

**Board of Pilot Commissioners for the Bays  
of San Francisco, San Pablo, and Suisun**

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**15-DAY NOTICE OF MODIFICATIONS TO PROPOSED  
REGULATORY ACTION REGARDING THE PILOT BOAT SURCHARGE****OAL file Z2024-0715-04**

Title 7. Harbors and Navigation  
Division 2. State Board of Pilot Commissioners for the Bays of  
San Francisco, San Pablo, and Suisun

**15-DAY NOTICE  
PUBLISHED: NOVEMBER 15, 2024**

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) hereby provides notice of changes to Section 236.1 of Title 7, California Code of Regulations that was the subject of a 45-day comment period. The Board is required to re-notice a proposed regulatory action where the proposed regulations have been previously considered, are being modified and the modifications are substantial and sufficiently related to the text of the previously proposed regulations.

**CHANGES TO THE TEXT**

Following the 45-day public comment period that ended on September 13, 2024, in response to public comments, changes were made to section 236.1, subsection (h). These changes were approved by the Board of Pilot Commissioners at its regular meeting on November 14, 2024. Following this meeting, these changes are submitted for an additional 15-day comment period effective today, November 15, 2024.

The changes to the proposed regulatory action are denoted by a **yellow highlight** and **red double underlined text** for additions. There were no deletions from the text.

**PUBLIC HEARING**

A public hearing regarding this proposal is currently not scheduled. However, any interested person or duly authorized representative may request, anytime during the 15-day comment period, for a public hearing to be scheduled.

**WRITTEN COMMENT PERIOD**

Any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action subject to this 15-day notice period. The written comment period

closes at **5:00 p.m. on Friday, November 29, 2024.** The Board will consider only comments received at the Board office by that time. Comments should be addressed to:

Allen Garfinkle, Executive Director  
Board of Pilot Commissioners for the Bays of  
San Francisco, San Pablo, and Suisun  
660 Davis Street  
San Francisco, California 94111

Comments may also be submitted by facsimile (FAX) at (415) 397-9463 or by e-mail to [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov).

### **AUTHORITY AND REFERENCE**

Authority: Harbors and Navigation Code (HNC) §§ 1144, 1154, and 1196.5 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific HNC §§ 1159.1, 1194, 1194.1.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

#### **Section 236.1, subsection (h)**

Proposed revisions to Section 236.1, subsection (h) of Title 7, California Code of Regulations relating to the Pilot Boat Surcharge program were made following the 45-day comment period based on public comments. The changes to the above-mentioned section clarify the Board's authority to collect funds in anticipation of future expenses.

As written, Section 236.1, subsection (h) specifies that the Pilot Boat Surcharge rate should cover "all costs—and only those costs—authorized by the Board for recovery." However, as highlighted during the 45-day public comment period, this language could be interpreted to prevent the Board from setting surcharge rates that proactively fund future Board-approved pilot boat construction or modification obligations. Consequently, subsection (h) has been modified to include the phrase, "or anticipated to be authorized." This change is intended to clarify the Board's authority to set a surcharge rate that accommodates anticipated costs, including those related to future pilot boat construction or modification projects. The adjustment grants the Board the flexibility to manage both current and anticipated financial obligations, providing stakeholders with clearer, more stable cost expectations, and helping to prevent significant rate increases.

No other changes were made to this proposed regulatory action. The 15-day regulatory text is attached.

## DISCLOSURES AND DECLARATIONS REGARDING THE PROPOSED ACTION

The Board has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district: None.
- Cost or savings in federal funding to the state: None.
- The amendments will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Housing costs: None.
- Effect on small business: None. The regulations will have a positive economic impact on the San Francisco Bar Pilots Association, which is not a small business. It is engaged in providing services in transportation. Its annual gross receipts exceed two million dollars (\$2,000,000). It is therefore excluded from the definition of “small business” contained in Government Code section 11342.610, subdivisions (c)(6) and (c)(7).

## CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Name: Alethea Wong  
Email: [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)  
Phone: (415) 397-2253

The backup contact person for these inquiries is:

Name: Allen Garfinkle  
Email: [bopc@bopc.ca.gov](mailto:bopc@bopc.ca.gov)  
Phone: (415) 397-2253

## AVAILABILITY OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the above address during normal business hours (9:00 a.m. to 5:00 p.m.). Please contact Alethea Wong at the above email address to arrange a date and time to inspect the files. As of this date, the initial Notice has been published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the regulations. The rulemaking file also includes copies of the proposed regulatory action subject to this 15-day notice, including this Notice, Attachment 1: Modified Text of the Proposed Regulations, and Attachment 2: Explanation of Modified Text of

the Proposed Regulations. Copies of all these items are available upon request from the Board Contact Person designated in this Notice.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

The Board is required to prepare a Final Statement of Reasons. Once the Board has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Board Contact Person identified in this Notice.

#### **BOARD INTERNET WEBSITE**

The Board maintains an Internet website for the electronic publication and distribution of written material. Copies of proposed regulations and corresponding documents can be accessed through the Board's website at [www.bopc.ca.gov](http://www.bopc.ca.gov).

## ATTACHMENT 1: MODIFIED TEXT OF THE PROPOSED REGULATIONS

The original text published in the California Code of Regulations as Section 236.1 has no underline. The initial proposal (noticed on July 27, 2024) is illustrated by a single underline for proposed additions and a ~~single strikethrough~~ for proposed deletions. Changes made after the 45-day comment period are illustrated by a yellow highlighted red double-underline for proposed additions. No deletions to the proposed regulations were made after the 45-day comment period.

### PROPOSED REVISIONS TO TITLE 7. HARBORS AND NAVIGATION DIVISION 2. STATE BOARD OF PILOT COMMISSIONERS FOR THE BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN

#### § 236.1. Pilot Boats ~~Surcharge~~.

(a) A separate surcharge on pilotage fees called a Pilot Boat Surcharge is authorized by Section ~~1190(a)(1)(B)~~ 1194 of the Harbors and Navigation Code to recover ~~those of~~ the pilots' costs of obtaining new pilot boats and of funding design and engineering modifications for extending the service life of existing pilot boats that are authorized by law. The surcharge is in the form of additional mills per high gross registered ton payable to the Pilot Boat Surcharge Account. This section sets forth the procedures for obtaining the Board's authorization for the pilots to recover such costs from the Pilot Boat Surcharge Account and to set and periodically adjust the Pilot Boat Surcharge.

(b) For purposes of this section, the term "new pilot boat" shall include an existing vessel acquired from another owner.

(c) Requests made pursuant to this section shall be submitted to the Board in writing and shall be supported by the data and documentation required by this section. The requesting party must establish to the satisfaction of the Board that the expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are - or, if those costs have already been incurred, were - reasonable and necessary. The process requires a necessity determination, a preliminary authorization and a final authorization, which are described in subsections (d), (e) and (f) respectively.

#### (d) Necessity Determination

(1) A request for a Board determination that expenditures for a new pilot boat or for life extension modifications to an existing pilot boat are or were necessary may be made prior to or at the same time as a request for preliminary authorization to recover such costs.

(2) The Board may consider a request for a necessity determination at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to

all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(3) Documentation in support of a necessity determination shall be sufficient to allow the Board to assess the remaining service life of the existing pilot boats, both with the proposed life extension modifications, if any, and without such modifications. ~~The Board or its advisory committee may request additional documentation or conduct its own investigation prior to making a necessity determination hereunder.~~

(4) The Board or its advisory committee may request additional documentation or conduct its own review prior to making a necessity determination hereunder.

~~(45) A necessity determination made under this section shall be valid for one year unless directed otherwise by the Board. The Board may issue a necessity determination that may include a validity period.~~

(e) Preliminary Authorization

(1) A request for the Board's preliminary authorization to recover the pilots' costs of obtaining new pilot boats or funding design and engineering modifications and the cost of for extending the service life of existing pilot boats shall precede a request for a final authorization and shall include a request for a necessity determination unless a necessity determination is pending or has been issued by the Board and remains valid.

