

## **Title 16. BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest. The Board does not intend to hold a hearing in this matter. If an interested party wishes that a hearing be held, he or she must make the request in writing to the Board no later than 5 p.m. on December 30, 2013. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text.

With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on January 13, 2014.

Authority and Reference: Pursuant to the authority vested in Section 7818 of the Business and Professions Code, and to implement, interpret or make specific Sections 7800, 7801, 7802, 7802.1, 7803, 7803.1, 7804, 7804.1, 7822, 7841 and 7841.1, the Board is considering changes to Division 29 of Title 16 of the California Code of Regulations (CCR) as follows:

### **INFORMATION DIGEST**

California Business and Professions Code (B&P) Section 7818 authorizes the Board to adopt, amend, and repeal regulations as may be reasonably necessary to enable the Board to implement laws relating to the practice of geology and geophysics.

The Board's intent is to ensure that all regulations are clear, relevant, unambiguous, and functional in accordance with the Board's 2011-2014 Strategic Plan.

The Board is proposing this regulatory action in order to clarify the definition of engineering geology and the definition of Professional Geophysical work. The Board's Geologist and Geophysicist Technical Advisory Committee (TAC), which is comprised of several licensed experts, made the determination that the definitions regarding engineering geology and Professional Geophysical work (Title 16, California Code of Regulations Section 3003 (b) and (e)) require modification, and this determination was approved by the Board.

In accordance with Business and Professions Code Section 7826(c), the Board may

establish a technical advisory committee or committees in order to advise the Board regarding the amendment, repeal, adoption, or revision of Board rules, regulations, policies, and procedures. In accordance with Business and Professions Code Section 7826.2, all of the members of the technical advisory committee are licensed and are experts in geology and/or geophysics; therefore, the Geologist and Geophysicist TAC members have the knowledge to make the determination that changes should be made regarding the technical language of the definition regulations.

The proposed changes to Title 16, California Code of Regulations Section 3003 (b) and (e) were discussed over the course of several Geologist and Geophysicist TAC meetings with the added input of additional licensed Professional Geologists and Geophysicists.

The proposed changes are as follows:

- Title 16, California Code of Regulations Section 3003 (b)-Definition Regarding Engineering Geology

Title 16, California Code of Regulations Section 3003 (b) addresses the definition of engineering geology. Title 16, California Code of Regulations Section 3003 (b) states that engineering geology includes "...the application of geologic data, principles and interpretation so that geologic factors affecting planning, design, construction and maintenance of civil engineering works are properly recognized and utilized."

The proposed amendments include the addition of language that clarifies the role of an engineering geologist. The proposed amendments indicate that engineering geology is "...the application of geologic data, principles and interpretation so that geologic factors and processes affecting planning, design, construction, maintenance, and vulnerability of civil engineering works are properly recognized and utilized."

The words "processes" and "vulnerability" have been added to create a more accurate definition of the engineering geology practice.

- Title 16, California Code of Regulations Section 3003 (e)-Definition Regarding Professional Geophysical Work

Title 16, California Code of Regulations Section 3003 (e) addresses the definition of Professional Geophysical work. A Professional Geophysicist is a licensed geophysicist pursuant to Business and Professions Code Section 7804.1. Title 16, California Code of Regulations Section 3003 (e) indicates that Professional Geophysical work includes the following: work performed at a professional level; application of scientific knowledge; use of initiative and judgment; minimal supervision; professional responsibility; integrity; and "...investigating, measuring, interpreting and reporting on the physical phenomena of the earth."

The subsection specifies that the following is not Professional Geophysical work: subprofessional/apprentice level work; work with little analysis of geological or geophysical work; work with lack of initiative; and work with a lack of scientific judgment.

The proposed amendment adds language regarding the scope of Professional Geophysical work, indicating that “The term includes the practice of geophysics for the evaluation and mitigation of earthquake hazards, and environmental and groundwater resources assessment.”

The purpose of this amendment is to create a more accurate definition of Professional Geophysical work in regards to the current scope of practice. In addition the amendment adds the subsections/scope of practice of geophysics that Business and Professions Code Section 7802.1 (“Geophysics” defined) does not define.

## POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

It is anticipated that the proposed changes will help depict a more accurate description in regards to the current scope of practice of engineering geology and Professional Geophysical work, and define the scope of Professional Geophysical work to include subsections of the practice that are currently not addressed in the definition. The regulation will benefit the public due to increased public health and safety. Accurately defining the scope of Professional Geophysical work clarifies what the practice entails for professionals in the field as well as for the public for the purposes of defining what kind of work can be performed by a Professional Geophysicist, and what may be considered unlicensed activity if the work/service is performed by an unlicensed individual, or an individual that does not possess the qualifications to perform the work/service.

### Consistency and Compatibility with Existing State Regulations

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal and it is neither inconsistent nor incompatible with existing state regulations.

## FISCAL IMPACT ESTIMATES

### Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed changes do not have an anticipated fiscal impact. The proposed changes to the definitions increase the accuracy of the true definition of the current scope of practice, but it does not change what is currently being done in the real world practices of engineering geology and Professional Geophysics. As a result, the number of individuals that take the licensure exam(s) and apply for

licensure after the passage of the exam(s) is not expected to increase or decrease; therefore, a fiscal impact is not expected.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this proposed regulatory action will not have an 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 Private Person or Business:

There is no anticipated cost impact to these individuals in the engineering geology and Professional Geophysics field that would occur as the result of clarifying the definition of engineering geology and Professional Geophysics. Therefore, 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: None

#### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The amendments to Title 16, California Code of Regulations Section 3003 (b) and (e) update definitions regarding professions. The Board does not license businesses; the Board licenses individuals.

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact of Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant 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.

### Benefits of the Regulations:

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the State government:

The proposed changes will help depict a more accurate description in regards to the current scope of practice of engineering geology and Professional Geophysical work, and define the scope of Professional Geophysical work to include subsections of the practice that are currently not addressed in the definition. It is anticipated that the regulation will benefit the public due to increased public health and safety. Accurately defining the scope of Professional Geophysical work clarifies what the practice entails for professionals in the field as well as for the public for the purposes of defining what kind of work can be performed by a Professional Geophysicist, and what may be considered unlicensed activity if the work/service is performed by an unlicensed individual, or an individual that does not possess the qualifications to perform the work/service.

### CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative is considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed described in this Notice, or would be more effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an Initial Statement of Reasons for the proposed action and has available all of the information upon which the proposal is based.

### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations 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 Board at 2535 Capitol Oaks Drive, Suite 300, Sacramento, CA 95833.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

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 below or by accessing the website listed below.

## CONTACT PERSON

Inquires or comments concerning the proposed rulemaking action may be addressed to:

Name: Erin LaPerle  
Address: 2535 Capitol Oaks Drive, Suite 300  
Sacramento, CA 95833  
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E-Mail Address: [Erin.LaPerle@dca.ca.gov](mailto:Erin.LaPerle@dca.ca.gov)

The backup contact person is:

Name: Larry Kereszt  
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Fax No.: (916) 263-2246  
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## WEBSITE ACCESS

The Board's website is: <http://www.bpelsq.ca.gov/>. Materials regarding this proposal can be found at: [http://www.bpelsq.ca.gov/about\\_us/rulemaking.shtml](http://www.bpelsq.ca.gov/about_us/rulemaking.shtml)