

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

INITIAL STATEMENT OF REASONS

Hearing Date: No Hearing Scheduled

Subject Matter of Proposed Regulations: Citation Program

Sections Affected:

AMEND 16 CCR SECTIONS:

472, 472.1, 472.2, 472.3, 472.4, 473, 473.1, 473.2, 473.3, 473.4 3062, 3062.1, 3062.2, 3062.3, 3062.4, 3063, 3063.1, 3063.3, and 3063.4.

INTRODUCTION: The Board for Professional Engineers, Land Surveyors, and Geologists (Board) is mandated to protect the public health, safety, and welfare by ensuring only those individuals who meet the qualifications for licensure are granted a professional engineer, land surveyor, geologist, or geophysicist license in California. The Board further meets its mandate by ensuring that professional engineers, land surveyors, geologists, and geophysicists who violate specific sections of the Business and Professions (B&P) Code or other applicable codes are properly investigated to determine if violations occurred.

The Enforcement Unit of the Board is responsible for reviewing and investigating all complaints that are filed against any person, licensed or unlicensed, who is alleged to have violated the Professional Engineers Act, the Professional Land Surveyors' Act, and/or the Geologist and Geophysicist Act (Acts). The Board itself can also open a complaint investigation case against a person for alleged violations of the Acts based on information it has received from any source. After reviewing and investigating the allegations, the Board can take any of the following actions: close the case with no violations found; close the case with a written warning, if a violation of the law was found but determined by the Board to not be serious enough to warrant enforcement action; issue an administrative citation, if the violations by a licensed or unlicensed person are found to be significant enough to take enforcement action against the person; or refer the matter for formal disciplinary action through the Attorney General's Office, if the violations by a licensed person appear to represent a significant danger to the public health, safety, and welfare such that would warrant removing the person's right to practice through suspension or revocation of the license.

Issuing administrative citations to licensed and unlicensed individuals is one form of public safety the Board can use to mitigate further violations of its laws. When a fine is levied with a citation, payment of the fine represents satisfactory resolution of the matter. All citations issued by the Board are matters of public record.

Amend 16 CCR Section (§) 472 and Section (§) 3062

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 472 - Clarify terminology used by the Board. 'Basis' is replacing 'nature' since it is more similar to the language we use during enforcement investigations and disciplinary proceedings. 'Citation' is replacing 'violation' since a citation is the actual document being referenced in the citation process and the 'violation' is already being referred to in the citation. 'Appeal' is replacing 'contest.' After conferring with our legal counsel, the words 'contest' and 'appeal' have the same basic meaning in legal terms. The Board prefers to use the word 'appeal' because it is more easily understood by laypeople who are not well-versed in legal terminology. 'Date of issuance' is replacing 'service' to more accurately define timeframe for written notice requests. 'Or' is replacing the '/' mark for the sake of efficiency, ease of reading, and to be consistent with grammar used throughout the laws and regulations.

CCR § 3062 - Mirror CCR § 472 to make all terminology similar within all of the Board's laws and regulations. Changes will provide consistency among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

These amendments will provide language that is more consistent with the Board's citation program and will be easier for the public, particularly individuals who are issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 472.1 and § 3062.1

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 472.1 - The word 'or' is replacing the '/' mark for the sake of efficiency and ease of reading and to be consistent with grammar used throughout the laws and regulations.

CCR § 3062.1 – Mirror CCR § 472.1 in order to consistently regulate the assessment of administrative fines. Changes will provide consistency

among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

These amendments will provide language that is more consistent within the Board's citation program and will be easier for the public, particularly individuals issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 472.2 and § 3062.2

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 472.2 - Clarify terminology used by the Board. 'Appeal' is replacing 'contest.' After conferring with our legal counsel, the words 'contest' and 'appeal' have the same basic meaning in legal terms. The Board prefers to use the word 'appeal' because it is more easily understood by laypeople who are not well-versed in legal terminology. 'The date of issuance' is replacing 'service' to clarify the actual date. While the word 'service' can be ambiguous, 'date of issuance' is more definitive. 'Shall' is replacing 'may' in noting the responsibility of the Executive Officer in affirming, modifying, or dismissing a citation after the informal conference. Not only is it in the best interest of everyone that the Executive Office 'shall' affirm, modify, or dismiss the citation, it is also consistent with other references to the citation in 16 CCR Section 472.2 where 'shall' is used. Additional language is being added to allow the Executive Office to extend notification beyond the required 30 calendar days for good cause. This 30-day requirement may need to be extended on occasions when the Executive Officer requests additional information from the person being cited based on information discussed in the informal conference. Often, it takes more than 30 calendar days for the person being cited to gather the requested information, provide it to our office, have it reviewed by the Executive Officer, and then for the Executive Officer to make the decision to affirm, modify, or dismiss the citation. The 30-calendar-day requirement can be an unnecessary hardship on the person being cited. Also in these sections, 'or' is replacing the '/' mark to be consistent with grammar used throughout the laws and regulations.

