

The California State Lands Commission proposes to adopt Article 4.9 of Chapter 1, Division 3 of Title 2 of the California Code of Regulations, to read as follows:

Section 2299.01 Purpose and Applicability

- (a) The purpose of the regulations in Title 2, Division 3, Chapter 1, Article 4.9 of the California Code of Regulations is to establish policies and procedures the Executive Officer of the California State Lands Commission shall undertake in assessing and commencing administrative enforcement actions pursuant to California Public Resources Code section 71216.
- (b) This article shall govern the enforcement and procedures related to violations of any of the provisions of Division 36 of the Public Resources Code and Title 2, Division 3, Chapter 1, Articles 4.5, 4.6, 4.7, and 4.8 of the California Code of Regulations.
- (c) The provisions of this article apply to all vessels, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state as well those vessels operating exclusively within the pacific coast region, except those vessels described in section 71202 of the Public Resources Code.

Authority Cited: Sections 71201 and 71201.7, Public Resources Code.

Reference Cited: Section 71201, Public Resources Code.

Section 2299.02 Definitions

- (a) “CCR” means the California Code of Regulations.
- (b) “Cited Party” means the master, owner, operator, agent, or person in charge of a vessel that has violated a provision or provisions of the California Marine Invasive Species Act (codified as Cal. Pub. Resources Code § 71200 et seq.) or title 2, California Code of Regulations, Articles 4.5, 4.6, 4.7, and 4.8.
- (c) “Coastal waters” means estuarine and ocean waters within 200 nautical miles of land or less than 2,000 meters (6,560 feet, 1,093 fathoms) deep and rivers, lakes, or other water bodies navigably connected to the ocean.
- (d) “Commission” means the California State Lands Commission.

- (e) “Exchange” means to replace the water in a ballast tank using, and strictly complying with, either of the methods described in Division 36, Chapter 1, of the California Public Resources Code section 71200, subdivision (h).
- (f) “Executive Officer” means the Executive Officer of the California State Lands Commission or any person designated by the Executive Officer to act on behalf of the Executive Officer.
- (g) “Incorrect exchange” means an exchange that is not performed in full compliance with either of the methods described in Division 36, Chapter 1 of the California Public Resources Code section 71200, subdivision (h).
- (h) “Land” means the material of the earth, whether soil, rock, or other substances that sit landward of, or at an elevation higher than the ocean’s mean high-tide line. Land includes rock outcroppings or islands located offshore.
- (i) “PRC” means Public Resources Code.

Authority Cited: Sections 71201 and 71201.7, Public Resources Code.

Reference Cited: Section 71200 and 71216, Public Resources Code.

Section 2299.03 Classification of Violations

A violation of any provision within Division 36, Chapter 2 (comprising sections 71203 through 71207), of the PRC or Title 2, Division 3, Chapter 1, Articles 4.6, 4.7, and 4.8 of the CCR shall be considered within one of three classes:

- (a) Class 1: Class 1 violations shall be issued to a cited party when a vessel discharges ballast water in the coastal waters of the state without first complying with the appropriate ballast management practices identified in section 71204.3 of the PRC or 2 CCR section 2284.

- (1) Class 1 violations will be considered to be:

- (A) Minor:

- (1) if a vessel subject to section 71204.3, subdivision (c) of the PRC, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of

ballast water in an area less than 200 nautical miles and equal to or greater than 180 nautical miles from land; or

- (2) if a vessel subject to 2 CCR section 2284, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 50 nautical miles and equal to or greater than 45 nautical miles from land.

(B) Moderate:

- (1) if a vessel subject to section 71204.3, subdivision (c) of the PRC, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 180 nautical miles and equal to or greater to 100 nautical miles from land;
- (2) if a vessel subject to 2 CCR section 2284, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 45 nautical miles and equal to or greater to 25 nautical miles from land; or
- (3) any additional Class 1 Minor violations committed on a subsequent voyage committed within twelve (12) months of a preceding Class 1 Minor violation shall be considered a Class 1 Moderate violation.

(C) Major (I):

- (1) if a vessel subject to section 71204.3, subdivision (c) of the PRC, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 100 nautical miles from land;
- (2) if a vessel subject to 2 CCR section 2284, prior to discharging ballast water into the coastal waters of the state, performs an incorrect exchange of ballast water in an area less than 25 nautical miles from land; or

Authority Cited: Sections 71203, 71204, 71204.3, 71205, 71206 and 71201.7, Public Resources Code.

Reference Cited: Sections 71207 and 71216, Public Resources Code.

Section 2299.04 Penalties

The cited party shall be assessed a penalty for each violation issued pursuant to this article. The penalty structure for each class of violation, as described in section 2299.03 of this Division, shall be as follows:

(a) Class 1 violations

- (1) Class 1 violations are subject to penalties in the amount listed in the following table:

<u>Minor</u>	<u>Not to exceed \$5,000 per violation</u>
<u>Moderate</u>	<u>Not to exceed \$10,000 per violation</u>
<u>Major (I)</u>	<u>Not to exceed \$20,000 per violation</u>
<u>Major (II)</u>	<u>Not to exceed \$27,500 per violation</u>

- (2) Every ballast tank involved in a ballast discharge violating this division shall be deemed a separate Class 1 violation.

(b) Class 2 violations

- (1) Upon the first occurrence of a Class 2 violation by a vessel, in lieu of a penalty, a letter of noncompliance shall be sent to the cited party explaining the violation.
- (2) Subsequent occurrences by a vessel of the same type of Class 2 violation shall be subject to a penalty of \$10,000 per violation.

