

[TITLE 14. RESOURCES AGENCY]

INITIAL STATEMENT OF REASONS  
FOR REGULATORY ACTION

To amend subdivisions (h) and (j) of Section 15251  
Title 14, California Code of Regulations (“CEQA Guidelines”)

Proposed Amendment to the Guidelines  
Implementing the California Environmental Quality Act  
To remove two programs from the list of Certified Regulatory Programs

*March 27, 2006*

DESCRIPTION OF THE REGULATORY ACTION

**A. Background on the proposed regulations**

Section 20180.5 of the California Public Resources Code provides that when a regulatory program of a state agency requires the agency to submit a plan or other written document in support of specified activities, and such regulatory program is certified by the Secretary for Resources (“Secretary”) pursuant to Section 20180.5, the regulatory program is exempt from specified sections of the California Environmental Quality Act (“CEQA”), Public Resources Code, section 21000, *et seq.* Section 21080.5(e) provides that the Secretary must withdraw certification if the Secretary determines that the regulatory program no longer meets the criteria for certification. Certification and withdrawal of certification must comply with Chapter 3.5 of the Government Code.

Pursuant to this section, the Secretary certified the following programs (among others):

1. The permit program of the San Francisco Bay Conservation and Development Commission (BCDC) under the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code. 14 CCR 15251(h).
2. The regulation of weather resources management projects through the issuance of operating permits by the State Department of Water Resources (DWR) pursuant to the California Weather Resources Management Act of 1978 (Water Code Sections 400 *et seq.*) 14 CCR 15251(j).

**B. Statement of specific purpose of the regulatory change and rationale for determining that the proposed regulations are reasonably necessary.**

DWR requested that the Secretary withdraw certification of its regulatory program governing the regulation of weather resources management projects through the issuance

of operating permits (certified at Section 15251(j) of title 14 of the California Code of Regulations) because the program is defunct. In 1984 the Legislature eliminated the statutory licensing and permit requirements for the weather management project (sections 403-409 of the California Water Code), and DWR subsequently repealed its regulations implementing the program.

BCDC requested that the Secretary to withdraw certification of the permit program of the San Francisco Bay Conservation and Development Commission under the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code. The permit program under the Suisun Marsh Preservation Act meets the criteria for certified regulatory programs through the interaction of BCDC rules and regulations with the provisions of multiple Local Protection Programs administered by local governments. However, in order to enhance the transparency of its compliance with CEQA, BCDC has decided that in the future it will implement the general CEQA requirements set forth in the Public Resources Code (commencing with Section 21000) and BCDC's regulatory provisions (commencing with 14 CCR Section 10110), and no longer intends to rely on its certified regulatory program for the permit program under the Suisun Marsh Preservation Act. For this reason, BCDC has requested the Secretary to withdraw certification of this component of its certified regulatory program.

The remainder of section 15251(h) of the CEQA Guidelines dealing with planning under the Suisun Marsh Preservation Act and the permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act, Title 7.2 (commencing with section 66600) of the Government Code are not affected by this proposed withdrawal of certification.

**C. Specific technology or equipment required by the proposed regulations**

None is required.

**STUDIES, REPORTS OR OTHER DOCUMENTS RELIED UPON**

The Secretary has relied upon written requests received by the DWR and BCDC. A copy of these written requests is attached as Exhibit 1.

**REASONABLE ALTERNATIVES**

The Secretary has considered the alternative of taking no action. With respect to DWR's request, the no-action alternative would be not to withdraw certification of DWR's regulatory program governing the regulation of weather resources management projects through the issuance of operating permits. The Secretary has rejected this alternative, because under section 21080.5(e) of the Public Resources Code, the Secretary must withdraw certification upon determining that the regulatory program has been altered such that it no longer meets the specified qualifications. Because the statutory licensing and permit requirements for the weather management project have been repealed, and

DWR subsequently repealed its regulations implementing the program, the Secretary must withdraw certification.

With respect to BCDC's request, the alternative would be not to withdraw certification of BCDC's permit program under the Suisun Marsh Preservation Act. The Secretary has rejected this alternative because BCDC no longer intends to rely on its certified regulatory program in issuing permits under the Suisun Marsh Preservation Act. Instead, BCDC will comply with the applicable provisions of CEQA. BCDC has informed the Secretary that this decision is intended to enhance the transparency of BCDC's CEQA process. The failure to withdraw certification of BCDC's permit program under the Suisun Marsh Preservation Act, which BCDC will no longer use, would be confusing to the public and would interfere with BCDC's goal of enhancing the transparency of its process. Accordingly, the Secretary has determined it is necessary to withdraw certification of this program.

#### **ALTERNATIVES TO REDUCE IMPACTS ON SMALL BUSINESSES**

Reasonable alternatives to lessen adverse economic impacts on small businesses were not identified for the proposed action. The proposed action would not have an adverse economic impact on businesses.

#### **EVIDENCE RELIED UPON TO SUPPORT ECONOMIC IMPACT FINDING**

The Secretary's initial determination that the proposed action will not have a significant adverse economic impact on business is based on: (i) DWR's letter stating that withdrawing certification of the DWR regulatory program would have no impact on business because the regulatory program has been repealed; and (ii) BCDC's letter stating that it no longer intends to use the BCDC permit program under the Suisun Marsh Preservation Act.

#### **EFFORTS TO AVOID DUPLICATION OF OR CONFLICTS WITH FEDERAL LAW**

The proposed action does not duplicate any existing federal law or regulations, and is limited to state law as provided in Public Resources Code section 21080.5.

This Initial Statement of Reasons will be updated to reflect information received through written comments submitted to the Resources Agency.

Dated: \_\_\_\_\_, 2006

---

Sandra S. Ikuta, Deputy Secretary and General Counsel  
California Resources Agency