

DEPARTMENT OF INDUSTRIAL RELATIONS

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH1515 CLAY STREET, SUITE 1901
OAKLAND, CA 94612
(510) 286-7000ADDRESS REPLY TO:
PO BOX 420603
SAN FRANCISCO 94142-0603**Title 8. Division of Occupational Safety and Health**
NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Division of Occupational Safety and Health of the Department of Industrial Relations is proposing to take the action described in the Informative Digest/Policy Statement Overview (Hereinafter "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 Training Room at 1515 Clay Street, 13th Floor in Oakland, California, on April 24, 2006, between 9:00 a.m. and 11:00 a.m.

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: 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:

Chris Grossgart, Staff Counsel
DOSH Legal
1515 Clay Street, 19th Floor
Oakland, CA 94612
FAX: (510) 286-7039

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 person designated in this Notice as contact person 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

Authority cited: Sections 60.5, 6308, 6501, 6502 and 6503, Labor Code. Reference: Sections 6500, 6501, 6502, 6503, 7373 and 7382, Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Labor Code sections 60.5 and 6308, the Division of Occupational Safety and Health (“the Division”) of the Department of Industrial Relations 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 in the State of California.

Pursuant to California Labor Code Sections 6500 through 6503 and Title 8, California Code of Regulations (“8 CCR”) Sections 341 and 341.1, employers must obtain permits from the Division for a series of listed high-hazard work activities. The permit application process notifies the Division of the existence of high-hazard jobsites and gives the Division an opportunity to interact with the permit applicant via a permit safety conference so that information can be exchanged and other measures can be taken to increase the safety of the permitted work activities. The permit application process is proactive, and promotes compliance with safety regulations on jobsites where a permit has been issued. The Division has initiated this rulemaking to revise the current system for issuing safety permits for certain types of hazardous work, mainly in the construction industry.

I. Section 341. Permit Requirements.

The Division proposes a substantial reworking of its permitting process. It proposes to delete the text of existing Section 341 to replace it with new language explaining: (a) the Scope and Application of new Section 341; (b) the definitions of terms used in the Proposed Rulemaking; (c) the basic permitting requirements; (d) work activities subject to permitting requirements and the types of permits required for specific activities; and (e) exceptions to the permitting requirements.

Section 341(a): Scope and Application.

New subsections (a)(1) through (a)(4) provide a brief overview or roadmap of the Division's permit program, since they discuss the scope of the permit regulations, the purpose of the permit process and the types of permits issued. These subsections serve as an introduction to the permitting process for the regulated public.

Section 341(a)(1).

Section 341(a)(1) specifies the subjects covered in Article 2 (Subchapter 2 of Chapter 3.2 of 8 CCR) governing permits. Specifically, Subsection (a)(1) indicates that Article 2 will outline the work activities which require permits, describe what permit holders must do to comply with permit requirements, and specify the types of permits available and how to apply for a permit.

Section 341(a)(2).

This subsection explains that the purpose of a permit is to provide notice to the Division when an employer will undertake permit-required activity. This provision allows the Division to help ensure that the employer performs the permitted work safely.

Section 341(a)(3).

Subsection (a)(3) lists the two types of permits: Annual Permits and Project Permits. Subsection (a)(3) indicates that definitions for both types of permit will appear in Section 341(b) and further details regarding the permits will be set forth in subsections (c), (d) and (e).

Section 341(a)(4).

Subsection (a)(4) indicates that the permit-application process is explained in Section 341.1.

Section 341(b): Definitions.

Section 341(b) would set forth definitions of ten terms that appear in the Proposed Rulemaking, as follows:

- (1) An "Annual Permit" is a permit that would allow an employer to conduct a specified activity at any jobsite for a period of one year.
- (2) The Proposed Rulemaking would include "Climbing a fixed tower crane" among the activities for which a permit is required. As defined in Subsection (b)(2), that terms means altering the height of the revolving section of a tower crane by adding or removing tower sections with the use of a climbing frame.
- (3) To ensure that members of the regulated public know when they are engaged in activities that require a permit, Subsection (b)(3) explains that to "engage in a permit-required activity" means either having employees who actually perform that activity or acting as a project administrator at a site where a permit-required activity is being performed.

