

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.9. MARINE INVASIVE SPECIES ACT ENFORCEMENT AND HEARING PROCESS

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

PROPOSED REGULATORY ACTION

The Commission proposes to adopt Article 4.9 within Title 2, Division 3, Chapter 1 of the California Code of Regulations. The sections within this Article would govern the enforcement and hearing process for imposing administrative civil penalties for violations of the Marine Invasive Species Act (Act) as authorized by section 71216 of the Public Resources Code (PRC).

Specifically, the proposed regulatory action will:

- Adopt section 2299.01 to define the purpose and applicability for the provisions of Article 4.9;
- Adopt section 2299.02 to define specific terms to provide clarity for the provisions of Article 4.9;
- Adopt section 2299.03 to establish the classes of violations based on requirements of the Act and its associated regulations;
- Adopt section 2299.04 to establish the administrative penalties associated with each violation class;
- Adopt section 2299.05 to establish the preliminary actions to be taken by the Executive Officer prior to pursuing any enforcement actions;
- Adopt section 2299.06 to establish the specific laws for which penalties can be assessed and establish the codified procedures for pursuing those penalties;
- Adopt section 2299.07 to establish the procedures to be taken by the Executive Officer if, after the preliminary actions, a violation has been found to occur and a complaint is issued;
- Adopt section 2299.08 to establish the procedures for the cited party to submit a notice of defense, if chosen; and

- Adopt section 2299.09 to establish the procedures for a hearing, should a notice of defense be submitted by the cited party.

The proposed regulatory actions are in accordance with the authority granted by PRC section 71216.

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 July 5, 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 Facilities 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.MFDRegulations@slc.ca.gov. Please include “**Article 4.9 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: Pursuant to section 71201(d) of the PRC, the purpose of the Act is to move the State expeditiously towards elimination of the discharge of nonindigenous species (NIS) into waters of the State. PRC sections 71203 through 71207 establish ballast

water management requirements, give the Commission the authority to adopt regulations for the management of biofouling, and establish ballast water and biofouling reporting requirements for vessels arriving at a California port or place. PRC section 71201.7 provides the Commission with the authority to adopt regulations as necessary to implement the Act. PRC section 71216 provides authorization to assess penalties under the Act.

Reference: The proposed regulations would implement, interpret, and make specific PRC sections 71200, 71207, 71217, and 71216 authorizing enforcement of civil penalties for violations of the Act.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of this Article is to establish an administrative enforcement process for violations of the Marine Invasive Species Act (Act). Article 4.9 establishes policies and procedures the Executive Officer of the California State Lands Commission shall undertake in assessing administrative civil penalties as allowed by section 71216 of the Public Resources Code.

Public Resources Code (PRC) section 71201(d) declares that the purpose of the Act (PRC section 71200 *et seq.*) is to move the state expeditiously toward elimination of the discharge of nonindigenous species (NIS) into the waters of the State or into waters that may impact the waters of the State. PRC sections 71203, 71204, 71204.3, and 71205 place ballast water management and reporting obligations on vessels entering a California port or place. PRC section 71201.7 provides authority for the Commission to adopt regulations. To that end, the Commission has adopted Articles 4.5, 4.6, 4.7, and 4.8 (Title 2, CCR). These regulations comprehensively regulate both operational (i.e., ballast water management) and administrative (i.e., reporting and recordkeeping) aspects of vessel operations in order to reduce the risk of NIS introduction into state waters.

If a person intentionally or negligently fails to comply with any of the provisions of the Act, PRC section 71216 authorizes the Commission to assess administrative civil penalties in an amount not exceeding twenty-seven thousand five hundred dollars (\$27,500) per violation per day. This proposed action would implement procedures for assessing these penalties and make specific the provisions of PRC section 71216. This proposed action will help the State achieve the purpose of the Act by deterring non-compliance using an administrative civil penalty mechanism.

Although compliance with the Act and associated regulations by the regulated community is high, every noncompliant ballast water discharge and vessel with unmanaged biofouling poses the threat of introducing NIS and risks harming California's coastal environment, coastal economy, and public health. Commission staff has determined that a transparent and consistent process for assessing penalties will enhance compliance by providing tools to enforce the provisions of the Act. Reducing instances of noncompliant ballast water discharge will greatly help protect the waters of the state from NIS impacts.

The objectives of this rulemaking are: 1) to inform the regulated community about the monetary penalties associated with non-compliance; 2) to apply an administrative civil penalty process in a consistent way, allowing parties to forecast each step; and, 3) to provide flexibility by allowing quick resolution of violations.

To achieve the first objective, this proposed action identifies classes of violations tied to specific vessel operational and administrative requirements. Violations of ballast water exchange requirements are Class 1 violations. Class 1 violations are further divided into subclasses based on the distance from land an improper ballast water exchange occurs, or whether an exchange occurred at all. Class 2 and Class 3 violations are associated with a vessel's recordkeeping and reporting requirements. All violation classes and subclasses correspond to maximum monetary penalty amounts. Through this mechanism, a responsible party can identify the potential monetary liability for a specific violation of the Act or its associated regulations.

