

Proposed amendments to Article 7. Pilotage Rates (commencing with §236), Title 7 CCR

Strike all existing and adopt new § 236 to read:

§236.

- (a) Pilotage rates and surcharges are governed by statutes at Chapter 5 of Division 5 of the Harbors and Navigation Code, commencing with Section 1190.
- (b) Pilotage surcharges may be modified by the Board as is necessary and authorized by the statutes which describe each individual surcharge in Chapter 5 of Division 5 of the Harbors and Navigation Code.
- (c) Pilotage rates codified by statute at Chapter 5 of Division 5 of the Harbors and Navigation Code, commencing with Section 1190, may be modified by the adoption and publication of a pilotage tariff, as required by Chapter 6 of Division 5 of the Harbors and Navigation Code, commencing with Section 1250. Any person with a substantial interest in the pilotage tariff may petition the Board to adopt or modify the pilotage tariff.
- (d) Nothing contained in this article shall preclude the Board from initiating a duly-noticed hearing to adopt or modify the pilotage tariff on its own motion.
- (e) Until such time as the pilotage rates are adjusted by the publication of a pilotage tariff pursuant to Chapter 6, the pilotage rates codified in Chapter 5 of Division 5 of the Harbors and Navigation Code shall remain in effect.

No changes to § 236.1, keep as is

Adopt new 7 CCR §§ 236.5 through 236.9 to read:

§236.5.

- (a) The Board shall adopt, and cause to be published, a pilotage tariff that establishes fair, just, reasonable, and sufficient rates for the provision of a safe, competent, reliable, and efficient pilotage service, as required by Chapter 6 of Division 5 of the Harbors and Navigation Code, commencing with Section 1250
- (b) The procedures governing the adoption of the required pilotage tariff and modification of pilotage rates by the adoption and publication of a pilotage tariff by the Board shall be those applicable sections of Chapter 6 of Division 5 of the Harbors and Navigation Code, commencing with Section 1250, and any such procedures as further provided herein.
- (c) In accordance with Chapter 6 of Division 5 of the Harbors and Navigation Code, the following sections further describe the procedures, responsibilities, and obligations of the Board and Executive Director of the Board when considering the adoption and publication of any change in the pilotage tariff.

§236.6. The Executive Director of the Board shall do all of the following upon receipt of a notice of intent to petition the Board to adopt or modify the pilotage tariff:

(a) Upon the receipt of a notice of intent to petition, the Executive Director shall follow the notification requirements set forth in Harbors and Navigation Code Section 1261, including:

- (1) Schedule an item for the next regular Board meeting to provide public notice, and publish the notice of intent to petition into the record.
- (2) Notify the Office of Administrative Hearings of the notice of intent to petition and request assignment of an administrative law judge to administer a hearing on the petition.
- (3) Notify the petitioner of any stakeholder who has requested to participate in prepetition meetings in the timeframe established by Harbors and Navigations Code Section 1262.

(b) The Executive Director shall receive any petition submitted with the Board by any person with a substantial interest in the pilotage tariff subject to all of the following:

(1) Upon receipt of a petition, the Executive Director shall confirm that the filing is consistent with all of the following pre-filing requirements of Sections 1260, 1262, and 1266 of the Harbors and Navigation Code, including:

- (A) The petition was submitted at least 90 days subsequent to the reading of the notice of intent to petition at a duly-noticed meeting of the Board, or the provision of service of a copy of the notice of intent to petition, whichever is earlier.
- (B) The petitioner has provided a notice of proposed meeting schedule to all interested stakeholders within 20 days of publication of the notice of intent to petition at a duly-noticed meeting of the Board.
- (C) The petitioner has confirmed that it has held at least one meeting with all interested stakeholders.

(2) Upon confirmation that a received petition has met its pre-filing requirements, the Executive Director shall confirm that the petition includes all of the contents required by Section 1267, subdivision (a) of the Harbors and Navigation Code.

(3) Upon confirmation that a received petition includes all required contents, the Executive Director shall follow the scheduling and notification requirements set forth in Harbors and Navigation Code Section 1268, including:

- (A) Schedule an item for the next regular Board meeting to provide public notice, and publish the signed submission and hearing request on the petition into the record.
- (B) Provide copies of all filed materials to the assigned administrative law judge.
- (C) Notify the petitioner and stakeholders who requested to participate of the administrative law judge's contact information, the official petition filing date, and the requirement for stakeholders to file a request to intervene within 20 calendar days.

(4) (A) If the Executive Director determines that the petitioner has failed to meet the pre-filing requirements, or that the petition does not include all required contents, the

Executive Director shall return the submission to the petitioner and notify the petitioner in writing of all deficiencies identified in the petition.

(B) A petition is only deemed filed once the Executive Director has confirmed the petition meets the pre-filing requirements and notifies the stakeholders, starting the 20-day period within which a stakeholder may file a written request to intervene in a petition proceeding under section 1269.

(c) (1) During any hearing before an administrative law judge on a petition, the Executive Director shall be in attendance.

(2) In the event that an administrative law judge issues a bench interrogatory or a discovery request to, or requests any other consultation with, the Executive Director during the course of a petition hearing or posthearing, the Executive Director shall respond directly to the administrative law judge. However, all parties have the right to respond to posthearing bench interrogatories and discovery requests, regardless of to which party the interrogatories or discovery requests are directed.

