

**INITIAL STATEMENT OF REASONS
PROPOSED CHANGES TO REGULATIONS OF THE
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

**Title 8, California Code of Regulations, Chapter 3.2, Subchapter 2 Regulations of the
Division of Occupational Safety and Health
Article 2.5 Registration – Asbestos-Related Work
Article 2.6 Asbestos Consultants and Site Surveillance Technicians
Article 2.7 Approval of Courses and Course Providers**

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) accreditation under the United States Environmental Protection Agency (USEPA) Asbestos Model Accreditation Plan (MAP).

PROBLEM ADDRESSED BY PROPOSED ACTION

The USEPA established requirements for granting authority to States to approve asbestos training providers under the asbestos Model Accreditation Plan (MAP) for States as part of 40 CFR Part 763, Appendix C to Subpart E. The Division has been approving training providers since the adoption of the MAP. In the past, the Division's training provider approval program has not met all of the requirements of the USEPA. The USEPA has required the Division to make minor changes to Section 341.16 to achieve full approval under the MAP. The changes are to duplicate some of the language of the MAP that is incorporated in section 341.16 Appendix 341.16a, into the body of the regulation to add clarity.

In September of 2002, the Division adopted standard hearing procedures in Title 8 California Code of Regulations 340.40 – 340.52. Sections 341.13 – 341.17 each currently prescribe differing and more complicated hearing procedures for individuals and businesses in asbestos-related work that have been effected adversely by an action taken by the Division.

SPECIFIC PURPOSE OF PROPOSED ACTIONS FACTUAL BASIS OF PROPOSED
ACTIONS

Section 341.13 Denial of registration

This section contains the procedures to be followed when the Division denies the issuance of registration to an asbestos contractor

Purpose: Adopt the Division's standardized administrative hearing procedures.

Rationale: This change will make the Division's hearing process for denial of an Asbestos Contractor's application for registration consistent with the other Division administrative hearing procedures.

Section 341.14 Revocation and Suspension of Registration

This section contains the procedures to be followed when the Division revokes the registration of an asbestos contractor.

Purpose: Adopt the Division's standardized administrative hearing procedures.

Rationale: This change will make the Division's hearing process for revocation or suspension of an Asbestos Contractor's registration consistent with the other Division administrative hearing procedures.

Section 341.15 Certification of Asbestos Consultants and Site Surveillance Technicians

Purpose: Subsection (a): editorial change to correct regulatory reference.

Subsection (b)(1)(G)(1): editorial change to eliminate obsolete language.

Subsection (i): adoption of the Division's standardized administrative hearing procedures.

Rationale: This change will make the Division's hearing process for denial, suspension or revocation of the Certification of a Certified Asbestos Consultant or Certified Site Surveillance Technician consistent with the other Division administrative hearing procedures.

Section 341.16 Approval of Courses and Course Providers

- Purpose:* Subsection (b)(1)(D) gathers examples of “substantive changes” from various locations in the MAP section (I)(F).
- Rationale:* USEPA has asked the Division to add these examples to clarify when a training provider is required to notify the Division that substantive changes have been made to their training program. See attached correspondence with Federal EPA.
- Purpose:* Subsection (b)(1)(E) eliminates ambiguity regarding who is eligible to take an AHERA refresher class.
- Rationale:* USEPA has asked the Division to make this change so that it is clear that someone seeking to take an AHERA refresher class has previously taken an AHERA initial class and currently holds a valid training certificate. This is from MAP section (I)(D).
- Purpose:* Subsection (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).
- Rationale:* USEPA has asked the Division to make this change to make it clear that it is acceptable to combine student from non-AHERA classes. This clarifies language in the MAP section (I)(B), which states that AHERA classes cannot be combined.
- Purpose:* Subsection (b)(1)(H) is being added to clarify that the recordkeeping requirements in section (I)(F) of the MAP mandatory.
- Rationale:* USEPA intended that the contents of the MAP to be mandatory. This change makes the recordkeeping requirements of section (I)(F) explicitly mandatory.
- Purpose:* Subsection (b)(2)(A)(2) This note is being eliminated as redundant due to the changes being made to (b)(1)(G).
- Rationale:* This change eliminates a note that would be redundant.
- Purpose:* Subsection (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.
- Rationale:* This change makes it clear that the requirements found in the MAP (I)(D)(4) is mandatory.

- Purpose:* 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.
- Rationale:* USEPA has asked the Division to make this change so that the granting of a grace period will be clearly mandatory.
- Purpose:* Subsection (c)(1)(F) is being added to require that the name of the instructor be added to AHERA training certificates.
- Rationale:* 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 the MAP and section 341.16(b)(1)(C).
- Purpose:* The note from subsection (c)(2) is eliminated.
- Rationale:* This is an editorial change to eliminate language that is no longer current.
- Purpose:* Subsection (d)(2)(H) requires a training provider to furnish the Division with a description of their training certificates.
- Rationale:* USEPA has asked the Division to make this change to reduce the risk of fraudulent certificates being issued.
- Purpose:* Subsection (d)(3) adds language forbidding training providers from trying to sell their Division approvals of training courses.
- Rationale:* USEPA has asked the Division to add this language to clarify that course approvals are non-transferable. Division legal counsel has advised staff that the Division's course approvals are not a business asset and are non-transferable.
- Purpose:* Subsection (d)(4) adds: Worker and Craft Worker courses may be approved in languages other than English.
- Rationale:* Section (I)(B)(1) of the Map 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 but USEPA has asked the Division to make this authorization explicit.
- Purpose:* Subsections (h)(2) and (3) clarifies what constitutes good cause.
- Rationale:* USEPA has asked the Division to add this language to clarify that the requirements of section (I)(G) of the MAP are mandatory.

Purpose: Subsection (h)(4) and (5): adoption of the Division’s standardized administrative hearing procedures.

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

Rationale: This change will make the Division’s hearing process for denial, suspension or revocation of a Training Provider’s approval to provide AHERA training, consistent with the other Division administrative hearing procedures.

Section 341.17 Asbestos Cement Pipe Training

Purpose: Subsection (g): adoption of the Division’s standardized administrative hearing procedures.

Rationale: This change will make the Division’s hearing process for denial, suspension or revocation of a Training Provider’s approval to provide asbestos cement pipe training, consistent with the other Division administrative hearing procedures.

OTHER REQUIRED SHOWINGS - GOVERNMENT CODE 11346.2(b)(2)-(4)

Studies, Reports, or Documents Relied Upon

None.

Reasonable Alternatives Considered

The Division has determined that no alternative considered 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.

Reasonable Alternatives That Would Lessen the Impact on Small Businesses

None.

Evidence Relied Upon to Support the Initial Determination That the Proposed Regulations Will Not Have a Significant Adverse Economic Impact on Business

The Proposed Rulemaking will not result in significant additional costs to private persons or businesses.

COST ESTIMATES

- (1) Costs or Savings to State Agencies: The Division anticipates no significant cost impact.
- (2) Impact on Housing Costs: The Division anticipates no significant cost impact.
- (3) Impact on Businesses: The Division anticipates no significant adverse impact on businesses, including the ability of California businesses to compete with businesses in other states.
- (4) Cost Impact on Private Persons or Entities: the Division anticipates no significant cost impact.
- (5) Costs or Savings in Federal Funding to the State: No federal funding is impacted.
- (6) Savings or Costs to Local Agencies or School Districts Required to be Reimbursed: The Division anticipates no savings or reimbursable costs to local agencies or school districts.
- (7) Other Nondiscretionary Costs or Savings Imposed on Local Agencies: These proposed regulations do not impose nondiscretionary costs or saving on local agencies.