This proposed rulemaking achieves the second objective by codifying the Commission's process before and after initiating an enforcement action and the procedures all parties must follow. This proposed rulemaking identifies when potential violations require a warning or a pre-enforcement process between the Commission and cited party followed by enforcement proceedings under the Administrative Procedures Act. These procedures will help ensure that administrative civil penalties, when sought, are prosecuted in a consistent manner pursuant to steps codified and referenced in this proposed action.

Finally, the third objective of the proposed action provides flexibility in resolving violations by requiring warnings for certain first-time violations, a pre-enforcement meeting between the Commission's Executive Officer and cited party in order to discuss the violation or potential violation, and authority to settle the violation prior to initiating an enforcement action.

The Commission staff evaluated whether there were any other regulations on this matter and has found that these are the only regulations concerning the process for

assessing administrative penalties. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

PRE-RULEMAKING CONSULTATION AND DECISION NOT TO PROCEED WITH EARLIER SUBMISSION

The Commission held an informal comment period from January 29, 2015 through February 23, 2015. The comments received from that informal comment period were considered by Commission staff in drafting the express language within this proposed rulemaking. On February 5, 2016, proposed rulemaking substantially similar to the proposed rulemaking noticed herein was published in the California Notice Register. On March 18, 2016, Commission staff formally decided not to proceed with that rulemaking published on February 5, 2016. That decision was published in the California Notice Register April 1, 2016.

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. This proposed action establishes a specific process for assessing and enforcing administrative penalties authorized under the Act. Any costs associated with this proposed regulation would be from penalties assessed due to violations of existing law and from the additional staff time needed to process the violations. The regulated community has been obligated to comply with the statutes and regulations of the Marine Invasive Species Program (MISP) since 2000.

DIFFERENCES FROM FEDERAL REGULATIONS

This proposed action is promulgated pursuant to PRC section 71216. Although the federal government regulates ballast water management, the Commission staff is proposing these regulations under separate state authority granted by the California Legislature. This proposed action will implement an administrative civil penalty procedure to assist in enforcing existing state laws and regulations. Because this proposed action applies to the function of state law, no duplication or conflict with federal regulations are expected.

DISCLOSURES REGARDING THE PROPOSED ACTION

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

LOCAL MANDATE

Commission staff has determined that this proposed regulatory action do 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 determined that certain costs may accrue to the Commission as a result of this proposed action. These costs are included in the state form STD. 399 and discussed in the Economic Assumption sheet included as part of the rulemaking record. No costs or savings are anticipated for any other state agency from this proposed action.

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 have no impact upon the creation or elimination of jobs within the State of California;
- (2) will have no impact upon the creation or elimination of existing businesses within the State of California;
- (3) will have no impact upon the expansion of businesses currently doing business within the State of California; and
- (4) will have no impact upon worker safety within the State of California.

Commission staff has determined that the proposed regulations will benefit:

- (1) the state's environment by:
 - potentially increasing compliance with pre-existing law thereby reducing significantly the risk of NIS introduction into California waters;
 - reducing the likelihood of future environmental, human health, and economic impacts resulting from the introduction and establishment of new NIS.

The proposed regulations meet the purpose of the Marine Invasive Species Act (Public Resources Code section 71201(d)): "...to move the State expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state..."

- (2) the health and welfare of California residents by ensuring that vessels operating within California comply with the provision of the Act. This will reduce the risk of vessel-mediated introductions of:
 - pathogens and parasites; and
 - harmful nonindigenous species (e.g. harmful algal blooms and toxic diatoms)

The health and welfare of California residents will benefit significantly from the adoption and implementation of the proposed regulations.

COST IMPACTS ON REPRESENTATIVE PERSONS OR BUSINESSES

Any costs associated with the proposed regulation stem from existing law. The regulated community has been obligated to comply with the statutes and regulations of the MISP since 2000. This proposed regulation simply defines a specific process for assessing penalties and conducting an administrative civil hearing process authorized

under the Act. The Commission staff is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SMALL BUSINESS DETERMINATION

The Commission staff finds that the adoption of this proposed action will not have a significant adverse economic impact on small businesses. Any costs stems from violations of existing provisions of the Act. The proposed regulations outline the processes and procedures for assessing and enforcing administrative penalties under the Act and its associated regulations. Continued compliance with the Act and regulations will add no economic burden to 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 submit comments on potential alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Direct inquiries concerning the substance of the proposed regulation to:

Christopher Brown
Senior Environmental Scientist
California State Lands Commission
Marine Facilities Division
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-0236
Facsimile: (916) 574-1950
Email: CSLC.MFDRegulations@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: CSLC.MFDRegulations@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 Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802-4335
Telephone: (562) 499-6400
Facsimile: (562) 499-6317
CSLC.MFDRegulations@slc.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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.

AVAILABILITY OF CHANGED OR MODIFIED TEXT OF ORIGINALLY PROPOSED REGULATIONS

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/>