(4) Section 341(e) excepts “emergency repair work to underground facilities” from the permit requirements of the Proposed Rulemaking. To ensure that the regulated public understands what the scope of this specific exception is, Subsection (b)(4) defines “emergency repair work to underground facilities” as the unscheduled repair or replacement of pipes or other underground structures for the purpose of protecting life or property.

(5) Since a permit is required to perform specified activities on any building or other structure more than 36 feet in height, Section (b)(5) clarifies that a structure’s “height” is the distance from the top of the structure, including any parapet walls, mechanical rooms or other penthouse structures, to the lowest point of the surrounding grade or ground level below. Mechanical screens, antennas, chimneys, flag poles, and similar attachments are not to be considered in determining the height of a structure.

(6) Subsection (b)(6) would specify that to “hold” a permit means acquiring a valid permit *prior* to the start of permitted work. This definition is necessary to clarify when employers need to obtain a permit. Employers must also obtain permits for the use of a diesel engine underground in a mine or tunnel prior to placing an engine.

(7) A “permit-required activity” is an activity described in Section 341(d) for which a permit is required by Article 2.

(8) The term “Project Administrator” refers to persons or entities like general contractors, prime contractors, owners/builders, joint ventures, and construction managers who have overall onsite responsibility for the planning, quality, management or completion of the erection or demolition of a structure.

(9) A “Project Permit,” as compared to an “Annual Permit”, is a permit that allows work at a specific location on a specific project.

(10) Finally, a “structure” is any creation by human activity of a piece of work, formation, or series of parts joined together, including but not necessarily limited to: buildings, falsework, scaffolding, bridges, elevated highways, chimneys, dams, powerhouses, smokestacks, silos, billboards, outdoor signs, transmission or communication towers, and tanks or tank towers.

Section 341(c): Basic Permit Requirement.

Proposed subsection (c) identifies the two types of permits, the Project Permit and the Annual Permit, and sets forth the requirements for each.

Section 341(c)(1)(A).

This subsection would state that a Project Permit must be issued for the project before work can begin.

Section 341(c)(1)(B).

This subsection would state that only one Project Permit is required for a particular project, as long as the permit holder continues to act as project administrator.

Explanatory NOTE following Section 341(c)(1)(B).

A new Note would direct readers to new subsections (f) and (g) of Section 341.1 of Article 2 for additional details regarding the scope of Project Permits. Subsection (f) contains a list of permit-required activities that may be included in a single Project Permit; and subsection (g) contains conditions for issuance of a single Project Permit for erecting, climbing and dismantling of a fixed tower crane.

Section 341(c)(2)(A).

This subsection would specify that the issuance of a Project Permit does not relieve another entity required to hold an Annual Permit from that obligation. Likewise, a Project Permit holder who engages in permit-required activities at another project, but does not act as Project Administrator, would be required to obtain an Annual Permit for work at that other site.

Section 341(c)(2)(B).

This subsection would specify that an Annual Permit must be obtained once per year. It also provides that the permit holder must notify the Division prior to commencement of any new work subject to the requirements of the Proposed Rulemaking.

Section 341(d): Work Activities Subject to Permit Requirements and the Types of Permits Required to Conduct the Activities.

Proposed subsection (d) would specify the work activities that would require permits under the Proposed Rulemaking.

Section 341(d)(1).

Proposed subsection (d)(1) would identify the erection of a fixed tower crane as a work activity for which the contractor erecting, climbing or dismantling the crane must hold a Project Permit prior to the start of any work, even though that contractor may not generally be the Project Administrator.

Explanatory NOTE No. 1 following Section 341(d)(1).

Note No. 1 would direct readers to Section 341.1 of the Proposed Rulemaking for additional details on Project Permit requirements for fixed tower cranes.

Explanatory NOTE No. 2 following Section 341(d)(1).

