it clear that the requirements found in T8CCR 341.16a (MAP) (I)(D)(4) are mandatory.

Subsection (b)(2)(F)(2) clarifies that training providers are to provide a one year grace period when accepting training certificates from previous AHERA classes. This change clarifies that the granting of a grace period is mandatory.

(c)(1)(F) is being added to require that the name of the instructor be added to AHERA training certificates. The Division is required to approve all instructors for AHERA classes. This change is being made to verify that the instructor for any given class meets the requirements of section (I)(B), (I)(E)(4), and (I)(F)(2) of T8CCR 341.16a (MAP) and section 341.16(b)(1)(C).

The note from subsection (c)(2) is eliminated. This is an editorial change to eliminate language that is no longer current.

(d)(2)(H) requires a training provider to furnish the Division with a description of their training certificates. This change reduces the risk of fraudulent certificates being issued.

(d)(3) adds language forbidding training providers from trying to sell their Division approvals of training courses. This change clarifies that course approvals are non-transferable.

(d)(4) adds language that allows worker and craft worker courses to be approved in languages other than English. T8CCR 341.16a (MAP) (I)(B)(1) authorizes the Division to approve classes in foreign languages. Subsection (b)(1)(B) specifies that courses offered will be given in a language that is understood by both the course instructor and trainees. The Division currently approves Spanish worker classes and this makes the Division's authority to approve worker and craft worker classes in other languages explicit.

Note following subsection (h): editorial change to correct code reference.

LOCAL MANDATE

The Proposed Rulemaking does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

The Proposed Rulemaking does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. The Proposed Rulemaking does not impose other nondiscretionary costs or savings on local agencies. The Proposed Rulemaking does not result in any costs or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

BUSINESS IMPACT/SMALL BUSINESSES

The Proposed Rulemaking will make minor technical changes to the existing regulations and will not require significant changes or mandates to regulated businesses. The Division has determined therefore, that the Proposed Rulemaking will not result in a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Proposed Rulemaking would not affect small businesses, as that term is defined in Government Code section 11342.610.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The Division has determined that the Proposed Rulemaking will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE 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.

EFFECT ON HOUSING COSTS

The Proposed Rulemaking will have no effect on housing costs in California.

ALTERNATIVES

The Division must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the amendment of these regulations is proposed, or would be as effective as, and less burdensome to, affected private persons than the Proposed Rulemaking.

AVAILABILITY

Following the close of the public comment period, the Division may adopt the proposal substantially as described herein or may modify the original proposal with sufficiently related changes. With the exception of technical or grammatical changes, the full text of the modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the contact person. The Division will also mail full text to persons who submit written comments related to the proposal or who have requested notification of any changes.

CONTACT PERSONS

Inquiries concerning the Proposed Rulemaking and written comments may be directed to:

Jeff Ferrell, Senior Industrial Hygienist (Primary Contact – ((916) 574-2995)
Steve Smith, Principal Safety Engineer (Secondary Contact – ((916) 574-2996)
Division of Occupational Safety and Health
2211 Park Towne Circle, Suite 1
Sacramento, CA 95825-0414

INITIAL STATEMENT OF REASONS AND INFORMATION

The Division has prepared an initial statement of reasons for the Proposed Rulemaking and has available all the information upon which the proposal is based.

TEXT OF PROPOSED RULEMAKING

Copies of the exact language of the Proposed Rulemaking and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Division of Occupational Safety and Health, 2211 Park Towne Circle, Suite 1, Sacramento 95825-0414. These documents may also be viewed and downloaded by going to “DIR Rulemaking – Proposed Regulations” under the category “Division of Occupational Safety and Health” at www.dir.ca.gov/DIRRulemaking.html.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the Proposed Rulemaking is based is contained in the rulemaking file which is available for public inspection by contacting the persons named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.