

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 April 11, 2016. 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 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 not later than 5:00 p.m. on April 25, 2016.

Authority and Reference: Pursuant to the authority vested by Sections 125.9, 148, 6716, 7818, and 8710 of the Business and Professions Code, and to implement, interpret, or make specific Sections 125.9, 148, 149, 6775, 6786, 6787, 7860, 7871, 7872, 8780, 8791, and 8792 of said Code, the Board is considering changes to Division 5 and Division 29 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 (Acts) 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 and will provide consistency with the Board's current procedures and maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

The Board's Enforcement Unit is responsible for reviewing and investigating any complaints that are filed against any person, licensed or unlicensed, who is alleged to have violated the 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 and reviewed 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 so serious as 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 SECTIONS:

Sections 472, 472.1, 472.2, 472.3, 472.4, 473, 473.1, 473.2, 473.3, and 473.4 of Title 16, Division 5 of the California Code of Regulations are being amended to correct grammar, replace vague terminology, and clarify the citation process. Accordingly, the word "appeal" is replacing the word "contest" since "appeal" is the more commonly used verbiage by the Board in statute and in practice. In addition, this amendment would add a sentence allowing the Executive Officer to extend the 30 day period for notifying the cited person of whether the citation had been affirmed, modified, or dismissed. This extension is necessary because the cited person is often allowed to provide additional information to the Executive Officer following the informal conference in support of their citation appeal. Currently, a cited person has a very short timeframe in which to submit follow-up information to the Executive Officer following the informal conference to allow the Executive Officer time to review the additional information and issue the informal conference decision within the 30-day time limit.

Sections 3062, 3062.1, 3062.2, 3062.3, 3062.4, 3063, 3063.1, 3063.3, and 3063.4 of Title 16, Division 29 of the California Code of Regulations are being amended to match the sections referenced above to provide consistency among the regulations that support and implement all three Acts. The language being amended will provide for consistency within the Board's Citation Program by mirroring the language in Sections 472-473.4. The amendments will not task the licensees with any additional work and will not require the licensees to expend any additional money to comply with the law. They will simply clarify and document the process.

Since the current regulations do not contain a Section 3063.2; therefore, current Section 3063.3 is being re-numbered to become Section 3063.2, and current Section 3063.4 is being re-numbered to become Section 3063.3. These changes will correctly numerate the sections. New Section 3063.4 is being added to maintain consistency among the regulations.

POLICY STATEMENT OVERVIEW / ANTICIPATED BENEFITS OF PROPOSAL

The purpose and benefit of this proposed regulatory action is to ensure that the Board's regulations are clear, concise, and necessary. It is important that both consumers and licensees can understand and abide by the laws. By not properly detailing language and procedures, licensees can be confused as to their rights and limitations. This is especially important in matters involving enforcement actions that may be taken against them. Allowing an extension of the 30-day time period after the informal conference will benefit both licensee and consumer since the licensee will have additional time to produce information that could be essential to the matter. These amendments will help to maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board has evaluated this proposed regulatory action, and it is neither inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that pertains to the citation program in compliance with the Acts.

FISCAL IMPACT ESTIMATES

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

None

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 Requires 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 regulatory proposal 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:

This proposed regulatory action would not have an impact on licensees or businesses. The Board 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 because the proposed changes involve clarifying and modifying procedures within the Board's citation program. The citation program enforces Board rules and regulations against individuals only.

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 Regulation:

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's government:

These amendments will provide language that is more consistent within the Board's citation program, will make all terminology similar within all the Board's laws and regulations, and will be easier for the public, particularly individuals issued citations, to understand. Providing clearer language will benefit everyone. These amendments will help to maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it 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 or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice and would be more cost-effective to 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 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, California, 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

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

Name: Jeff Alameida
Address: 2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: (916) 263-2269
Fax No.: (916) 263-2246
E-Mail Address: Jeff.Alameida@dca.ca.gov

The backup contact person is:

Name: Kara Williams
Address: 2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: (916) 263-5438
Fax No.: (916) 263-2246
E-Mail Address: Kara.Williams@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bpelsg.ca.gov.