Note No. 2 would direct the reader to Section 344.70 of 8 CCR. That section requires a different permit for the *operation of a fixed tower crane, once it is erected.*

Section 341(d)(2).

Proposed Subsection (d)(2), adapted from existing subsection (a)(4), identifies the use of diesel engines in mines and tunnels as another activity for which a Project Permit is required, even

though that applicant may not be the Project Administrator on the jobsite. The permit must be obtained prior to placing the diesel engine underground.

Section 341(d)(3).

Proposed subsection (d)(3), adapted from existing subsection (a)(3), identifies the demolition or dismantling of buildings or structures more than 36 feet in height as an activity requiring a Project Permit. Moreover, that section would also require that any other employers directly engaged in demolition or dismantling activities hold an Annual Permit.

Section 341(d)(4)(A) – 341(d)(4)(E).

Proposed subsection (d)(4) lists regulated work activities generally performed during the construction of a building more than three stories or 36 feet in height. The work activities specific to construction are set forth in proposed subsections (d)(4)(A) through (d)(4)(E); the activities specific to demolition are already specified in proposed subsection (d)(3) above.

Section 341(d)(4)(A).

This subsection would specify “erection and placement of structural steel or structural members made of materials other than structural steel” as activity subject to permit requirements.

Explanatory NOTE following Section 341(d)(4)(A).

This Note would explain that reinforcing bars used in reinforcing concrete construction are not considered structural steel or members for the purposes of Section (d)(4)(A).

Section 341(d)(4)(B).

This subsection would specify installation of metal decking or decking made of substitute materials as a work activity subject to permit requirements.

Section 341(d)(4)(C).

This subsection would specify installation of curtain walls, precast panels, or fascia as a work activity subject to permit requirements.

Section 341(d)(4)(D).

This subsection would specify forming and placement of concrete structures or concrete decks on steel structures as a work activity subject to permit requirements.

Section 341(d)(4)(E).

This subsection would specify installation of structural framing, including roof framing, and installation of panelized roof systems as work activities subject to permit requirements.

Explanatory NOTE after Section 341(d)(4)(E).

This Note would explain that interior partitions are not considered part of “structural framing” for the purposes of Section (d)(4)(E).

Section 341(d)(5).

Proposed subsection (d)(5) would set forth two work activities for which an employer must obtain *either* an Annual Permit or a Project Permit.

Section 341(d)(5)(A).

Proposed subsection (d)(5)(A) would identify the construction of excavations or trenches 5 feet or deeper, into which a person is required to descend, as a work activity for which an Annual Permit or a Project Permit is required.

Explanatory NOTE following Section 341(d)(5)(A).

This Note would clarify the meaning of “descend” in proposed subsection (d)(5)(A) by defining the term as entry into any part of the excavation once it has attained a depth of 5 feet or more.

Section 341(d)(5)(B).

Proposed subsection (d)(5)(B) would identify the erection and placement of scaffolding, vertical shoring or falsework as the second work activity subject to the requirements of new subsection (d)(5).

Section 341(e): Exceptions to Permit Requirements.

Proposed subsection (e) would identify work sites and types of employers that have historically been exempted from permit requirements.

Section 341(e)(1).

Proposed subsection (e)(1) is taken verbatim from existing subsection (b)(1) pertaining to exempt governmental bodies, with additional language to explicitly provide that the United States government, its officers and agencies are exempt from the permit requirements of the Proposed Rulemaking.

Section 341(e)(2).

Proposed subsection (e)(2) is taken verbatim from existing subsection (b)(2) pertaining to exempt public utilities, without modification.

Section 341(e)(3).

Proposed subsection (e)(3) is taken verbatim from existing subsection (b)(3) pertaining to exempt emergency repair work, without modification. “Emergency repair work to underground facilities” would now be defined in subsection (b)(4).

Section 341(e)(4).

Subsection (e)(4) is taken verbatim from existing subsection (b)(4). It pertains to excavations and trenches into which a person is not required to descend, either during the excavation process or during its final use.

Section 341(e)(5).