CCR § 3062.2 – Mirror § 472.2 to consistently regulate the process of appealing citations. Changes will provide consistency among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

Allowing for an extension of the 30-calendar-day period to affirm, dismiss, or modify the citation allows the person being cited, and the Executive Officer, to ensure that all documentary evidence is being considered before the matter is concluded. Also, the amended language will be easier for the public, particularly individuals issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 472.3 and § 3062.3

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 472.3 - Clarify terminology used by the Board. 'Or' is replacing the '/' mark to be consistent with grammar used throughout the laws and regulations. 'Cited' is replacing 'against whom the citation is assessed' in describing the cited person to better clarify and identify the cited person. This change is also more consistent with other language used in the regulations. In addition, 'all of' is being added to indicate that the entire fine must be paid within the time allowed, not just a portion of the fine. This clarifies a gray area that cited persons only needed to pay a portion of the fine within the time allowed.

CCR § 3062.3 – Mirror § 472.3 to make all terminology similar within all of the Board's laws and regulations. Changes will provide consistency among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

These amendments will provide language that is more consistent with the Board's Citation Program and will be easier for the public, particularly individuals issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 472.4 and § 3062.4

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 472.4 - An "a" is being added before "professional land surveyor" for grammatical purposes. The phrase 'in a telephone directory' is being replaced with the phrase 'with respect to the offering or performance of services' to conform to changes in statute (Business and Professions Code section 149), which broaden the scope to all advertising, not just in a telephone directory.

CCR § 3062.4 - Amended to add further clarification to regulation. Adding references to Section 7872 connects the regulation to the statute and clarifies that this regulation pertains to the advertising of unlicensed services. The phrase 'in a telephone directory' is being replaced with the phrase 'with respect to the offering or performance of services' to conform to changes in statute (Business and Professions Code section 149), which broaden the scope to all advertising, not just in a telephone directory. Subsection 3062.4(b) is being repealed since it discusses a process that is already described in another regulation (Section 3062.2).

2. Anticipated benefits from this regulatory action:

These changes would provide clarification with the intended purpose of addressing the advertising of unlicensed services in conformance with statutory changes. It would also remove unnecessary language. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 473 and § 3063

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 473 - Clarify terminology used by the Board. 'Basis' is replacing 'nature' since it is more similar to the language we use during enforcement investigations and disciplinary proceedings. 'Citation' is replacing 'violation' since a citation is the actual document being referenced in the citation process and the 'violation' is already being referred to in the citation. 'Appeal' is replacing 'contest.' After conferring with our legal counsel, the words 'contest' and 'appeal' have the same basic meaning in legal terms. The Board prefers to use the word 'appeal' because it is more easily understood by laypeople who are not well-versed in legal terminology. 'Or' is replacing the '/' mark to be consistent with grammar used throughout the laws and regulations. 'The date of issuance' is replacing 'service' to clarify the actual date. While the word 'service' can be ambiguous, 'date of issuance' is more definitive. 16 CCR Section 473(c)(5) is also being amended so that it reads more clearly. The intent of the subsection is not being changed.

CCR § 3063 – Mirror § 473 to make all terminology similar within all of the Board's laws and regulations. Changes will provide consistency among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

These amendments will provide language that is more consistent with the Board's Citation Program and will be easier for the public, particularly

individuals who are issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 473.1 and § 3063.1

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 473.1 - 'Or' is replacing the '/' mark for the sake of efficiency and ease of reading and to be consist with grammar used throughout the laws and regulations.

CCR § 3063.1 – Mirror § 473.1 to make all terminology similar within all of the Board's laws and regulations. Changes will provide consistency among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

These amendments will provide language that is more consistent with the Board's Citation Program and will be easier for the public, particularly individuals issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 473.2 and § 3063.3

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 473.2 - 'Or' is replacing the '/' mark to be consist with grammar used throughout the laws and regulations.

CCR § 3063.3 - Will become § 3063.2 since § 3063.2 does not currently exist. This will correctly numerate the sections. In addition, it will mirror § 473.2 to consistently regulate the process of appealing citations. Changes will provide consistency among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

These amendments will provide language that is more consistent with the Board's Citation Program and will be easier for the public, particularly individuals issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 473.3 and § 3063.4

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 473.3 - In the title, "Citations" is being replaced with "Order" since the "order" is what the citation is requiring the person to do. This amendment clarifies the "order" from the "citation." These sections are also being amended to clarify terminology used by the Board. 'Or' is replacing the '/' mark to be consistent with grammar used throughout the laws and regulations. "Assessed" is also being added before the fine to better describe the basis of the fine. "All of" is being added so that a cited person is aware that the entire fine amount is required to be paid to avoid possible suspension or revocation of the license (this also would be consistent with subsection (c), which indicates that all of the fine must be paid).

