

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.5. MARINE INVASIVE SPECIES CONTROL FUND FEE

The California State Lands Commission (Commission) will decide whether to adopt the regulatory actions described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to amend sections 2270 and 2271 in Article 4.5 of Title 2, Division 3, Chapter 1 of the California Code of Regulations.

The Commission proposes amending section 2270 so that regulatory definitions are consistent with recent statutory amendments of the Public Resources Code. As of January 1, 2016, AB 1312 (Chapter 644, Statutes of 2015), amended Public Resources Code section 71200(r) (“Voyage”) by replacing “any” with “a” before the word “California” and deleted “or place” before the word “outside.” Section 2270 currently reflects the definition of “Voyage” as it existed prior to AB 1312 and thus the wording lacks consistency. Additionally, AB 1312 relettered the definition of “Voyage” requiring the regulations to update the citation from 71200(q) to 71200(r). Finally, the statutory definition of “waters of the state” (subdivision (o)) has a comma after the word “waters” that is not present in the regulation. These non-substantive changes are proposed so that the regulatory text mirrors that in statute for clarity purposes.

The proposed amendment to section 2271 would increase the fee paid by vessels arriving at California ports (the Fee) from eight hundred fifty dollars (\$850) per qualifying voyage to one thousand dollars (\$1,000) per qualifying voyage if the vessel has traveled from outside of California. The Fee funds all activities of the Marine Invasive Species Program as described in Division 36 of the Public Resources Code.

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 Monday, November 7, 2016. The Commission must receive all written comments by that time. Submit written comments to:

Ravindra Varma
Supervisor, Planning Branch
California State Lands Commission
Marine Environmental Planning Division
200 Oceangate, Suite 900
Long Beach, CA 90802

Written comments may also be submitted by facsimile to (562) 499-6317 or by email to CSLC.MEPDRegulations@slc.ca.gov. Please include "**Article 4.5 Comments**" in the subject line of the email.

PUBLIC HEARING

Commission staff has not scheduled a public hearing on this proposed action. However, the Commission will hold a public hearing, pursuant to Government Code section 11346.8, 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 prior to the close of the written comment period.

AUTHORITY AND REFERENCE

Authority: Public Resources Code section 71201.7 authorizes the Commission to adopt regulations necessary to implement the Marine Invasive Species Act. Public Resources Code section 71215 requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Marine Invasive Species Act.

Reference: The proposed regulations would implement, interpret, and make specific Public Resources Code sections 71200 and 71215.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1999, the Governor and Legislature recognized the urgent need to curtail introductions of Non-Indigenous Invasive Species (NIS) from ships' ballast water discharges into State waters. The Ballast Water Management for Control of Nonindigenous Species Act established a new division in the Public Resources Code titled, "Division 36. Ballast Water Management for Control of Nonindigenous Species" (Public Resources Code section 71200 et seq.). In 2003, the ballast water management program was renamed the Marine Invasive Species Program (MISP), and the MISP was

reauthorized and expanded through passage of the Marine Invasive Species Act (Chapter 491, Statutes of 2003).

Public Resources Code section 71215 created the Marine Invasive Species Control Fund and requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Marine Invasive Species Act. It also states that the Fee may not exceed one thousand dollars (\$1,000) per vessel voyage; however, this amount may be adjusted for inflation every two years.

The proposed amendment would increase the Fee requirement authorized by Public Resources Code section 71215(b)(2). The Fee is required to fulfill the specific multi-agency activities mandated by the Act. However, the current Fee amount (\$850 per qualifying voyage) will not meet the costs of the programs mandated under the Act by early 2018. The proposed amendment (Title 2 California Code of Regulations section 2271(a)) would set the amount of the Fee to be used to support the activities required under the Act at one thousand dollars (\$1,000) per qualifying voyage. The objective of this proposed action is to increase the fee in order to sustain the Fund, enabling the Commission to continue implementing the Marine Invasive Species Program, protecting public health and safety and the environment through Fiscal Year 2019/2020.

The Commission adopted regulations defining “voyage” and “waters of the state,” in section 2270 of Title 2 of the California Code of Regulations, mirroring the definitions in Public Resources Code section 71200. However, amendments to the definitions in section 71200 created two inconsistencies with definitions in section 2270. First, the amendments to section 71200 changed “any California port” to “a California port”; second, the amendments changed the lettering of the definitions so that “voyage” is now defined under subdivision (r), not subdivision (q). Additionally, Commission staff has determined that the definition of “waters of the state” in section 2270, subdivision (o) is missing a comma. To avoid confusion and ensure consistency, the Commission proposes amending these regulatory definitions to correctly reflect the current statutory definitions.

The Commission staff evaluated whether there were any other state or federal regulations on these matters. Although the federal government regulates ballast water management, the Commission is proposing these amendments under authority granted by California law. The proposed action would increase the fee for each qualifying voyage by one hundred fifty dollars (\$150). Also, the amendments to regulatory definitions correspond to only state law. Because this proposed action applies to the function and implementation of state law, no duplication or conflict with federal regulations is expected to occur. The Commission staff evaluated whether there were any other regulations on this matter and has found that these state regulations are the

only regulations concerning the fee or subject definitions. Therefore, the proposed action is neither inconsistent nor incompatible with existing state or federal regulations.