(c) Class 3 violations

- (1) Upon the first occurrence of a Class 3 violation, in lieu of a penalty, a letter of noncompliance shall be sent to the cited party explaining the violation.
- (2) Subsequent occurrences of the same type of Class 3 violation shall be assessed a penalty of \$1,000 per violation. Every thirty (30) day period

that a required form or forms remains unsubmitted after the original period for submission identified in section 2299.03(c) of this division shall be deemed a separate violation.

Authority Cited: Sections 71201.7, and 71216, Public Resources Code.

Reference Cited: Sections 71207 and 71216, Public Resources Code.

Section 2299.05 Preliminary Actions

- (a) Prior to pursuing any enforcement action under the provisions of this article, the following preliminary procedures shall be followed.
 - (1) The Executive Officer shall provide a written notice of a violation to the cited party containing the following:
 - (A) a description of the violation;
 - (B) a statement that enforcement proceedings may be initiated; and
 - (C) notification that the cited party may, within ten (10) working days after receipt of the notice, submit a request in writing to the Executive Officer for a preliminary meeting.
 - (2) If the cited party requests a preliminary meeting with the Executive Officer, that meeting shall be held prior to any further enforcement actions and may include any discussions relating to the violations in question, including, but not limited to, whether a violation had in fact occurred, what evidence exists for the violation, and what classification should apply for each violation.
 - (3) If the cited party so requests and agrees to pay for all costs, the preliminary meeting shall be recorded and a transcript shall be prepared.
 - (4) The preliminary meeting shall be scheduled at the Executive Officer's discretion, but shall in no event be scheduled more than thirty (30) calendar days after the request for the meeting is received by the Executive Officer.

- (5) Within ten (10) working days after the preliminary meeting, the Executive Officer shall provide written notice to the cited party of the decision as to whether enforcement action is to proceed.
- (b) If, after the procedures within subdivision (a) are followed, the Executive Officer finds that the cited party has committed a violation of any provision referred to in this article, the Executive Officer may take any or all of the following actions:
- (1) initiate proceedings pursuant to section 71216 of the PRC against the cited party to administratively impose civil penalties;
 - (2) take whatever legal action is necessary and appropriate to obtain an order from the court enjoining the violation;
 - (3) notify the appropriate federal agency of any violation which may also constitute violation of federal law or regulation; or
 - (4) refer the violation to the local district attorney for prosecution pursuant to section 71217 of the PRC.
- (c) It is unnecessary for the Executive Officer to comply with the procedures of this section when issuing an order for a vessel to depart the waters of the state pursuant to section 71207, subdivision (d) of the PRC.

Authority Cited: Sections 71201.7, 71207, and 71216, Public Resources Code.

Reference Cited: Section 71207, 71216 and 71217, Public Resources Code.

Section 2299.06 Hearing Procedures

- (a) Civil penalties shall be administratively imposed for violations of the provisions of Division 36, Chapter 2 (commencing with section 71203) of the Public Resources Code and Title 2, Division 3, Chapter 1, Articles 4.6, 4.7, and 4.8 of the California Code of Regulations.
- (b) Except as otherwise specified in this article, the process to impose civil penalties shall be conducted in accordance with the Administrative Procedure Act located within Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of the Government Code and section 71216 of the PRC. The Executive Officer and the cited party may agree to settle the violation before, during, or after the commencement of proceedings to impose civil penalties.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference Cited: Section 71216, Public Resources Code.

Section 2299.07 Complaint

- (a) After following the preliminary actions described in section 2299.05 of this article, the Executive Officer may commence proceedings to impose civil penalties by issuing a complaint.

- (b) The complaint must contain all of the following:
 - (1) a brief statement of the violation alleged, including the acts or failures to act that constitute a basis for liability;

 - (2) the amount of the civil liability;

 - (3) a statement that the cited party has the right to a formal hearing, upon request, at which they may be represented by counsel; and

 - (4) a statement that the cited party's right to a hearing will be deemed waived if the cited party fails to file a notice of defense with the Executive Officer within 30 days from the date the complaint was served on the cited party, or their agent for service.

- (c) A copy of the complaint shall be served upon the cited party either personally or by registered mail. Complaints served by registered mail shall be deemed served as of the postmark date.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference Cited: Section 71216 Public Resources Code.

Section 2299.08 Notice of Defense

- (a) The cited party may, no later than 30 days after service of the complaint, submit a notice of defense to the Executive Officer at the principal office address identified in section 1901 of this Division.

- (b) The notice of defense shall be in the form and include the content described in section 11506 of the Government Code.

- (c) If, within the notice of defense the cited party requests a hearing on the merits, such a hearing shall commence within thirty (30) days after the Executive Officer receives the notice of defense. The Executive Officer and the cited party may stipulate to commence the hearing date later than thirty (30) days.
- (d) If the Executive Officer does not receive a notice of defense within 30 days after service of the complaint, the Executive Officer shall issue an order setting liability in the amount of the complaint.
 - (1) If the Executive Officer and cited party have reached a settlement of the violation, the Executive Officer shall issue an order setting liability in the amount of the settlement.
 - (2) An order setting liability shall not be subject to review by a court or agency.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.

Reference Cited: Section 71216, Public Resources Code

Section 2299.09 Hearing

- (a) A hearing shall be conducted by an independent hearing officer in accordance with the procedures specified in Title 2, Division 3, Part 1, Chapter 5 (commencing with section 11500) of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take the following into consideration:
 - (1) the nature, circumstances, extent, and gravity of the violation, taking into account the harm to the environment and ecology;
 - (2) the cited party's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment; and
 - (3) the cited party's ability to pay the proposed civil penalty.
- (b) At the Executive Officer's discretion, the venue for the hearing shall be in either Sacramento County or Los Angeles County, unless the Executive Officer and the cited party stipulate to an alternate location.

Authority Cited: Sections 71201.7 and 71216, Public Resources Code.
Reference Cited: Section 71216, Public Resources Code.