

**TITLE 14. DEPARTMENT OF BOATING AND WATERWAYS
NOTICE OF PROPOSED ACTION**

NOTICE IS HEREBY GIVEN that the California Department of Boating and Waterways (Department) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED ACTION

The Department proposes to add Section 6550.5 (e) (1) through (3), in Title 14, in California Code of Regulations, relating to proposed regulations to provide guidelines for determining if a boat is unseaworthy and adding provisions which allow a police officer or harbor policeman authorized the provisions of Chapter 5 of the Harbors and Navigation Code, to issue a written notice to appear in court, in accordance with Harbors and Navigation Code Section 664; to the owner or operator of a boat, allows the officer to terminate the voyage of a boat if it is underway, or allows the officer to have the boat removed from the waterway.

WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written statements, arguments or contentions (herein referred to as comments) relevant to the proposed action by the Department. Comments must be received by the Department by 5:00 p.m. on Monday, February 15, 2010, which is hereby designated as the close of the written comment period. The Department will also accept written comments during the written comment period. Comments may be transmitted by regular mail, fax, or email to the Department in care of the Contact Person designated below:

Mr. Mike Sotelo
California Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, California, 95815
FAX: (916) 263-0357
E-mail: msotelo@dbw.ca.gov

PUBLIC HEARING

The Department does not propose to conduct a public hearing for this proposed action. However, in accordance with section 11346.8 of the Government Code, any interested party, or his or her duly authorized representative, may submit a request for a public hearing, in writing, to the Department, at least 15 days before the close of the written comment period, specified above.

Please submit your written request for a hearing to the contact person listed above

AUTHORITY AND REFERENCE CITATIONS

This regulatory action is taken pursuant to the authority vested by the Harbors and Navigation Code Sections 652 and 655, and are referenced in the Harbors and Navigation Code Sections 652, 655, 663, 663.5, 663.6, and 664

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department has the authority, pursuant to Harbors and Navigation Code Sections 652 and 655, which respectively allow for establishing minimum safety standards for boats and associated equipment and adopting regulations for the use of vessels, water skis, aquaplanes, or similar devices that will minimize the danger to life, limb or property consistent with reasonable use of the equipment for the purpose for which it was designed.

Section 6550.5 of Title 14 of the California Code of Regulations currently states that Article 4 defines equipment requirements for all vessels that operate on waters of the state, which requires these vessels to comply with construction standards and equipment requirements of the International Regulations for Preventing Collision at Sea, 1972, are considered to be in compliance with these Rules.

Currently paragraph (d), sub-paragraphs, (1) through (8) of 6550.5, define eight unsafe conditions which allows a peace officer or harbor policemen to order an unsafe vessel to be removed where it is being operated, and where such conditions described therein, cannot be corrected, and where, in the judgement of the officer continued operation of the vessel would create an immediate danger to life, limb or property.

The Department proposes adding paragraph (e), subparagraphs (1) through (3) to section 6550.5, to provide guidelines for determining if a boat is unseaworthy and adding provisions which allow a police officer or harbor policemen authorized by the provisions of Chapter 5 of the Harbors and Navigation Code to: (1) issue a written notice to appear in court, (2) order the termination of the voyage of a boat if it is underway or (3) have the boat removed from the waterway under the conditions specified.

These proposed additions to section 6550.5 would define unseaworthy conditions which exceed the eight unsafe conditions specified in subparagraph (d). Subparagraph (e) would allow a peace officer or harbor policemen to take an immediate enforcement action whether or not the operator is on board the vessel, if the vessel manifests any of the unseaworthy conditions defined therein. Currently, a peace officer may only take action to order a boat to shore or have it removed if the operator is on board the unsafe vessel.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has determined that the proposed action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. The Department has also determined

that no non-discretionary costs or savings to local agencies will result from the proposed action.

COSTS OR SAVINGS TO STATE AGENCIES

The Department has determined that no savings or any increased costs to any State agency will result from this action.

COSTS OR SAVINGS TO FEDERAL FUNDING TO THE STATE

The Department has determined that this action imposes no cost or savings in Federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has initially determined that this action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department has made the initial determination that adoption of this proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

The Department has determined that the proposed action will not impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

REPORTING REQUIREMENTS

The proposed action makes no reporting requirements upon businesses.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

DETERMINATION OF EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed action has no impact on small businesses because only a County, or a public agency within a County, may voluntarily participate in the Boating Safety and Boating Law Enforcement Equipment Grant Program, the Boating Safety and Boating Law Enforcement Training Grant Program, and the Boating Safety and Boating Law Enforcement Trainee Grant Program, and primarily because counties and public agencies are not considered to be small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a) (13), the Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments regarding alternatives to the proposed regulations to the contact person, named in this notice, during the public comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an Initial Statement of Reasons for each program proposed, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation for each program may be obtained from the Department contact person named in this notice. The information upon which the Department relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, the Department may make the regulations permanent if it remains substantially the same as described in the Informative Digest. If the Department does make changes to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the Department contact person named in this notice. The Department will accept written comments on any changes for 15 days after the modified text is made available.

CONTACT PERSON

Written comments about the proposed action, requests for a copy of the Initial Statement of Reasons and/or the proposed text of the regulations, inquiries regarding the rulemaking file and questions on the substance of the proposed action may be directed to:

Mr. Mike Sotelo
California Department of Boating and Waterways
2000 Evergreen Street, Suite 100
Sacramento, California, 95815
Telephone: (916) 263-0787
FAX: (916) 263-0357
E-mail: msotelo@dbw.ca.gov

NOTE: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted

above: Denise Peterson, Law Enforcement and Training Supervisor, at (916) 263-8181.

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations are also available on the Department's Internet Home Page (<http://www.dbw.ca.gov>).

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on the Department's "Decisions Pending and Opportunities for Public Participation" Internet page at <http://www.dbw.ca.gov/PublicOpp.aspx>.