

**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

INITIAL STATEMENT OF REASONS

Hearing Date: No Hearing Scheduled

Subject Matter of Proposed Regulations: Examination Appeal

Sections Affected:

Repeal Sections 3036.1, 3036.2, 3037.1, & 3037.2 of Title 16, Division 29 of the California Code of Regulations (CCR).

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

- a) Title 16 CCR Section 3036.1 allows for the inspection of geophysicist or specialty geologist or specialty geophysicist examinations by the examinee or the applicant's attorney. Allowing inspection of examinations can invalidate exam items and cause them to not be legally defensible and usable for purposes of licensure or certification. Additionally, there is no statutory or regulatory authority to charge a fee for examination inspection causing the Board for Professional Engineers, Land Surveyors, and Geologists (Board) to absorb the administrative cost involved in the planning and implementation of the inspection process.
- b) By its own terms, Title 16 CCR Section 3036.2 was repealed and became inoperative as of December 31, 1999. However, the language has

remained in the California Code of Regulations. This proposal is simply eliminating the language from Title 16 CCR.

- c) Title 16 CCR Section 3037.1 allows for the appeal of the geophysicist or specialty geologist or specialty geophysicist examination. Exam appeals open up security issues by allowing exam items to be reviewed and made public outside of a secure testing center. In addition, exam appeals were plausible when the makeup of the exams included essay items. Essay items are subject to variability in scoring due to errors or influences during the grading process, whereas multiple choice items are developed to have one (1) correct, or key, response and multiple wrong responses, or distractors. Additionally, there is no statutory or regulatory authority to charge a fee for examination appeal workshop, causing the Board to absorb the administrative cost involved in the planning and implementation of the appeal process.
- d) By its own terms, Title 16 CCR Section 3037.2 was repealed and became inoperative as of December 31, 1999. However, the language remained in the California Code of Regulations. This proposal is simply eliminating the language from Title 16 CCR.

Business and Professions Code Sections 7810.1, and 7818 provides the Board with the responsibility to make and enforce rules and regulations that are reasonably necessary to carry out its provisions. To that extent, the Board is proposing to repeal these regulations in order to maintain public safety while maintaining exam security, and implement minor absorbable cost savings for the Board. The Board's mission is to safeguard the life, health, property, and welfare of the public.

2. Anticipated benefits from this regulatory action:

- a) Repealing Title 16 CCR Sections 3036.1 and 3037.1 would maintain valid, secure, and legally defensible examinations for licensure. If exam items are shared outside a secure testing center with examinees and future applicants, the questions' validity and security is compromised. Multiple-

choice exams require less time to administer, provide a more comprehensive evaluation of the candidate's knowledge, and are graded by a computer with no variation in grading.

- b) On average, the Board receives four to six requests for appeal of an examination each year. There are administrative expenses associated with the appeal process including, but not limited to, application review, staff preparation, subject matter expert (SME) consultation, and travel expenses. The repeal of Title 16 CCR Sections 3036.1 and 3037.1 would result in a minor cost savings for the Board.
- c) Repealing Title 16 CCR, Sections 3036.2 and 3037.2 would simply remove language that has previously been repealed and is no longer relevant, remaining on track with the Board's 2015-2018 Strategic Plan to clean-up the regulations.

Factual Basis/Rationale

Until the fall of 2009, some geology related exams had essay type questions which allowed for disparity in the grading process. Because of this, the Board allowed the inspection and appeal of examinations. Effective the spring cycle of 2010, all geology related examinations were made up entirely of multiple choice questions. The examination process has improved and the request for appeals has decreased over time. Additionally, no examinees that participated in the appeal process over the last four years had their scores changed as a result of their appeals.

The Board is repealing Title 16 CCR Sections 3036.1 and 3037.1, which removes the inspection and appeal options for the geophysicist or specialty geologist or specialty geophysicist examinations. The determining factors behind removing appeal options are: exams are all multiple-choice and include only one key response (one right answer), are psychometrically valid, legally defensible, graded by computer, not structured to be appealed, and the appeal process jeopardizes the reliability and security of the exam items.

The Board offers comment periods after the exam and by mail to submit any concerns with the exam items or testing procedures. The comments are reviewed by staff and Subject Matter Experts to determine if action should be taken and scores should be adjusted. In this way, the Board is maintaining exam security while offering a vehicle for change if concerns should arise. The repeal conforms to the Professional Engineers and Professional Land Surveyors Board Rules (Division 5 of Title 16 of the CCR) that do not allow for any appeal of examinations that are multiple-choice. Also, there is no statute in place that requires an appeal process nor is there a statutory or regulatory fee established to assist with the cost to perform appeals. All these factors contribute to the Board's request to remove inspection and appeals options.

Repealing Title 16 CCR Sections 3036.2 and 3037.2 is simply eliminating the language. The authority to inspect and appeal geologist examinations was repealed on December 31, 1999, but the language remained in the regulations. Repealing language is purely clean up as we seek to repeal Title 16 CCR Sections 3036.1 and 3037.1 which currently allows for inspection and appeal of geophysicist or specialty geologist or specialty geophysicist examinations.

Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon:

1. Board for Professional Engineers, Land Surveyors, and Geologists 2015-2018 Strategic Plan, Strategic Goals 2, 2.1, 2.10, & 3.5.
2. March 7, 2013, Board Meeting, Agenda Item 9B - Recommendation to Repeal Board Rules (Title 16 CCR Sections 443, 444, 3036.1, and 3037.1) Engineers, Land Surveyors, and Geologists – Inspection and Appeal of Examination.
3. Minutes from the March 7, 2013, Board Meeting.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The Board does not license businesses; the Board licenses individuals.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because repealing inspection and appeals has no bearing on job creation or elimination.
- It will not create new business or eliminate existing businesses within the State of California because businesses are not licensed by the Board.
- It will not affect the expansion of businesses currently doing business within the State of California because businesses are not licensed by the Board.
- This regulatory proposal benefits the health and welfare of California residents by eliminating a review process that negatively impacts the public health, safety and welfare of consumers.
- This regulatory proposal benefits worker safety because it guarantees that only minimally competent individuals are licensed to practice the profession.
- This regulatory proposal does not affect the State's environment because the proposal is not making any changes to the state's environment.

Specific Technologies or Equipment

This regulation 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:

- Continue to offer inspection and appeal options. This would invalidate exams and will continue to present a public safety issue. This goes against the Board's mission to safeguard the life, health, property, and welfare of the public as well as pose a cost to the Board to administer the inspection and appeal process.
- Change the appeal eligibility for candidates scoring within a closer passing score to inspect the exam. This alternative still offers exam item security issues and opens up a public safety concern. It will also cause the Board to continue to absorb the costs involved in administering the inspection and appeal process.