

**TITLE 2. ADMINISTRATION  
DIVISION 3. STATE PROPERTY OPERATIONS  
CHAPTER 1. STATE LANDS COMMISSION**

**ARTICLE 5.1 MARINE TERMINAL PHYSICAL SECURITY**

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

The California State Lands Commission (Commission) proposes to repeal all the provisions of 2 CCR, Article 5.1. Article 5.1 concerns physical security at California's Marine Oil Terminals. The Regulations under Article 5.1 were promulgated after the tragic 2001 terrorist attacks in New York. The rulemaking action was a stopgap measure to fill the perceived void created from the newfound understanding of possible vulnerabilities of industry in specific areas of commerce concentrations. The regulations first became effective early 2002 as emergency regulation, and permanent adoption followed in February 2003. The regulations addressed the immediate and necessary need for verification of physical security at all marine oil terminals in the state of California.

The regulations under Article 5.1 were eventually subsumed by the federal government's Maritime Transportation Security Act of 2002 (MTSA 2002) which became 33 Code of Federal Regulations (CFR) Subchapter H – Maritime Security, due to the extent of the federal government's improvement in their security requirements over maritime infrastructure across the United States. Jurisdiction over terminal security came under the auspices of the United States Coast Guard (USCG), making the Commission's security provisions in Article 5.1 unnecessary. Because the purpose of Article 5.1, terminal security, is handled by the USCG, not the Commission, the Commission now seeks its repeal in order to eliminate redundant and non-operable regulations.

The Commission Staff while enforcing the regulations have found that Title 2 CCR, Article 5.1 is for physical security of the Marine Terminal and is very limited in scope. The federal 33 CFR, Subchapter H, takes a much broader view of security by including the ships and barges berthed at marine terminals. The federal regulations are very comprehensive. As a result, the State regulation has become unenforceable. Differences between 33 CFR, Subchapter H, and 2 CCR, Article 5.1, include ships and barges berthed at the marine terminals, facility security plans based on vulnerability assessment, preparedness for security threats based on Maritime Security (MARSEC) levels issued by USCG, and access control through Transportation Worker Identification Credential (TWIC). Title 2 CCR, Article 5.1 is limited to physical security and does not have any provisions that are mutually exclusive from the federal requirements.

## **SPECIFIC PURPOSE OF THE REGULATION**

Title 2, California Code of Regulations, Sections 2430 through 2445 are being repealed because the subject matter and directives contained within have been within the jurisdictional purview of the USCG since 2002. As a result, the Commission has not enforced the provisions of Article 5.1. The purpose of the repeal is to eliminate redundant and non-operable regulations in order to update the regulated community on what standards the Commission does enforce and to promote clarity in the California Code of Regulations by removing unnecessary regulations.

## **NECESSITY**

This proposed repeal of Article 5.1 is necessary in order to remove the provisions of title 2, California Code of Regulations, sections 2430 through 2445. As described above, the purpose of the repeal is to eliminate redundant and non-operable regulations. The repeal of each provision of Article 5.1 is reasonably necessary to removing its operability from the California Code of Regulations and addressing the problem of its redundant and non-operable regulations.

The Federal “Maritime Transportation Security Act of 2002” (Pub. L. 107-295), specifically 33 CFR, Subchapter H, regulations on physical security at Marine Oil Terminals are more comprehensive and have subsumed the State regulations by way of standard criterion to vessels and marine oil terminals involved in maritime commerce. The Commission Staff while enforcing the regulations, have found that Title 2 CCR, Article 5.1 is for physical security of the terminal, which is very limited in scope. The federal 33 CFR, Subchapter H, takes a much broader view of security by including the ships and barges berthed at marine terminals. The federal regulations are very comprehensive. As a result, the state regulation has become unenforceable. Differences between 33 CFR, Subchapter H and Article 5.1 include ships and barges berthed at the marine terminals, facility security plans based on vulnerability assessment, preparedness for security threats based on Marine Security (MARSEC) levels issued by USCG, and access control through Transportation Worker Identification Credential (TWIC). Title 2, Article 5.1 is limited to physical security and does not have any provisions that are mutually exclusive from the federal requirements.

## **TECHNICAL, THEORETICAL, AND / OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

Commission staff did rely upon a technical document in this repeal of Article 5.1 which is United States Coast Guard 33 CFR Subchapter H, Maritime Security regulations.

## **ECONOMIC IMPACT ANALYSIS**

The economic impact assessment indicates that the proposed repeal will have the following effects:

**Creation or elimination of jobs within California:**

The proposed repeal will have no costs or benefits on businesses in California. The provisions of Article 5.1 have been subsumed by the passage of the MTSA 2002 which established the USCG as the primary jurisdictional enforcement agency with regards to marine terminal physical security. As a result, Article 5.1 is redundant and non-operable and thus has had no cost impact.

**Creation of new businesses or elimination of existing business within California:**

The proposed repeal will have no costs or benefits on businesses in California. The provisions of Article 5.1 have been subsumed by the passage of the MTSA 2002 which established the USCG as the primary jurisdictional enforcement agency with regards to marine terminal physical security. As a result, Article 5.1 is redundant and non-operable and thus has had no cost impact.

**Effect on the expansion of businesses currently doing business in California:**

The proposed repeal will have no costs or benefits on businesses in California. The provisions of Article 5.1 have been subsumed by the passage of the MTSA 2002 which established the USCG as the primary jurisdictional enforcement agency with regards to marine terminal physical security. As a result, Article 5.1 is redundant and non-operable and thus has had no cost impact.

**Impact upon the health and welfare of California residents, worker safety, or the state's environment:**

The proposed repeal will not benefit the health and welfare of California residents, worker safety, or the state's environment in dollar terms. There will be general benefit to California citizenry in terms of efficiency of government operations. The repeal will eliminate multijurisdictional and duplicative work without loss of effectiveness. The provisions of Article 5.1 have been subsumed by the passage of the MTSA 2002 which established the USCG as the primary jurisdictional enforcement agency with regards to marine terminal physical security. As a result, Article 5.1 is redundant and non-operable and thus has had no cost impact.

**Creation of a local mandate or cost or savings to State agencies:**

The proposed repeal will have no costs or benefits on businesses in California. The provisions of Article 5.1 have been subsumed by the passage of the MTSA 2002 which established the USCG as the primary jurisdictional enforcement agency with regards to marine terminal physical security. As a result, Article 5.1 is redundant and non-operable and thus has had no cost impact.

**REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

No alternatives were considered in the proposal to repeal this Article 5.1 regulation.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES**

The Commission has not identified any alternatives that would lessen any adverse impact on small business.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS**

The proposed repeal will have no costs or benefits on businesses in California. The provisions of Article 5.1 have been subsumed by the passage of the MTSA 2002 which established the USCG as the primary jurisdictional enforcement agency with regards to marine terminal physical security. As a result, Article 5.1 is redundant and non-operable.