(2) A preliminary authorization may be submitted to, considered, and approved by the Board in project stages.

(3) A preliminary authorization may be submitted to, considered, and approved by the Board in conjunction with a necessity determination.

~~(24) The Board may consider a request for preliminary authorization at a duly noticed regular or special meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.~~

~~(35) Documentation in support of a request for preliminary authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include basic design and performance specifications, cost estimates, proposed timeline of major milestones for design and construction of a new pilot boat or for acquisition and modification of an existing vessel, or installation of life extension modifications ~~onto~~ an existing pilot boat, and may include plans for long term financing. ~~The Board or its advisory committee may request additional documentation from the requesting party prior to issuing a preliminary authorization hereunder.~~~~

(6) The Board or its advisory committee may request additional documentation from the requesting- party or conduct its own review prior to issuing a preliminary authorization hereunder.

(47) The purpose of a preliminary authorization is to provide an opportunity for meaningful and early communication among affected parties and the Board on issues relevant to the costs of obtaining new pilot boats or of funding design and engineering modifications of existing pilot boats. ~~Preliminary authorizations may be issued in stages as circumstances dictate.~~

(58) The Board may issue a preliminary authorization on such terms as it may deem appropriate to provide guidance to the parties on such matters as have been addressed and to set the conditions and timing for a final authorization determination. The authority to recover costs under this section ~~or to set a Pilot Boat Surcharge rate~~ shall only be issued after a final authorization.

(f) Final Authorization

(1) A request for final authorization to recover the pilots' costs of obtaining new pilot boats or of funding design and engineering modifications intended to extend the service life of existing pilot boats may be submitted to the Board at such time as may have been directed in the Board's preliminary authorization issued pursuant to subsection (e)(58).

(2) A final authorization may be submitted to, considered, and approved by the Board in project stages.

(23) The Board may consider a request for final authorization at a duly noticed regular or special Board meeting held after the request and all documentation in support of the request have been deposited with the Board and made available for public inspection. Notice shall be given to all parties directly affected by pilotage rates or to a trade organization representing such parties and to all other parties who have requested such notification.

(34) Documentation in support of a request for final authorization shall be sufficient for the Board to assess the reasonableness of the request in light of its necessity determination and shall include such information and data as determined in the preliminary authorization.

~~(4) In the case of service life extension modifications, the documentation shall also include sufficient data to determine and quantify the associated operational savings, including reduced repair and maintenance expenses that are reasonably expected to result from the service life extension modifications, and shall set forth the proposed basis for periodic review to determine actual savings over the life of the pilot boat.~~

(5) The Board or its advisory committee may request additional documentation from the requesting party or conduct its own review prior to issuing a final authorization hereunder.

(6) ~~(A)~~ The Board may issue a final authorization ~~setting that shall set forth the costs to be recovered by the pilots under this section, and the reasons therefor, the initial surcharge rate and the date it is to go into effect.~~

(B) Boat repair and maintenance costs cannot be included in a final authorization.

~~(7) The Board may, as a condition of issuing a final authorization relative to proposed service life extension modifications to existing pilot boats, require periodic data from the requesting party to identify any associated operational savings, including reduced repair and maintenance expenses, resulting from such modifications and adjust the Pilot Boat Surcharge rate from time to time to reflect such savings.~~

~~(8) The Port Agent shall provide timely information to the Board of the sale or other disposition of any pilot boats, of the net proceeds from such sale or disposition, and of the manner in which the net proceeds are to be used to reduce the debt or pay the outstanding cost associated with the new pilot boat or with the modifications to existing pilot boats hereunder. The Board may adjust the Pilot Boat Surcharge rate or reduce the costs to be recovered thereby to ensure compliance with the debt reduction provision of Harbors and Navigation Code Section 1190(a)(1)(B). For purposes of this section, "sale of existing pilot boats" shall include donation or other disposition of an existing pilot boat, and "net proceeds" from such sale includes the tax benefit realized from such donation less the costs associated with the donation.~~