(d) Upon receipt of a tentative order and tariff from an administrative law judge, the Executive Director shall do all of the following:

(1) Publish notice of the tentative order and tariff on the Board's website, including findings, publication date, and effective date of the tariff.

(2) Advise board members and the public of their right to request agendizing the tentative order and tariff within 10 calendar days of the notice of the tentative order and tariff.

(e) (1) If no request to agendize is received by the Executive Director within 10 calendar days of the notice order and tariff, the Executive Director shall:

(A) Publish the final order and tariff on the Board's website.

(B) Submit the final tariff to the Office of Administrative Law for publication.

(2) If a request to agendize is received by the Executive Director within 10 calendar days of the notice order and tariff, the Executive Director shall:

(A) Agendize the tentative order and tariff for the next regular Board meeting.

(B) Notice the hearing pursuant to Section 1278(b) of the Harbors and Navigation Code.

(C) Summarize and present the tentative order and tariff during the public hearing at the next regular Board meeting.

(3) If the Board accepts the tentative order or takes no action pursuant to Section 1278(d) of the Harbors and Navigation Code, the Executive Director shall:

(A) Publish the final order and tariff on the Board's website.

(B) Submit the final tariff to the Office of Administrative Law for publication.

(4) If the Board rejects the tentative order pursuant to Section 1278(d)(3) of the Harbors and Navigation Code, the Executive Director shall:

(A) Publish a rejection of the order and tariff on the Board's website.

(B) Submit a formal notice of rejection to the Office of Administrative Law for publication.

(5) If the Board chooses to rerefer the tentative order to the administrative law judge pursuant to Section 1278(d)(4) of the Harbors and Navigation Code, the Executive Director shall return the case and provide all hearing materials to the administrative law judge.

(e) Upon receipt of a reviewed tentative order and tariff from an administrative law judge following a rereferral, the Executive Director shall follow the steps of subdivision (d) of this Section, as applicable.

§236.7

Except as otherwise permitted with respect to the Executive Director's responses to bench requests or as part of a noticed public meeting, members of the Board and Board staff shall not engage in ex parte communications regarding the pilotage tariff, pilotage rates, or issues that are the subject of a pilotage tariff petition with any party, stakeholder, member of the public, or other Board member during the period beginning with the request by the Executive Director for assignment of an administrative law judge until the time that any potential for a related Board hearing on the petition has concluded.

§236.8

(a) Any objection to the standing of a party to bring a pilotage tariff petition or counterpetition under Harbors and Navigation Code Section 1265, or to intervene with respect to a petition pursuant to Section 1269, shall be heard and adjudicated by the administrative law judge at the initial petition management conference under Section 1271, subdivision (a).

(b) For the purpose of determining standing to bring a petition or counterpetition for, or to intervene in, a pilotage tariff proceeding, the following shall apply:

(1) "Direct financial interest in the rates and tariffs charged for pilotage services" shall be presumed to include either any vessel owner or operator which is a payor of a rate or tariff charged for the receipt of pilotage services, or any Board-licensed active pilot or organization of Board-licensed active pilots which is a payee of a rate or tariff charged for the provision of pilotage services.

(2) "Indirect financial interest in the rates and tariffs charged for pilotage services" shall be presumed to include any organization which is representative of those with a direct financial interest in the rates and tariffs charged for pilotage services.

(3) It is a rebuttable presumption that any person who has neither a direct nor an indirect financial interest in the rates and tariffs charged for pilotage services, as set forth in Harbors and Navigation Code Section 1256 and this section, is not a stakeholder pursuant to Harbors and Navigation Code Section 1256, subdivision (f).

(c) Any objection to a petitioner's claim of its "substantial interest in the pilotage tariff" by an intervenor shall be made in the proposed intervenor's written request to intervene pursuant to Harbors and Navigation Code Section 1269. Any objection raised subsequent to filing of the written request to intervene is untimely.

§236.9

(a) If the Board schedules an item to consider initiating a duly-noticed hearing to adopt or modify the pilotage tariff under this article on its own motion, then the notice of the item

shall be considered a notice of intent to petition under Harbors and Navigation Code Section 1260.

(b) In such an instance whereby the Board publishes a notice of an item to initiate a duly-noticed hearing to adopt or modify the pilotage tariff under this article on its own motion, then the Board shall not be required to convene a prepetition meeting pursuant to Harbors and Navigation Code Section 1262.

(c) For purposes of Harbors and Navigation Code Section 1265, subdivision (b), Section 1266, subdivision (d), and Section 1267, in the situation described in subsections (a) and (b) of this section 236.9, the Board shall be considered a “petitioner” and submit a “petition.”

(d) For purposes of Harbors and Navigation Code Sections 1271, 1272, and 1273, in the situation described in subsections (a) and (b) of this section 236.9, the Board shall be considered a “party.”

(e) Nothing in this section relieves the Executive Director of any procedural obligations as described in this Article, except with regard to any obligations related to Harbors and Navigation Code Section 1262.

(f) Nothing in this section relieves any member of the Board or Board staff from the restrictions on engaging in ex parte communications during the period beginning with the request by the Executive Director for assignment of an administrative law judge as described in this Article and pursuant to Harbors and Navigation Code Section 1274.