

## **TITLE 14. DEPARTMENT OF BOATING AND WATERWAYS**

### **NOTICE OF PROPOSED REGULATORY 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 REGULATORY ACTION**

The Department proposes to amend 7601, 7602, and 7605 in Title 14 of the California Code of Regulations (CCR), relating to Yacht and Ship Broker's Licenses, i.e., amending the definition of advertising, clarifying the required information that must appear in an advertisement for a brokered yacht, and clarifying the authorization is also required to share compensation for sharing a listing of a brokered vessel with another broker.

### **WRITTEN COMMENTS**

A written comment period has been established commencing 02/13/2009 and terminating on 04/10/2009. Any interested person may present written comments concerning the proposed regulation no later than 5:00 p.m., 04/10/2009. Comments submitted after this time and date will not be considered. Please submit your written comments, relevant to the proposed regulatory action, to:

Mike Sotelo  
California Department of Boating and Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815  
Facsimile (FAX): (916) 263-0648

### **PUBLIC HEARING**

The Department does not propose to conduct a public hearing for this proposed regulatory 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.

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

### **AUTHORITY AND REFERENCE**

This regulatory action is taken pursuant to the authority vested by Harbors and Navigation Code section 703, which authorizes the Department to adopt the proposed regulations, which would implement, interpret, or make specific sections 701, 708, and 716 of the Harbors and Navigation Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The regulations the Department proposes to adopt through the authority found in 701 of the Harbors and Navigation Code allows the Department to adopt rules and regulations it deems necessary to carry out the provisions of Division 3, Chapter 5, Article 2 of the Harbors and Navigation Code, known as the Yacht and Ship Brokers Act. The proposed amendment to of Article 8 in Chapter 1, Division 4 of Title 14 of the CCR would amend the definition of advertising, clarify the required information that must appear in an advertisement for a brokered yacht, and clarify the authorization required to share a listing to sell a brokered yacht.

**Amend 7601 (c), General Definitions.** The current definition of advertising found in section 7601 (c) is out of date and does not adequately identify the various advertising media used in selling brokered yachts. This section is amended to update the definition.

**Amend 7602, Advertising.** This section specifies the requirement for brokers to disclose the fact that the advertisement for a brokered vessel is conducted by a licensed broker. The section is being amended to disclose the name of the listing broker if the advertisement appears in a multiple listing advertisement, so that consumers are aware which brokerage holds the listing for the vessel that they are interested in purchasing.

**Amend 7605, Shared Compensations.** This section, formerly, identified as “shared listings”, is amended to read, “shared compensation”, to specify that a broker who intends to share the commission or compensation from the sale of the brokered vessel, must obtain permission in writing from his or her principal to do so. The section was amended to clarify that the listing broker must obtain the seller’s authorization to share or divide the commission or compensation with other brokers who would assist the listing broker by sharing a listing to advertise the vessel to enhance the sales possibilities.

## **PLAIN ENGLISH REQUIREMENTS**

The Department prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirement of Government Code section 11342.580 and 11346.2 (a) (1). The proposed regulations are considered non-technical and are written to be easily understood by the persons affected by them.

## **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, and would be as effective and less burdensome to affected private persons than the proposed action. The Department invites public comment on alternatives to the proposed regulations.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

The Department has made the initial determination that adoption of this proposed regulatory 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.

### **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.

## **ASSESSMENT**

The Department has determined that the proposed regulatory action will not create or eliminate jobs within the state of California, create new businesses or eliminate existing businesses within the state of California, and will not expand businesses currently doing business within the state of California.

### **DETERMINATION OF EFFECT ON SMALL BUSINESSES**

The Department has determined that the proposed regulatory action will have little or no effect on small businesses. The kayaking company that provided the impetus for regulatory action may move to another staging area where such activity is permitted.

### **EFFECT ON HOUSING COSTS**

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

### **IMPACTS ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Department has determined that the proposed regulatory 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 regulatory action does not constitute a “new program or 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 regulatory action.

### **COST OR SAVINGS TO STATE AGENCIES**

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

### **COSTS OR SAVINGS TO FEDERAL FUNDING TO THE STATE**

The Department has determined that this regulatory action imposes no costs or savings in federal funding to the State.

### **REPORTING REQUIREMENTS**

The proposed regulatory action makes no reporting requirement upon businesses.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATORY ACTION**

The Department has prepared an Initial Statement of Reasons, 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 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 regulation permanent if it remains substantially the same as described in the Informative Digest. If the Department does make changes to the regulation, 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 will be made available.

## **AVAILABILITY ON THE INTERNET**

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/PubOpp.aspx>.

## **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 below. In addition, the Final Statement of Reasons will be posted on the Department's Internet Home Page and accessed at <http://www.dbw.ca.gov>.

## **CONTACT PERSON**

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

Mike Sotelo  
California Department of Boating and Waterways  
2000 Evergreen Street, Suite 100  
Sacramento, CA 95815  
Telephone (916) 263-0787  
Fax (916) 263-0648  
E-mail: [msotelo@dbw.ca.gov](mailto:msotelo@dbw.ca.gov)

NOTE: If the contact person listed above is unavailable, for questions on the substance of the regulatory action you may contact, Denise Peterson, Law Enforcement and Training Supervisor, at (916) 263-8181.