

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

660 Davis Street., San Francisco, CA 94111

Phone: (415) 397-2253

E-mail: bopc@bopc.ca.gov

www.bopc.ca.gov



NOTICE OF PROPOSED RULEMAKING

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NOTICE IS HEREBY GIVEN that the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) proposes to adopt the regulations described hereunder, after considering all comments, objections, and recommendations regarding the proposed action received during the public comment period, which closes on **January 5, 2026**.

The Board proposes to amend and adopt the following sections of the California Code of Regulations, Title 7, Harbors and Navigation, Division 2, State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun:

- Amend: § 236. Rate Hearing Procedures.
- Adopt: § 236.5. Adoption and Publication of Pilotage Rates.
- Adopt: § 236.6. Duties of the Executive Director.
- Adopt: § 236.7. Ex Parte Communications.
- Adopt: § 236.8. Objections to Standing.
- Adopt: § 236.9. Hearing Initiated by Board Action.

PUBLIC HEARING

The Board will hold a public hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, not later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes **on January 5, 2026**. The Board will consider only comments received at the Board office by that time. Submit comments 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 via e-mail to 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 § 1250 et seq.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law and Effect of Proposed Amendments

The proposed regulations operationalize HNC § 1250 et seq. These statutes, which were chaptered in September 2022, require the Board to update the procedures it uses to conduct the rate setting process.

The statutes enacted in 2022 made significant changes to the rate setting process, including the authority for determining and setting pilotage rates shifting from the Legislature to the Board. Under the previous statute, which had been in place since the 1970s, rates for bar pilotage services were determined by the legislature by passing specific statutes rather than by the rule-making authority of the Board of Pilot Commissioners. The updated statutes have effectively transformed pilotage rate setting from a statutory process dependent on legislative action into a regulatory process overseen by an administrative law judge.

With the transfer of responsibility away from the Legislature in the 2022 statutes, the new proposed regulations are designed to clarify and specify the roles and duties of the various parties involved in the rate setting process. This includes the role and duty of the Board, the Board Executive Director and staff, and stakeholders. For example, proposed sections 236 and 236.5 define the Board's authority to modify, adopt, and publish rates and surcharges as well as the qualitative framework under which these changes should be made. Section 236.6 provides a comprehensive list of the Executive Director's ministerial duties, while section 236.7 governs the Board and Board staff with respect to *ex parte* communications. Section 236.8 identifies which parties have standing and establishes criteria for determining it. Finally, section 236.9 confirms that the Board retains the authority to initiate a rate setting proceeding on its own. These changes are intended to implement the new statutes while also ensuring the effectiveness and efficiency of the rate setting process.

The key elements of the proposed regulations are:

Role of the Executive Director Clarified. The purpose and intent of this section is to establish a chronologically comprehensive list of the Executive Director's ministerial responsibilities during rate setting process. In support of an efficient rate setting process the proposed regulation also distinguish the Executive Director's duties from the duties of other participants, such as the Board or the administrative law judge.

- ***Ex Parte* Communications Clarified.** The proposed regulations clarify that Board members and staff are prohibited from engaging in *ex parte* communications about the pilotage tariff, rates, or related petitions with anyone outside official proceedings from the time an administrative law judge is requested until the possibility of a related Board hearing has ended, except for the Executive Director's limited permitted responses. This section aims to ensure a smooth, well-ordered rate setting process by ensuring

transparency, clarifying responsibilities, and avoiding misunderstandings among the parties.

- **Framework for Determining Standing Established.** The proposed regulations will clarify the process by which parties may obtain standing at a rate hearing. This will ensure fair and equal access to the rate setting process while requiring that all participants demonstrate a direct or indirect financial interest in the pilotage system. These changes are intended to enhance both the effectiveness and the efficiency of the rate setting process.

Anticipated Benefits of the Proposed Regulations

The broad objective of this proposed regulatory action is to implement the pilotage rate setting statutes enacted in 2022, which transferred responsibility from the legislature to the Board. If approved, these regulations will assist the Board with the implementation of this responsibility.

