

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

ARTICLE 5.1 MARINE TERMINAL PHYSICAL SECURITY

NOTICE OF PROPOSED REGULATORY ACTION

The California State Lands Commission (the Commission) proposes to repeal the regulation below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to repeal Sections 2430 through 2445 of Article 5.1, in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). The repeal would discontinue the provisions of the state program for physical security at marine oil terminals.

PUBLIC HEARING

The Commission has not scheduled a public hearing for this proposed action. However, the Commission will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5:00 pm on **May 21, 2018**. All written comments must be received at the Commission by that time. Written comments should be submitted to:

Ravindra Varma
Supervisor, Planning Branch
California State Lands Commission
Marine Environmental Protection Division
200 Oceangate, Suite 900
Long Beach, CA 90802
Tel: (562) 499-6369
e-mail: CSLC.MEPDRegulations@slc.ca.gov

Written comments may also be submitted by facsimile to (562) 499-6444 or by e-mail to CSLC.MEPDRegulations@slc.ca.gov. Please include **“Article 5.1 Comments”** in the subject line of the e-mail.

AUTHORITY AND REFERENCE

Authority: Sections 8755 and 8757, Public Resources Code.

Reference: Sections 8750, 8751, 8755, and 8757, Public Resources Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The Commission proposes to repeal all the provisions of 2 CCR, Article 5.1. The Commission commenced a spill prevention inspection and monitoring program of all marine oil terminals in the state in 1991. The Public Resources Code (PRC) Section 8755 authorizes the Commission to adopt rules, regulations, guidelines and Commission leasing policies for reviewing the location, type, character, performance standards, size and operation of all existing and proposed marine oil terminals within the state. Initially, the Commission's regulations included annual and triennial inspections and thorough examinations.

The regulations under Article 5.1 were promulgated after the tragic September 11, 2001, terrorist attacks in New York. The adoption of Article 5.1 was intended to create security measures to address a newfound understanding of marine oil terminal specific vulnerabilities. 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), due to the extent of the federal government's improvement in their security requirements over marine infrastructure across the United states. Federal regulations in title 33, Code of Federal Regulations (CFR), Subchapter H – Maritime Security, differ from Article 5.1 by providing more comprehensive security measures for maritime facilities, including Marine Oil Terminals.

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, and has as the objective of this regulatory action, the repeal of Article 5.1 to eliminate redundant and non-operable regulations. This objective is accomplished by repealing title 2, California Code of Regulations, section 2430 through 2445, in their entirety.

The anticipated benefits of the proposed regulation are to make the rules regarding physical security at marine oil terminals consistent by repealing unnecessary,

redundant, and outdated regulations within Article 5.1 and rely on the enforcement of those rules by the USGS and federal law.

After conducting an evaluation, the Commission has found that this proposed regulation is not inconsistent with existing State regulations because no other state regulation exists with regards to physical security at marine oil terminals.

DIFFERENCES FROM FEDERAL 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.

STATEMENT ON LOCAL MANDATES

The proposed repeal of Article 5.1 does not create a local mandate. The proposed repeal is not expected to create any costs or benefit as it eliminates a regulation that was subsumed and made inoperable by federal law in 2002.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Commission has made the following initial determinations:

Cost to local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17360: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private person or business: Perceived efficiency in State Government operations will be of general benefit and welfare of California citizenry. The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There will be general benefit to the operators of California Marine Terminals by repealing the duplicative regulations that makes the State Administration more efficient without loss of regulatory effectiveness.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Repeal of this regulation will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing business within California;
3. Affect the expansion of businesses currently doing business in California; or
4. Have any impact upon the health and welfare of California residents, worker safety, or the state's environment.
5. Create a reporting requirement on regulated parties.

Significant effect on housing costs: None

Benefits of the proposed regulation: The proposed regulation will benefit the California worker health and safety by removing duplication and inconsistency in marine terminal physical security requirements. Existing and more comprehensive federal rules will guide physical safety requirements at these locations.

SMALL BUSINESS DETERMINATION

The Commission has determined that the repeal of these regulations do not affect small businesses as defined in Government Code (GC) Section 11346.610, because all affected businesses are maritime oil transportation and terminal owners and operators, as specified under GC Section 11342.610(c)(7) and having annual gross receipts of more than \$1,500,000. Further, the proposed repeal will have no cost impact to any party.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Commission must determine that no reasonable alternative it considered or that has been identified and brought to the attention of the Commission 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, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or

other provision of law. This proposed action repeals Article 5.1. The Commission believes that there is no reasonable alternative to the repeal.

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written public comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory action may be directed to:

Ravindra Varma
Supervisor, Planning Branch
California State Lands Commission
Marine Environmental Protection Division
200 Oceangate, Suite 900
Long Beach, CA 90802
Tel: (562) 499-6369
e-mail: CSLC.MEPDRegulations@slc.ca.gov

or: Joseph Fabel
Staff Attorney
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-0964
Email: Joseph.Fabel@slc.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Long Beach office at the address above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of regulations for repeal, the initial statement of reasons, and information upon which the proposed repeal is based. Copies may be obtained by contacting Ravindra Varma at the address, telephone, or e-mail as listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public comment period, the Commission may adopt the repeal of Article 5.1, substantially as described in this notice. If modifications are made, in response to public comments, which are sufficiently related to the original proposal of repeal, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations.

Requests for copies of any modified regulations should be sent to the attention of Ravindra Varma at the address above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ravindra Varma at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the Text of the regulations in underline and/or strikeout can be accessed through our website at:

<http://www.slc.ca.gov/Laws-Regs/New-Proposed.html>