

STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
CONTRACTORS STATE LICENSE BOARD
INITIAL STATEMENT OF REASONS

Hearing Date: March 25, 2014

Subject Matter of Proposed Regulation(s): Class C-22 – Asbestos Abatement Contractor and Asbestos Classification and Certification Limitations and Examination Requirement

Section(s) Affected: Title 16, California Code of Regulations, Sections 832.22 and 833

Specific Purpose of Each Adoption

The Contractors State License Board (CSLB) is mandated to protect the public health, safety, and welfare by ensuring that only those individuals who meet the qualifications for licensure are granted contractor licenses in California.

Business and Professions Code (BPC) Section 7008 authorizes CSLB to adopt rules and regulations, in accordance with the Administrative Procedures Act, that are reasonably necessary to carry out the provisions of the chapter of the Code. Section 7055 establishes three branches of contracting business within which to organize CSLB's license classifications, including (A) general engineering contracting, (B) general building contracting, and (C) specialty contracting. Section 7057 defines a B - general building contractor. Section 7058 establishes the specialty contractor license classification and defines "specialty contractor" as "a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts." Section 7058.5 establishes the certification program for contractors who perform asbestos-related work, as defined in Section 6501.8 of the Labor Code. Section 7058.7 establishes the certification program for contractors who perform hazardous substance removal or remediation work. Section 7059 authorizes the Board to adopt rules and regulations that are reasonably necessary to effect the classification of contractors. Sections 7065 and 7068 set forth the written examination requirements and the knowledge and experience qualifications, respectively, for the licensure of contractors. Section 7065.3 sets forth conditions under which an additional classification may be added to an existing contractor license without examination. Sections 7071.17 and 7074, in part, contain 90-day deadlines for CSLB applicants and licensees to meet specific requirements before stated implications may result. California Code of Regulations (CCR) Section 825 clarifies that every applicant for licensure must have had four (4) years of journey-level experience, within the last ten (10) years, in the specific classification being sought by the applicant. Labor Code Section 6501.5 establishes registration requirements for persons doing asbestos-related work, which is defined in Section 6501.8.

The specific purpose of each proposed regulation is as described below.

§ 832.22. Class C-22 – Asbestos Abatement Contractor

There is no existing regulation regarding an asbestos abatement contractor classification.

The proposed regulation is being adopted in order to establish a specialty classification for an asbestos abatement contractor, including the related scope of work.

This regulation is necessary to establish a C-22 – asbestos abatement contractor classification. Regulatory action is needed because without the regulatory language there would be no such stand-alone classification, and asbestos abatement work could be performed only under the Section 7058.5 asbestos certification as an overlay to the other classification(s) held by licensed contractors.

§ 833. Asbestos Classification and Certification Limitations and Examination Requirement

There is no existing regulation regarding limitations on or examination requirements for an asbestos abatement contractor classification or the asbestos certification.

The proposed regulation is being adopted in order to set forth limitations and requirement for the new asbestos abatement contractor classification and the existing asbestos certification.

This regulation is necessary to clarify limitations and requirements for a new C-22 – asbestos abatement classification, in comparison to the existing asbestos certification. Regulatory action is needed because without the regulatory language there could be confusion about how the new classification would be utilized for asbestos abatement work and how it differed from the existing Section 7058.5 asbestos certification, as well as about the examination requirement for the classification.

Factual Basis/Rationale

CSLB licenses contractors in 43 different license classifications covering the broad range of construction trades performed by contractors. With limited exceptions (i.e., incidental and supplemental work), contractors licensed in one classification are prohibited from performing work in another classification unless they are also duly licensed in that classification.

The asbestos certification, established in BPC Section 7058.5, is issued only to currently licensed contractors who hold at least one license classification. It is not a specialty classification unto itself and cannot stand on its own; it must be held in conjunction with a true license classification. A contractor must pass a written examination to obtain the asbestos certification, but there are no specific experience requirements for the certification. In order to perform asbestos-related work, such contractors must also be duly registered by the Division of Occupational Safety and Health (DOSHS) of the Department of Industrial Relations.

CSLB recently discovered that some licensed contractors who hold the asbestos certification were operating outside of their classification(s) when performing asbestos abatement work. For instance, a C-2 – insulation and acoustical contractor performed asbestos abatement that included the removal of a roof at a public school. Upon further inquiry and investigation into the matter, it was found that there is a lack of understanding in the industry of the legal parameters of the asbestos certification.