Subsection (e)(5) is taken verbatim from existing subsection (b)(5) and would exempt excavation for the construction of graves from the permitting process.

Section 341(e)(6).

New subsection (e)(6) is adapted from existing subsection (b)(6), pertaining to swimming pools. The proposed change would add “excavation for” to the existing language “construction of swimming pools”.

Explanatory NOTE following Section 341(e).

Pursuant to Labor Code section 6500(b), this new Note would explain that the work activity of constructing motion picture, television, or theater stages and sets does not require a permit unless the requirements set forth in that Section 6500(b) are met.

II. Section 341.1. Issuance of Permits.

Because of the reformulation of the permitting process proposed in Section 341, it is necessary to make numerous revisions to Section 341.1. Some of the proposed revisions are minor and improve clarity without affecting substance; other revisions make substantive changes. The Division proposes to delete the existing language of Section 341.1 in its entirety and to replace it with new language which would set forth the requirements for obtaining a Project Permit or Annual Permit when required by Section 341.

Section 341.1(a): Where to Submit Permit Applications.

Proposed subsection (a)(1) would require that all applications for Project Permits be submitted to the Division’s district office that has geographical jurisdiction over the project site.

Section 341.1(a)(2).

Proposed subsection (a)(2) would require that all Annual Permits be obtained from the Division’s office in the Cal/OSHA district where the applicant’s headquarters are located. If an applicant for an Annual Permit has no California headquarters, that applicant must submit the application to the Division’s headquarters in Oakland.

Explanatory NOTE following Section 341.1(a)(2).

This explanatory note, adapted from existing subsection (a), tells the permit applicant where forms are available and generally where district offices can be located.

Section 341.1(a)(3).

Proposed subsection (a)(3) would require that all permits for the use of diesel engines in mines and tunnels be obtained from the nearest district office of the Division's Mining and Tunneling Unit.

Explanatory NOTE following Section 341.1(a)(3).

This explanatory note would inform applicants where to obtain applications for underground diesel permits.

Section 341.1(b): Application Requirements Applicable to All Permit Applications.

The proposed changes to subsection (b) would set forth the information which all permit applicants must include in their applications.

Section 341.1(b)(1).

Proposed subsection (b)(1) would list the provisions to be included on all permit applications required by this section. For example, an applicant would be required to provide all the customary contact information on an application. In addition, the applicant would have to provide the number of a valid license issued from the Contractors State License Board, and must show proof of workers' compensation coverage, if applicable. Applicants must also attach a check or money order to cover applicable fees. A note following subsection (b)(1) states that the Division is not equipped to accept cash or credit card payments. Finally, the applicant must certify that he or she has knowledge of applicable occupational safety and health standards and will comply with such standards and any other lawful orders of the Division.

Section 341.1(b)(2).

Proposed subsection (b)(2) would set forth additional requirements for project permit applications. In addition to the information required in Subsection (b)(1), applicants for project permits would have to provide a jobsite telephone number, the specific location of the job site, and the activity to be covered by the permit.

Section 341.1(c).

Section 341.1(c) would be re-titled "Additional Application Requirements Applicable to Permits for Underground Use of Diesel Engines in Mines and Tunnels, and to Permits for Fixed Tower Cranes" to reflect its new content.

Section 341.1(c)(1).

Currently, Section 341.1(b)(1) describes the special permit provisions for underground use of diesel engines. The Proposed Rulemaking would make minor grammatical and stylistic changes

to make the section clearer. For example, a portion of the title sentence, “Special provisions” would be deleted. In the second sentence of new subsection (c)(1), the proposal would delete the words “in work” from the existing phrase “for the underground use of diesel engines in work in mines and tunnels”.

Section 341.1(c)(1)(A).

This subsection would require a permit application for the underground use of diesel engines in mines and tunnels to provide complete details and specifications of each diesel engine and exhaust purifying device.

Section 341.1(c)(1)(B).

This subsection would require a permit application for the underground use of diesel engines in mines and tunnels to provide the location of the mine or tunnel and details of how the diesel equipment is to be used.