DETERMINATION ON MAJOR REGULATION DESIGNATION

The Commission staff has determined that this proposed regulatory action is not a major regulation as defined by Government Code section 11342.548. First, the proposed action non-substantively amends regulatory definitions without creating new standards or requirements. Accordingly, these definition amendments will create no economic impact. Second, this proposed action would also increase the existing Fee amount to one thousand dollars (\$1,000), an increase of one hundred fifty dollars (\$150) per qualifying voyage. Utilizing vessel voyage information from 2015, Commission staff estimates the annual cost to an individual shipping company will range from one hundred fifty dollars (\$150) to forty-seven thousand two hundred fifty dollars (\$47,250). Assuming 5,300 qualifying vessel voyages annually statewide, the economic impact per year to the entire regulated community is estimated to be seven hundred ninety-five thousand dollars (\$795,000); because major regulations are those which exceed an economic impact of fifty million dollars (\$50,000,000), this proposed action is not a major regulation.

DISCLOSURES REGARDING THE PROPOSED ACTION

Commission staff, acting on behalf of the Commission, has made the following initial determinations:

LOCAL MANDATE

Commission staff has determined that the proposed regulatory action does not impose any mandates on local agencies or school districts.

FISCAL IMPACTS

Commission staff has determined that this proposed regulatory action imposes no mandates or costs requiring state reimbursement to any local agency or school district pursuant to Government Code sections 17500 et seq. No other non-discretionary costs or savings imposed on local agencies are anticipated.

Commission staff has determined that the proposed amendment will not result in any costs or savings to the State.

Commission staff has determined that this proposed action will have no impact on costs or savings in federal funding to the State.

HOUSING COSTS

Commission staff has determined that this proposed action will have no impact on housing costs.

STATEMENT REGARDING ADVERSE ECONOMIC IMPACTS DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE

Commission staff has determined that the proposed regulations will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Through the Economic Impact Assessment, Commission staff has determined that the proposed regulations:

- 1) Will likely have no impact on the creation or elimination of jobs within the State of California.
- 2) Will likely have no impact on the creation or elimination of businesses within the State of California.
- 3) Will not affect the expansion of businesses currently doing business within California.
- 4) Will have no impact upon worker safety within the State of California; and
- 5) Will benefit the health and welfare of California residents and the state's environment by ensuring sufficient funding for the Marine Invasive Species Program, which will continue to protect California from the introduction of nonindigenous species from vessels that arrive at California ports.

COST IMPACTS ON REPRESENTATIVE PERSONS OR BUSINESSES

The proposed regulation would amend regulatory definitions and increase the Fee requirements pursuant to California Public Resources Code section 71215. The fee will affect the owners and operators of large vessels (300 gross registered tons or more) that arrive at a California port after traveling from a non-California port. All vessel owners or operators affected by the proposed amended regulation would be required to pay an increased fee of one hundred fifty dollars (\$150) per qualifying voyage. Commission staff assumes that representative businesses will each have one to three hundred fifteen (1 – 315) qualifying voyages to California ports. Accordingly, the annual cost to an individual business is predicted to range from one hundred fifty dollars (\$150) to forty-seven thousand two hundred fifty dollars (\$47,250), depending on the business's number of qualifying voyages.

SMALL BUSINESS DETERMINATION

The Commission staff finds that the proposed amendments of this regulation may affect small businesses.

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 otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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.

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

CONTACT PERSONS

Direct inquiries concerning the substance of the proposed regulation to:

Nicole Dobroski
Assistant Chief, Marine Environmental Protection Division
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-0742
Facsimile: (916) 574-1950
Email: Nicole.Dobroski@slc.ca.gov

Or: Patrick Huber
Staff Attorney
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-0728
Facsimile: (916) 574-1855
Email: Patrick.Huber@slc.ca.gov

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Ravindra Varma
Supervisor, Planning Branch
California State Lands Commission
Marine Environmental Protection Division
200 Oceangate, Suite 900
Long Beach, CA 90802-4335
Telephone: (562) 499-6400
Facsimile: (562) 499-6317
Email: Ravi.Varma@slc.ca.gov

AVAILABILITY OF STATEMENTS

Commission staff will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its Sacramento and Long Beach offices listed above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, including the economic impact assessment, and relevant sources of information upon which the proposed rulemaking is based. Interested parties may obtain copies of any of the aforementioned files by contacting Ravindra Varma as listed above, or by visiting the website listed below.

After considering all timely and relevant comments, the Commission may adopt the proposed regulations substantially as described in this notice. If Commission staff makes any substantial and sufficiently related modifications to the proposed text, the modified text with changes clearly indicated will be available to the public for at least fifteen days prior to the date that the Commission considers adopting the regulations. Interested parties shall send requests for copies of any modified regulations to the attention of Ravindra Varma at the address indicated above. The Commission will accept written comments on the modified regulations for fifteen days after the date that they are available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, interested parties may obtain a copy of the Final Statement of Reasons by contacting Ravindra Varma at the address, telephone number, or email address listed above or by accessing the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice of proposed rulemaking, the initial statement of reasons, the proposed text of regulations, the economic impact assessment, relevant documents, and any future changes or modifications to the proposed text can be accessed through our website at: <http://www.slc.ca.gov>