CSLB determined that clarification was needed regarding whether the asbestos certification is a classification-specific authorization to perform asbestos-related work solely in the classification(s) held by the individual licensee or is an all-encompassing authorization to perform asbestos-related work in or on any part of a structure, regardless of the classification(s) held by the individual contractor.

To argue that an asbestos certification allows the holder to perform asbestos-related work across different license classifications in which the holder is not properly licensed would be to treat the certification as a separate specialty classification, which it is not. As previously stated, the asbestos certification has no experience requirements; only a written examination is required. Since all other license classifications have experience requirements as set forth in CCR Section 825, if the asbestos certification was treated as a separate specialty classification without having an experience requirement component, CSLB would be applying a lesser standard than is present with other license classifications.

For more than a year, CSLB considered various aspects relating to the asbestos certification. After consultation with legal counsel and discussion on the intent of the enabling law, CSLB concurred that a licensed contractor who holds the asbestos certification may perform asbestos-related work only in the license classification(s) for which he/she is specifically licensed. The asbestos certification does not authorize a contractor to perform asbestos-related work in license classifications that are not held by the contractor. Essentially, the asbestos certification must function as an overlay to the license classification(s) held by the contractor.

At its December 11, 2012 Board meeting, CSLB reviewed the legal opinion and unanimously approved a policy that a licensed contractor who holds an asbestos certification and who is registered by DOSH may perform asbestos-related work only in the license classification(s) for which he/she is licensed. In addition, CSLB's 2012-13 Strategic Plan included an objective to "develop language for a regulation to clarify asbestos certification as trade-specific."

At its February 26, 2013 Board meeting, CSLB considered the appropriateness of developing a separate, all-inclusive asbestos specialty classification in regulation that would allow asbestos-related work in or on any portion of a structure, regardless of any other classification(s) held by the contractor. This specialty classification would function as a stand-alone classification and could be issued as the sole classification held by a contractor. It would not rely upon any other classifications for it to function. A motion to develop an asbestos abatement specialty classification was unanimously approved at this meeting.

In addition, CSLB met with existing contractors who hold the asbestos certification and who perform asbestos-related work as their primary contracting business to discuss the issue. In a meeting with industry and DOSH representatives on June 5, 2013, attendees reviewed draft regulatory language for the asbestos abatement specialty classification and fully supported the proposal, with minor text modifications.

CSLB reviewed and gave preliminary approval of the originally proposed language for the new asbestos abatement regulations at its September 6, 2013 Board meeting.

Since there is no existing regulation regarding an asbestos abatement contractor classification, CSLB initiated the proposed regulatory action for the purpose of establishing a new specialty classification for an asbestos abatement contractor, including the related scope of work, and setting forth limitations and requirement for the new asbestos abatement classification and the existing asbestos certification.

§ 832.22. Class C-22 – Asbestos Abatement Contractor

There is no existing regulation regarding an asbestos abatement contractor classification.

The proposed regulation is being adopted in order to establish a specialty classification for an asbestos abatement contractor, including the related scope of work. The proposed specific provisions of Section 832.22 are as described below.

Subsection (a) establishes the scope of work for the C-22 – asbestos abatement specialty classification that shall be done in accordance with DOSH requirements. DOSH, also known as Cal/OSHA, is the governmental agency that oversees worker health and safety in California. Through its Asbestos Contractors' Registration Unit and pursuant to Labor Code Section 6501.5, DOSH meets its legislative mandate to register contractors who perform asbestos-related work that involves 100 sq. ft. or more of asbestos-containing construction materials. Contractors wishing to perform asbestos-related work must meet DOSH's registration requirements and successfully complete their required training. Once granted, registration holders must reapply each year to renew their registration with DOSH.

Subsection (b) requires DOSH registration (or an active application for registration in process) for asbestos classification holders. Some applicants may have already obtained their DOSH registration when they apply for the C-22 – asbestos abatement classification, but others will have to be duly licensed by CSLB before their registration will be granted by DOSH. This regulatory language will allow either scenario to be acceptable, provided the applicant complies with subsection (c) below if he/she falls in the latter category.

