

**CALENDAR ITEM  
C47**

A Statewide

08/20/10  
W9777.234  
W9777.290

S Statewide

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**CONSIDER AMENDMENTS TO REGULATIONS TO ADOPT FORMS TO GATHER  
INFORMATION ABOUT THE INSTALLATION AND USE OF BALLAST WATER  
TREATMENT SYSTEMS IN CALIFORNIA WATERS**

**PROPOSAL:**

Pursuant to Public Resources Code (PRC) Sections 71205(g) and 71201.7, 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." Commission staff is proposing to adopt Section 2297.1 which would add new requirements for the master, owner, operator, agent, or person in charge of a vessel that has a ballast water treatment system installed on board, and has or will discharge treated ballast in waters of the state, to submit information to the Commission on the installation, maintenance and use of that ballast water treatment system in California waters. Submission of this information would be required via the "Ballast Water Treatment Technology Annual Reporting Form" and the "Ballast Water Treatment Supplemental Reporting Form." The forms are incorporated by references through the proposed adoption of Section 2297.1.

**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 December 2007.

## **CALENDAR ITEM NO. C47 (CONT'D)**

In preparation for initial implementation of California's performance standards on January 1, 2010, the Commission provided a second technology assessment report to the Legislature in January 2009. In this report, the Commission requested that the Legislature provide the Commission with the authority to amend the ballast water reporting requirements via regulation. Specifically, the Commission requested the authority to collect information about the installation and use of ballast water treatment system on board vessels operating in California waters. This information is necessary in order to effectively implement California's performance standards for the discharge of ballast water.

In 2009, Assembly Bill 248 (Lowenthal) was proposed in response to the Commission's 2009 technology assessment report. Assembly Bill 248 was signed by the Governor in the fall of 2009 (Chapter 317, Statutes of 2009) and added Section 71205(g) to the Public Resources Code. Section 71205(g) requires the Commission to adopt forms, via regulation, to gather information about the installation and use of ballast water treatment systems on vessels operating in California waters. The proposed amendments to Title 2, Division 3, Chapter 1, Article 4.7, would adopt Section 2297.1 and fulfill the legislative requirements set forth in PRC Section 71205(g).

The amendments to Article 4.7 will allow the Commission to gather valuable information about the installation and use of ballast water treatment systems in California waters, and will 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:**

During the initial 45-day comment period, Commission staff received three comment letters sufficiently related to the proposed regulatory action. The first two letters required no response because they supported or offered no comment on the proposed regulation. The third letter provided eight comments on the proposed rulemaking. Commission staff accepted seven comments and modified the language of the forms and associated instructions accordingly. One comment was rejected. The comment suggested the removal of Question 6 on the Ballast Water Treatment Technology Reporting Form (Exhibit B). Question 6 asks whether or not a vessel is in compliance with the requirement to maintain a ballast water treatment performance log on board. The question is necessary to assist staff in determining whether vessel operators are in compliance with applicable laws and regulations. Since PRC Section 71205(h) requires that an operator maintain a ballast water treatment performance log on board, the operator either is or is not in compliance. Additionally, Staff do not believe it is necessary to include comment space on the form for the operator to explain why the vessel is out of compliance. Staff will follow-up with all non-compliant vessels.

## **CALENDAR ITEM NO. C47 (CONT'D)**

After the close of the 45-day comment period, Staff discovered the omission of the authority and reference citations in Section 2297.1(a) and 2297.1(b). The citations were added to the proposed regulation. The amended regulation, including the citations and the modifications in response to public comment, were mailed out for a 15-day comment period on July 7, 2010. The comment period closed on July 26, 2010. One comment was received during that time period which was identical to the previously rejected comment suggesting the removal of Question 6 on the Ballast Water Treatment Technology Reporting Form (Exhibit B). The comment was rejected again for the same reasons previously described.

### **STATUTORY AND OTHER REGULATIONS:**

- A. Public Resources Code Section 71200 through 71271

### **PERMIT STREAMLINING ACT DEADLINE:**

Notice of Rulemaking was published on January 21, 2010. Commission staff must submit the final file to the Office of Administrative Law no later than January 21, 2011.

### **OTHER PERTINENT INFORMATION:**

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of CEQA because it 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.

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).

### **EXHIBITS:**

- A. Text of Proposed Modified Regulations
- B. Ballast Water Treatment Technology Annual Reporting Form
- C. Ballast Water Treatment Supplemental Reporting Form

**CALENDAR ITEM NO. C47 (CONT'D)**

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. Find that the activity is not subject to the requirements of 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 and less burdensome to affected private persons than the proposed regulations.
5. Adopt the proposed amendment, which would add Section 2297.1, to Title 2, Division 3, Chapter 1, Article 4.7 of the California Code of Regulations, substantially in the form of those set forth in Exhibits "A, B and C," 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.