Section 341.1(c)(1)(C).

This subsection would require a permit application for the underground use of diesel engines in mines and tunnels to provide the length, cross-section, and layout of the underground haulage ways.

Section 341.1(c)(1)(D).

This subsection would require a permit application for the underground use of diesel engines in mines and tunnels to provide the maximum number and brake horsepower of diesels to be operated in any aircourse.

Section 341.1(c)(1)(E).

This subsection would require a permit application for the underground use of diesel engines in mines and tunnels to provide ventilation plans, including direction of airflow, fan capacity, duct sizes and auxiliary ventilation.

Section 341.1(c)(1)(F).

This subsection would require a permit application for the underground use of diesel engines in mines and tunnels to provide dates when the proposed diesel use is to begin and the dates and locations where a representative of the Division may conduct tests of the diesel exhaust gases and mechanical conditions affecting exhaust gas emission.

Section 341.1(c)(2).

This section relates to permits for the erection climbing and dismantling of fixed tower cranes. It would require applicants for a permit to erect, climb or dismantle a fixed tower crane to provide specified additional information on their applications. For example, Section (c)(2)(A) requires the applicant to certify that a Division-licensed tower crane certifier or surveyor or safety representative of the manufacturer or distributor of the crane will be present during erection,

climbing and dismantling operations to assure safe practices. A note following this subsection would reference additional requirements in 8 CCR applicable to tower crane permits.

In addition, Section (c)(2)(B) would require the applicant to notify the Division of the date and time of initial erection at the site, completion of erection and commencement of operation, climbing of the tower crane and dismantling of the tower crane. Such notification must be received at the district office which issued the permit at least 24 hours prior to the activity which is the subject of the notification.

Section 341.1(d): Safety Conference for Project Permits and Annual Permits.

Existing subsection (c) describes the safety conference that is held in the Division's district office as part of the Project Permit or Annual Permit process. The Proposed Rulemaking would renumber existing Subsection (c) as Subsection (d) and re-title it "Safety Conference for Project Permits and Annual Permits".

Section 341.1(d)(1).

This section would give the Division the authority to conduct an investigation, a hearing and/or a safety conference in connection with the issuance of a permit. The proposed language is essentially a modification of existing requirements. For example, the word "employer" which appears in existing Subsection (c) would be changed to "permit applicant". The adjective "healthful" would be added to modify the existing nouns "employment" and "place of employment". As non-substantive change, the adjective "safe" would be preserved, in a new location at the end of the sentence.

Section 341.1(d)(2).

New subsection (d)(2) would direct the Division to make a reasonable effort to accommodate the scheduling needs of the applicant, and to furnish the applicant with a list of information or items the applicant must bring to the permit safety conference.

Section 341.1(d)(3).

New subsection (d)(3) would direct the Division to hold the safety conference at a district office or at another designated location which is convenient to the parties. The safety conference would be open to the applicant, representatives of the owner of the project, contracting agencies, and the applicant's employees and their representatives. The permit applicant would be required to notify all such parties of the safety conference, and to provide proof of such notification to the Division.

Section 341.1(e): General Requirements Applicable to Issuance of All Permits.

Subsection (e)(1) of the Proposed Rulemaking would allow the Division to issue a permit to a qualified applicant upon filing of a completed application form and compliance with all the prerequisites set forth therein, including payment.

Subsection (e)(2) would specify the information that will appear on a permit issued by the Division, including (A) the name of the permit holder; (B) the permit number; (C) the type of

permit issued; (D) the date through which the permit shall remain valid; (E) payment information; (F) names of the Division staff involved in reviewing the application; and (G) the activities permitted by the permit.

Subsection (f): Issuance of Project Permits for All Projects Other Than Erection of Tower Cranes.

The Proposed Rulemaking would revise existing subsection (d) and renumber it as subsection (f). As revised, Subsection (f) would present the general requirements for Project Permits that may be issued to Project Administrators. Subsection (f) would state that a Project Administrator need obtain only one Project Permit, and would specify the work activities necessitating a single permit in subsection (f)(1) through (f)(5).