Anticipated benefits of this proposed regulation include:

- **Stakeholder Benefits.** These regulations will enable streamlining the rate setting process by removing required legislative action on a rate adjustment request. Eliminating these steps will take out conflicting language between current regulation and statutes. Additionally, the proposed changes will also reduce delays and uncertainty for stakeholders.
- **Transparency Benefits.** The procedural clarity and transparency in the 2022 statutes and the proposed regulations will foster confidence in the Board's financial management practices.
- **Efficiency and Effectiveness Benefits.** The proposed regulations will enhance effectiveness and efficiency by, among other things, establishing a framework for determining standing.

Determination of Inconsistency/Incompatibility with Existing State Regulations

The Board has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations or statutes. After conducting a review for any state regulations that would relate to or affect the sections proposed to be added and amended, the Board has concluded that these are the only state regulations related to the pilotage rate setting process under the jurisdiction of the Board.

DISCLOSURES AND DECLARATIONS REGARDING THE PROPOSED ACTION

The Board has made the following determinations:

1. Mandate on local agencies and school districts:

None. The Board has determined that the proposed regulations do not constitute a mandate on school districts or other local agencies. The proposed regulations improve the effectiveness and efficiency of the rate setting process.

2. Cost or savings to any state agency:

None. The Board has determined that the proposed regulations would not result in significant costs or savings.

3. Cost to any local agency or school district:

None. The proposed regulations do not place a mandate on local agencies or school districts, and there would be no costs incurred by these entities.

4. Other nondiscretionary cost or savings imposed on local agencies:

None. There are no requirements imposed on local agencies, and therefore, there are no other nondiscretionary costs or savings.

5. Cost or savings in federal funding to the state:

None. These regulations do not relate to any federal program.

6. Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:

None. The proposed regulations do not have a statewide adverse economic impact on California businesses.

7. Cost impacts on a representative private person or business:

None. 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.

8. Results of the economic impact assessment/analysis:

These regulations are not anticipated to have any direct, indirect or induced effect on California businesses. Specifically:

- The action will not have any effect on the creation or elimination of jobs within the state.
- The action will not affect the creation of new businesses or the elimination of existing businesses within the state.
- The action will not affect the expansion of businesses currently doing business within the state.
- The action will have no effect on worker safety and the state's environment.

Benefits of the Proposed Action: Among other benefits, the proposed regulations clarify the Executive Director's ministerial responsibilities, ensuring that duties are clearly defined and distinct from those of the Board and the administrative law judge. They also

strengthen transparency by prohibiting *ex parte* communications outside official proceedings, reducing the risk of misunderstandings. Finally, they establish a clear framework for determining standing at rate hearings, promoting fair access for all parties with a financial interest and improving the overall efficiency of the rate-setting process.

9. Significant effect on housing costs:

None. The proposed regulations do not relate directly or indirectly to housing costs.

10. Small business determination:

The Board has determined that the proposed regulations do not affect small business because the changes improve the effectiveness and efficiency of the rate setting process.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code §11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or 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 provisions of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing, if one is held, or during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

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

The backup contact person for these inquiries is:

Name: Matthew Millspaugh
Email: bopc@bopc.ca.gov
Phone: (415) 397-2253

Please direct requests for copies of the proposed text (Express Terms) 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 to the Board at the above address.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board has established a rulemaking file for this regulatory action, which contains those items required by law. The rulemaking file is available for inspection and copying throughout the rulemaking process at the Board's offices located at the 660 Davis Street, San Francisco, California, 94111. Please contact Allen Garfinkle at the above phone number or email address to arrange a date and time to inspect the files. The rulemaking file is available for inspection or copying during normal business hours (9:00 a.m. to 5:00 p.m.). As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the regulations. Copies of these items are available upon request from the Board Contact Person designated in this Notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the 45-day public comment period, the Board may adopt the proposed regulations. As a result of public comments, either oral or written, that are received by the Board regarding this proposal, the Board may determine that changes to the proposed regulations are appropriate.

If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. The Board will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Allen Garfinkle at the above email address. The Board will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available.

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.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Board maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Rulemaking, the Initial Statement of reasons, and the text of the regulations in underline and strikeout can be accessed through the Board's website at www.boppc.ca.gov.