Subsection (c) requires proof of DOSH registration within 90 days after the asbestos abatement contractor license is issued. The 90-day deadline is consistent with existing 90-day statutory deadlines for CSLB applicants and licensees, including those contained in BPC Sections 7071.17 and 7074. As explained above, this subsection applies to those applicants who must be duly licensed by CSLB before DOSH will issue their registration. This subsection further establishes implications to the license if the

proof of registration is not submitted timely – either the classification will be removed from the license if other classifications are present on the license or the license will be suspended if the C-22 – asbestos abatement classification is the only classification held by the licensee. Subsection (c) also prohibits practice of asbestos abatement work until the proof of DOSH registration has been submitted.

Subsection (d) establishes experience requirements for applicants for the asbestos abatement contractor classification. Consistent with the experience requirements for all other CSLB license classifications, as set forth in CCR Section 825, applicants for the C-22 – asbestos abatement classification are required to have four (4) years of journey-level experience, within the last ten (10) years, in the specific classification. Due to the potential lethality of asbestos, which is a known carcinogen, and the extremely specialized, technical, and hazardous nature of asbestos abatement work, the four years of journey-level experience must be obtained while working for a duly licensed/certified and DOSH registered contractor.

Subsection (e) requires proof of current DOSH registration as a condition precedent to the renewal of an asbestos abatement contractor license. As mentioned above, DOSH registrants must renew their registrations annually; therefore, CSLB must ensure that the registration is valid and in good standing at the time the contractor license is renewed. Submission of proof of current DOSH registration by the licensee at the time of CSLB license renewal will meet that requirement.

Subsection (f) limits the scope of work of the C-22 – asbestos abatement classification. Since asbestos abatement work involves the containment, encapsulation, or removal, as well as the disposal, of asbestos containing construction materials, the scope must specifically reflect that and must not allow an asbestos abatement contractor to perform other construction-related duties or hazardous substance removal or remediation unless he/she is otherwise duly licensed to do so.

§ 833. Asbestos Classification and Certification Limitations and Examination Requirement

There is no existing regulation regarding limitations on or examination requirements for an asbestos abatement contractor classification or the asbestos certification.

The proposed regulation is being adopted in order to set forth limitations and requirement for the new asbestos abatement contractor classification and the existing asbestos certification. The proposed specific provisions of Section 833 are as follows:

Subsection (a) clarifies the stand-alone nature of the C-22 – asbestos abatement contractor classification. This clarification is necessary to distinguish the new specialty classification from the existing asbestos certification that, as described under subsection (c) below, functions as an overlay to the specific classification(s) held by the licensee. Therefore, a C-39 – roofing contractor who holds the asbestos certification can perform asbestos abatement work only in relation to roofing construction duties. But the holder of the new stand-alone C-22 – asbestos abatement classification will be able to perform asbestos abatement work in or on any portion of a structure, regardless of any other classification(s) held by the licensee.

Subsection (b) clarifies that in order for a B – general building contractor to contract for any project that includes asbestos abatement work, he/she must hold the C-22 – asbestos abatement classification or the Section 7058.5 asbestos certification and DOSH registration or subcontract with an appropriately licensed contractor. With some exceptions and limitations, general building contractors typically undertake projects that involve at least two unrelated building trades. However, they are specifically prohibited from performing work that involves C-16 – fire protection or C-57 – well drilling classifications unless they hold the appropriate classification or subcontract with an appropriately licensed contractor. The comparable limitation contained in subsection (b) reflects the seriousness of asbestos abatement work, as previously discussed.

Subsection (c) clarifies the overlay nature of the Section 7058.5 asbestos certification, in that it operates in conjunction with other classification(s) held by the licensed contractor. As discussed in subsection (a) above, this language is intended to make a distinction between the existing asbestos certification that functions as an overlay to the specific classification(s) held by the licensee and the new stand-alone C-22 – asbestos abatement classification. This language codifies the position of CSLB’s legal counsel and Board on the matter.

Subsection (d) allows for the waiver of the written trade examination for the C-22 – asbestos abatement contractor classification under certain circumstances, specifically for a licensee who has acquired the required four years of journey-level experience in the C-22 – asbestos abatement contractor classification during which time he/she held the Section 7058.5 asbestos certification in good standing, provided he/she passed the written asbestos certification examination prior to obtaining the asbestos certification.