Subsections (f)(1) through (f)(4) describe multiple work activities that may be included in one Project Permit when the work is done at the same jobsite. For example, Subsection (f)(1) requires a single Project Permit for the construction or demolition of a building or structure over 36 feet high and the associated excavation work at the same site. Subsection (f)(2) requires a single Project Permit for the construction of specified structures and the erection of attendant scaffolding. Under Subsection (f)(3) a Project Administrator would need a single Project Permit for any project of demolition of specified structures at one site. Subsection (f)(4) would require taking out a single Project Permit for all or any combination of the activities listed in Subsections (f)(1), (f)(2) and (f)(3) at a single jobsite.

New Subsection (f)(5) would require a single permit for two or more projects when the work is part of the same contract but is located in different Division districts, as long as the work is the installation of essentially identical structures.

Section 341.1(f)(5)(A).

New subsection (f)(5)(A) would list common “essentially identical structures” that would be subject to the provisions of Subsection (f)(5), namely: silos, outdoor signs, tanks or tank towers, and transmission or communication towers.

Section 341.1(f)(5)(B).

New subsection (f)(5)(B) would list common structures that may appear to be identical or nearly identical in basic design, but which are specifically excepted from the provision for Project Permits for more than one jobsite. Such projects include bridges, dams, elevated highways, buildings and tower cranes.

Section 341.1(f)(5)(C).

New subsection (f)(5)(C) would provide that the Division’s district office where the first project scheduled to be commenced is located will issue a Project Permit for more than one jobsite.

Section 341.1(f)(5)(D).

New subsection (f)(5)(D) would require a Project Administrator who has obtained a Project Permit for more than one jobsite to fulfill the notification requirements for Annual Permits, as set

forth in Subsection (g)(2)(C), below. Such a requirement is necessary because allowing Project Permits for more than one jobsite, without separate safety conferences for each jobsite, would allow work to go on without the Division's knowledge, and would deprive both the Division and the permit holder of the benefit of a site-specific safety conference.

Subsection (g): Issuance of Project Permits for Fixed Tower Cranes.

New subsection (g) is adapted from existing subsection (e). Existing subsection (e) explains that only one permit is necessary for the erection, climbing and dismantling of a fixed tower crane. A proposed amendment would add a title sentence that highlights the fact that such permits are Project Permits, as required in Section 341(c)(3). A second proposed amendment would require separate permits to be taken out for erecting, climbing or dismantling a tower crane, if the same employer does not perform all three functions.

Subsection (h): Issuance of Annual Permits.

This section would address the issuance of Annual Permits.

Section 341.1(h)(1).

Subsection (h)(1) would authorize the Division to issue an Annual Permit upon the applicant's demonstration that it has an adequate safety program that has been developed for the work activity covered by the permit. This subsection would also permit the Division to place conditions on the Annual Permit.

Explanatory NOTE following subsection (h)(1).

The new proposed explanatory Note following new subsection (h)(1), gives the Division the flexibility to stagger the expiration dates in the first year following the effective date of the Proposed Rulemaking.

Section 341.1(h)(2)(A).

New subsection (h)(2)(A) would provide that an Annual Permit is valid only if the permitted activity is performed by the entity named in the permit.

Section 341.1(h)(2)(B).

New proposed subsection (h)(2)(B) would require the permit holder to notify the Division at least 24 hours prior to performing the activity which is the subject of the notification. Notification could be by mail, personal delivery, fax transmission or electronic mail, and shall provide the project location and date and time work is to commence.

Section 341.1(h)(3).

New subsection (h)(3) would allow the renewal of annual permits by mail.

