

**CALENDAR ITEM
C48**

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W 9777.234
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**CONSIDER AMENDMENT TO BALLAST WATER PERFORMANCE STANDARDS
REGULATIONS TO REQUIRE VESSELS TO INSTALL SAMPLING PORTS FOR
COMPLIANCE VERIFICATION**

PROPOSAL

Pursuant to Public Resources Code (PRC) Section 71205.3, Commission Staff is proposing to amend the California Code of Regulations, Title 2, Division 3, Chapter 1, Article 4.7, titled "Regulations Establishing Performance Standards for the Discharge of Ballast Water for Vessels Operating in California Waters." The proposed amendments would modify Sections 2291, 2292, and 2294 in order to clarify and correct inconsistencies between the governing statute and the regulations regarding the implementation dates for the performance standards. The proposed amendments would also adopt Section 2297 which would add new requirements for the installation of sampling facilities (i.e. ports) to collect ballast water samples for verification of compliance with the performance standards.

BACKGROUND

The Coastal Ecosystems Protection Act (Act) of 2006 expanded the Marine Invasive Species Act of 2003 to more effectively address the threat of nonindigenous species introductions through ballast water discharge. The Act charged the California State Lands Commission to implement performance standards for the discharge of ballast water and to prepare a report assessing the efficacy, availability, and environmental impacts, including water quality, of currently available ballast water treatment technologies. The performance standards regulations were adopted in October 2007, and the first technology assessment report was approved by the Commission in

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December 2007 (see Dobroski et al. 2007). In response to the recommendations in the 2007 report, the California Legislature passed Senate Bill (SB) 1781 (Chapter 696, Statutes of 2008) which delayed the initial implementation of the performance standards from January 1, 2009 to January 1, 2010. Article 4.7 was amended in January, 2009 to modify Section 2294, Implementation Schedule for Interim Performance Standards for Ballast Water Discharges, to reflect this change in statute.

The currently proposed amendments modify Sections 2294(c) and 2294(d) to maintain consistency with PRC Section 71205.3 and to preserve the continuity and clarity of Article 4.7. Additionally, when Article 4.7 was approved in October, 2007, the regulation inadvertently included an error in Section 2294(d). The proposed amendment to that provision is necessary to rectify the error and ensure that PRC Section 71205.3 and the regulation are consistent. Finally, Section 2291(c) is repealed to eliminate any confusion as to when the standards shall be implemented.

PRC Section 71206 requires the Commission to take samples of ballast water and sediment from at least 25 percent of arriving vessels. Thus, in addition to the necessary amendments to the implementation schedule, the proposed regulations must also address the need to take samples of discharged ballast water from vessels in order to verify compliance with the performance standards. The International Maritime Organization (IMO) has approved Guidelines for Ballast Water Sampling (G2) for uniform application of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (IMO 2005). The Guidelines provide information on sampling facilities (i.e. ports) to take ballast water samples and have been incorporated into the proposed regulation (Sections 2297(a) and 2297(b)) to maintain international consistency. Additional specifications are added based on computational fluid dynamic modeling conducted by the U.S. Naval Research Laboratory and the United States Coast Guard. These models support the proposed technical amendments to the regulation and are necessary to maximize the likelihood of collecting a representative sample from the ballast water discharge line and to minimize organism mortality due to shear forces in the sampling facility. Specific terms used in Section 2297 are added to Section 2292 to clarify the fundamental concepts of the regulation and to maintain international consistency.

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Altogether, the amendments to Article 4.7 will ensure the clarity and consistency of the regulation, enhance the ability of the Commission to verify vessel compliance with the performance standards, and minimize the transport of NIS into the waters of the State of California.

ISSUES OR CONCERNS:

Commission staff received three comment letters sufficiently related to the proposed regulatory action. Commission staff incorporated one comment by modifying the language of the proposed regulation. The additional language merely makes explicit what would be the only reasonable way of complying with the requirements of the regulation. Therefore the change is considered nonsubstantive and does not require an additional comment period. The remaining comments were either accepted for updated informational purpose without changing the regulatory text, or were rejected, as they were not sufficiently related to the regulatory text. All comments are summarized in the Final Statement of Reasons per the Administrative Procedures Act. The Final Statement of Reasons is displayed on the Commission's website.

STATUTORY AND OTHER REGULATIONS:

A. Public Resources Code Section 71200 through 71271

PERMIT STREAMLINING ACT DEADLINE:

N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

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2. The proposed regulatory amendments do not affect small businesses as defined in Government Code Section 11342, subsection (h), because all affected businesses are transportation and warehousing businesses having annual gross receipts of more than \$1,500,000, as specified under Government Code Section 11342, subsection (h)(2)(I)(vii).

EXHIBIT:

A. TEXT OF PROPOSED MODIFIED REGULATIONS

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378
2. FIND THAT THE AMENDMENT WILL NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE SECTION 11342(h), BECAUSE ALL AFFECTED BUSINESSES ARE TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAN \$1,500,000, AS SPECIFIED UNDER GOVERNMENT CODE SECTION 11342(h)(2)(I)(VII).
3. FIND THAT THE AMENDMENT WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITHIN CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.
4. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE AMENDMENT IS PROPOSED OR WOULD BE AS EFFECTIVE AS AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.

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5. ADOPT THE PROPOSED AMENDMENT, WHICH WOULD AMEND ARTICLE 4.7, SECTIONS 2291, 2292, AND 2294, AND ADD SECTION 2297, TO TITLE 2, DIVISION 3, CHAPTER 1, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE IMMEDIATELY AFTER THEY HAVE BEEN FILED WITH THE SECRETARY OF STATE.
6. AUTHORIZE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS MADE BY THE OFFICE OF ADMINISTRATIVE LAW.
7. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND AMENDMENTS AND TO ENSURE THAT THE AMENDMENT BECOMES EFFECTIVE.
8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT AT SUCH TIME AS IT BECOMES EFFECTIVE.