CSLB has nearly 1,200 active asbestos certification holders; however, only approximately 300 individuals are currently registered by DOSH. Therefore, while the 1,200 certification holders would have already passed the written examination, many of them would not likely have the required experience and would not meet the DOSH registration requirement. Many of these individuals may have obtained the asbestos certification for the sole purpose of being able to bid on asbestos-related projects. However, that is no longer necessary, because the new regulatory language clarifies that a general building contractor can contract for a project that includes asbestos abatement work if he/she is appropriately licensed or if he/she subcontracts with another contractor who is so licensed. Due to the aforementioned statistics and the fact that asbestos abatement work is a very specialized niche of contracting, CSLB anticipates that the number of individuals who will seek licensure in this classification and, even more so, who will seek the waiver of the written trade examination under subsection (d) will be relatively few.

Underlying Data

Excerpt from CSLB December 11, 2012 Board Meeting Minutes
Excerpt from CSLB February 26, 2013 Board Meeting Minutes
Excerpt from CSLB September 6, 2013 Board Meeting Minutes
Excerpt from CSLB Strategic Plan 2012-13

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the fact that there are relatively few contractor licensees who currently hold the existing asbestos certification and who would be impacted by the proposed regulations. In addition, there are even fewer licensees who maintain DOSH registration and who may seek licensure in the new specialty asbestos abatement classification under the new regulations. The proposed regulations will provide an additional avenue through which a licensed contractor can be authorized to perform asbestos abatement work.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because licensed contractors have been able to perform asbestos abatement work under the existing asbestos certification established in BPC Section 7058.5 and will continue to do so. This proposed regulation will simply expand the avenues through which a licensed contractor can be authorized to perform such work.
- It will not create new business or eliminate existing businesses within the State of California because licensed contractors have been able to perform asbestos abatement work under the existing asbestos certification and will continue to do so. This proposed regulation will simply expand the avenues through which a licensed contractor can be authorized to perform such work.
- It will not affect the expansion of businesses currently doing business within the State of California because licensed contractors have been able to perform asbestos abatement work under the existing asbestos certification and will continue to do so. This proposed regulation will simply expand the avenues through which a licensed contractor can be authorized to perform such work.
- This regulatory proposal benefits the health and welfare of California residents because it helps ensure that only those contractors who are qualified to do so are licensed and authorized to perform asbestos abatement work in accordance with DOSH requirements, which is a significant health and safety issue.
- This regulatory proposal benefits worker safety because it helps ensure that only those contractors who are qualified to do so are licensed and authorized to perform asbestos abatement work in accordance with DOSH requirements, which is a significant health and safety issue.
- This regulatory proposal benefits the state's environment because it helps ensure that only those contractors who are qualified to do so are licensed and authorized to perform asbestos abatement work in accordance with DOSH requirements, which is a significant health, safety, and environmental issue.

Specific Technologies or Equipment

This proposed regulatory action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

CSLB could have considered the possibility of allowing all licensed contractors who hold the existing asbestos certification to perform asbestos abatement work in or on any portion of a structure, regardless of the classification(s) held by the contractor. This would allow all asbestos abatement work to be performed as if the asbestos certification was a stand-alone authorization. This alternative was rejected because it went against legal counsel advice and appeared to be contrary to the intent of the asbestos certification law, BPC Section 7058.5. In addition, applicants for the asbestos certification are held to a lesser standard by not having to meet a specific experience requirement in the applicable trade, as is required for licensure in all other stand-alone classifications as set forth in CCR Section 825. This distinction supports the true overlay nature of the asbestos certification.

CSLB considered the possibility of remaining with the status quo, in which a licensed contractor who holds the existing asbestos certification could perform asbestos abatement work only within the classification(s) held by the contractor. This would limit all asbestos abatement work to be an overlay to classifications specifically held by the contractor. This alternative was rejected because some licensed contractors who specialize exclusively in asbestos abatement work would be restricted in the scope of work in which they could perform asbestos abatement due to their lack of licensure in specific license classifications.

Only the proposed regulatory action will allow the existing asbestos certification to continue in its current state as an overlay to classification(s) held by the certification holder and will establish a stand-alone asbestos abatement classification with appropriate experience and examination requirements. It will allow contractors who focus their asbestos abatement work in a limited number of classifications to remain with the existing asbestos certification and will allow contractors who specialize in asbestos abatement work throughout a building to obtain the new asbestos abatement specialty classification. This proposal will expand the avenues through which a licensed contractor can be authorized to perform asbestos abatement work.