CCR § 3063.4 - Will become § 3063.3. Section 3063.2 does not currently exist, so current Section 3063.3 will become 3063.2. This will correctly numerate the sections. In addition, it will mirror § 473.3 to make all terminology similar within all of the Board's laws and regulations. Changes will provide consistency among all professions regulated by the Board and hold individuals to the same requirements, rights, and responsibilities.

2. Anticipated benefits from this regulatory action:

These amendments will provide language that is more consistent with the Board's Citation Program and will be easier for the public, particularly individuals issued citations, to understand since the language and terminology will be similar within all of the Board's laws and regulations. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Amend 16 CCR § 473.4

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

CCR § 473.4 - An "a" is being added before "professional land surveyor" for grammatical purposes. The phrase 'in a telephone directory' is being replaced with the phrase 'with respect to the offering or performance of services' to conform to changes in statute (Business and Professions Code section 149), which broaden the scope to all advertising, not just in a telephone directory.

CCR § 3063.4 – Amended to clarify regulation. Adding references to Section 7872 connects the regulation to the statute and clarifies that this regulation pertains to the advertising of unlicensed services. The phrase 'in a telephone directory' is being replaced with the phrase 'with respect to the

offering or performance of services' to conform to changes in statute (Business and Professions Code section 149), which broaden the scope to all advertising, not just in a telephone directory.

2. Anticipated benefits from this regulatory action:

This amendment corrects a grammatical error, provides clarification with the intended purpose of addressing the advertising of unlicensed services in conformance with statutory changes. Procedures will be the same for all professions regulated by the Board along with requirements, rights, and responsibilities.

Factual Basis/Rationale

16 CCR Sections 472-473.4 and 3062-3063.4 need to be amended to provide consistency within the Board's Citation Program. These sections set forth the entire Citation Program, such as providing procedures for issuing citations, serving citations, appealing citations, and providing a description of what may happen if a cited person fails to comply with the citation orders. This rulemaking proposal provides for the same process to be followed for all citations issued by our Board, regardless of the profession involved (engineering, land surveying, geology, or geophysics) or whether the individual is licensed or unlicensed.

The language being amended in 16 CCR Sections 3062-3063.4 will provide for consistency within the Board's Citation Program by mirroring the language in Sections 472-473.4.

The citation process can be complicated and confusing to a cited person. The Board's laws need to be clear and descriptive in outlining the citation process to ensure that the cited person is being given sufficient notice and due process.

It is the intent of the Board to ensure that its laws are clear, concise, efficient, and necessary. To that extent, staff is proposing amendments to the regulations that implement the enforcement components of the Professional Engineers Act, Professional Land Surveyors' Act, and Geologist and Geophysicist Act so that they are all similar in content and form. These modifications will make it easier for the consumers of California, and our Board's licensees and certificate holders, to comprehend and follow the laws and regulations; they will provide consistency with the Board's current procedures; and they will maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

1. Board Meeting, March 9, 2012, Agenda Item 10, Consideration of Rulemaking

Proposals, Proposed Amendments to Division 5 and 9 of Title 16, California Code of Regulations

2. Goal 3, Board for Professional Engineers, Land Surveyors, and Geologists 2015-2018 Strategic Plan.

Business Impact

These proposed amendments will not have any adverse economic impact on businesses since this rulemaking proposal is specifically related to the citation process. The Board may issue citations to individuals; however, the Board cannot issue citations to businesses since the Board does not license businesses. This rulemaking proposal will not task the licensees with any additional work and will not require the licensees to expend any additional money.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it is merely clarifying existing practices in the citation program and does not add any new requirements that would affect jobs.
- It will not create new business or eliminate existing businesses within the State of California because the Board does not license nor regulate businesses, only individuals.
- It will not affect the expansion of businesses currently doing business within the State of California because the Board does not license nor regulate businesses, only individuals.
- It will not impact the health and welfare of California residents, worker safety, and the state's environment as its clarifying requirements for individuals involved in citations and has no bearing on the environment.
- This regulatory proposal benefits the health and welfare of California residents because it will make it easier for the consumers of California, and our Board's licensees and certificate holders, to comprehend and follow the laws and regulations by providing consistency with the Board's current procedures.
- This regulatory proposal benefits worker safety because it guarantees that workers shall be compliant with all laws and regulations according to Board statutes and regulations.

Specific Technologies or Equipment

These proposed amendments do 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.

The alternative to this proposed regulation would be to leave the regulation language as it is currently written. The result would be laws that are not clear or descriptive and could be misunderstood by consumers and licensees. This is especially true with 16 CCR Sections 3062-3063.4 because the language is vague and does not clearly describe either the process or the responsibilities of the person being cited.