MORE INFORMATION

The full text of the Proposed Rulemaking, and all information upon which the Proposed Rulemaking is based, including an initial statement of the reasons for the Proposed Rulemaking, are available upon request. Inquiries concerning the Proposed Rulemaking may be directed to the agency contact persons:

Chris Grossgart, Staff Counsel (Primary Contact)
Michael D. Mason, Chief Counsel (Secondary Contact)
Department of Industrial Relations
Division of Occupational Safety and Health
Legal Unit
1515 Clay Street, 19th Floor
Oakland, CA 94612
(510) 286-7348

The Division's rulemaking file for the Proposed Rulemaking is open for public inspection Monday through Friday, excluding State holidays, from 9:00 a.m. to 4:00 p.m., at 1515 Clay Street, 19th Floor, in Oakland, California. Persons desiring a copy of the Division's Final Statement of Reasons for the Proposed Rulemaking, once it has been prepared, should submit a written request to the agency contact person, named above. Alternatively, this Notice, the Division's Initial Statement of Reasons, the actual text of the Proposed Rulemaking, documents relied upon (if any), and the Final Statement of Reasons are available on the internet at www.dir.ca.gov/DIRRulemaking.html.

COSTS OR SAVINGS OF THE PROPOSED RULEMAKING

Costs or Savings to State Agencies: The Division has determined that the Proposed Rulemaking will result in no costs or savings to state agencies.

Impact on Housing Costs: The Proposed Rulemaking will have no effect on housing costs in California.

Impact on Businesses: 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 aggregate fee increase spread out among all the Division's permit holders will result in a *per capita* increase of less than four dollars.

Cost Impact on Private Persons or Entities: The Proposed Rulemaking will not result in additional costs to a private persons or businesses. There are some indications that there will be savings to private persons or businesses. Permit applicants other than Project Administrators, who have had to schedule and attend permit conferences to obtain permits for multiple projects around the State have reported significant time and travel costs. Under provisions of the Proposed Rulemaking, such permit applicants will obtain an Annual Permit at one permit conference in the Division's District Office closest to the business address of the applicant. The specialty contractor will then be able to renew the permit annually by mail.

Costs or Savings in Federal Funding to the State: The Proposed Rulemaking will not result in costs or savings in Federal funding to the State.

Costs or Savings to Local Agencies or School Districts: No costs to local agencies or school districts are required to be reimbursed. Sections 341 and 341.1 specifically exempt local governmental agencies and school districts from permit requirements.

Impact on the Creation of Jobs or Businesses: The Proposed Rulemaking will not have a significant impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of existing businesses in California.

Other Nondiscretionary Costs or Saving Imposed on Local Agencies: The Proposed Rulemaking does not impose nondiscretionary costs or savings on local agencies. As indicated above, Sections 341 and 341.1 specifically exempt local governmental agencies and school districts from permit requirements.

DETERMINATION OF MANDATE

The proposed changes to Sections 341 and 341.1 do not impose any kind of mandate on local agencies or school districts. The Division has determined that the proposed changes do not impose a mandate requiring reimbursement by the State pursuant to Part 7 (Sections 17500 through 17616) of Division 4 of the California Government Code because the proposed changes to the existing regulations do not constitute a new program or higher level of service of an existing program within the meaning of Section 6 of Article XXIII B of the California Constitution.

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a State of California policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the State of California. See County of Los Angeles v. State of California (1987) 43 Cal 3d 46.

The proposed changes to Sections 341 and 341.1 do not require a local agency to carry out the governmental function of providing services to the public.

DOCUMENTS RELIED UPON

Fluor Daniel, Inc. California Occupational Safety and Health Appeals Board Docket No. 90-948 Decision After Reconsideration (November 20, 1991).

This document is available for review Monday through Friday from 9:00 AM to 4:30 PM at the office of the Division’s Research & Standards Development Unit, 2100 E. Katella Avenue, Suite 100, Anaheim, California 92806 (714) 939-8484.

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated by reference in this proposed action.

REASONABLE ALTERNATIVES

The Division must determine that no reasonable alternative considered during rulemaking or otherwise identified and brought to the Division's attention would be more effective in carrying out the purpose that underlies the proposed action, or would be as effective as and less burdensome to affected small businesses than the proposed action.

EFFECT ON SMALL BUSINESS

The Proposed Rulemaking would not affect small business, as it merely modifies existing Division policies for permitting, and would not create additional fees.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.