~~(g) A Pilot Vessel Boat Advisory Committee may be appointed pursuant to Section 208 to review and assess the documentation relative to the requests pursuant to subsections (d)(34), (e)(36) and (f)(36) of this section, to conduct independent investigation of the issues and request additional documentation as it may deem appropriate, and to develop recommendations to the Board relevant to such requests or as otherwise directed by the Board. Actions on the requests shall only be taken at duly noticed meetings of the Board.~~

~~(h) The Finance Committee of the Board shall periodically, or at such times as the Board may direct, review the costs authorized, **or anticipated to be authorized**, for recovery and the current and projected income from the Pilot Boat Surcharge and shall prepare recommendations to the Board for periodic adjustments to the surcharge rate to ensure that the surcharge rate is sufficient to recover all costs - and only those costs - authorized **or anticipated to be authorized** by the Board for recovery. The rate should be sufficient to maintain a commercially reasonable reserve to allow for ordinary or anticipated fluctuations in surcharge income until all costs authorized have been recovered. The rate should also be sufficient to cover the administrative costs of the Board with respect to administration of the Pilot Boat Surcharge Account, including any audits of the usage of the Pilot Boat Surcharge Account funds, not to exceed five (5) percent of all moneys collected. Any rate adjustment shall be made by Board action at a duly noticed meeting and shall take effect at such dates as the Board may direct.~~

~~(i) For purposes of this section, "sale of existing pilot boats" shall include donation or other disposition of an existing pilot boat, and "net proceeds" from such sale includes the tax benefit realized from such donation less the costs associated with the donation.~~



NOTE: Authority cited: Section 1154, Harbors and Navigation Code. Reference: Section 1159.1, ~~1190(a)(1)(B)~~1194 and 1194.1, Harbors and Navigation Code.

## ATTACHMENT 2: EXPLANATION OF MODIFIED TEXT OF THE PROPOSED REGULATIONS

This chart explains the proposed changes in response to comments received during the 45-day comment period, specifically the proposed additions illustrated by a **yellow highlighted red double-underline** in “Attachment 1: Modified Text of the Proposed Regulations” above. No deletions to the proposed regulations were made after the 45-day comment period.

SECTION	REASON
236.1(h)	<p>In the Initial Statement of Reasons for the noticed regulatory changes, the amendments proposed for Section 236.1, subsection (h) clarified the Board’s ability to collect and utilize funds collected by the Pilot Boat Surcharge Account for administrative purposes, including audits. These amendments are adopted without any changes. The additional amendments proposed to subsection (h) respond to public comments received during the 45-day comment period.</p> <p>The purpose and intent of the amendments to Section 236.1, <i>in toto</i>, was to expand the Board’s authority to approve the use of pilot boat surcharge funds at various stages of the pilot boat development process. Additionally, the amendments aimed to provide the Board with flexibility to collect funds in anticipation of future expenses. To ensure these objectives are clearly reflected in the regulations, the Board has amended Section 236.1, subsection (h), aligning the regulations with these goals.</p> <p>As written, Section 236.1, subsection (h) specifies that the Pilot Boat Surcharge rate should cover “all costs—and only those costs—authorized by the Board for recovery.” However, as highlighted during the 45-day public comment period, this language could be interpreted to prevent the Board from setting surcharge rates that proactively fund future Board-approved pilot boat construction or modification obligations. Consequently, subsection (h) has been modified to include the phrase, “or anticipated to be authorized.” This change is intended to allow the Board to set a surcharge rate that accommodates anticipated costs, directly related to future pilot boat construction or modification projects. The addition of this language grants the Board the flexibility to manage both current and upcoming financial obligations, providing stakeholders with clearer, more stable cost expectations and helping to prevent significant rate increases.</p>