

**CALENDAR ITEM
C34**

- A)) Statewide
- S)

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**CONSIDER AMENDMENT TO REGULATIONS TO MODIFY THE DATE OF
IMPLEMENTATION FOR THE PERFORMANCE STANDARDS FOR THE
DISCHARGE OF BALLAST WATER FOR VESSELS OPERATING IN CALIFORNIA
WATERS**

PROPOSAL

As mandated by Section 71205.3 of the Public Resources Code (P.R.C.) the Commission's Staff is proposing to modify of permanent regulations of 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 purpose of the amendment to Article 4.7 is to modify Section 2294 Implementation Schedule for Interim Performance Standards for Ballast Water Discharges to reflect the change in statute.

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 introduction 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 (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. The purpose of the amendment to Article 4.7

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is to modify Section 2294 Implementation Schedule for Interim Performance Standards for Ballast Water Discharges to reflect the change in statute.

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 21084 and 14 Cal. Code Regs. 15300.

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

EXHIBITS:

- A. Proposed Amendment.
- B. Initial Statement of Reasons

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS,

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SECTION 15061 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 WITH 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 AMMEND ARTICLE 4.7, SECTION 2294, 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 THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.
7. DIRECT THE COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND

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AMENDMENTS AND TO ENSURE THAT THE AMENDMENT BECOME EFFECTIVE.

8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT AT SUCH TIME AS IT BECOMES EFFECTIVE.

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Title 2, Division 3, Chapter 1,

**Article 4.7 Performance Standards for the Discharge of Ballast Water For Vessels
Operating in California Waters**

**Section 2294. Implementation Schedule for Interim Performance Standards for
Ballast Water Discharges**

Section 2293 applies to vessels in accordance with the following schedule:

- (a) Beginning January 1, ~~2010~~ 2009, for vessels constructed on or after that date with a ballast water capacity of less than or equal to 5,000 metric tons.
- (b) Beginning January 1, 2012, for vessels constructed on or after that date with a ballast water capacity greater than 5,000 metric tons.
- (c) Beginning January 1, 2014, for vessels constructed before January 1, 2009, with a ballast water capacity of 1,500 metric tons or more but not more than 5,000 metric tons.
- (d) Beginning January 1, 2016, for vessels constructed before January 1, 2009, with a ballast water capacity of less than 1,500 metric tons or greater than 5,000 metric tons.

Authority: Sections 71201.7 and 71205.3, Public Resources Code

Reference: Sections 71201.7 and 71205.3, Public Resources Code

STATE LANDS COMMISSION

**REGULATIONS AMENDING THE DATE OF IMPLEMENTATION OF THE
PERFORMANCE STANDARDS FOR THE DISCHARGE OF BALLAST WATER FOR
VESSELS OPERATING IN CALIFORNIA WATERS**

Initial Statement of Reasons

Title 2, Division 3, Chapter 1, Article 4.7

SPECIFIC PURPOSE OF THE REGULATION

Senate Bill 1781 (Chapter 696, Statutes of 2008) amended Section 71205.3 of the Public Resources Code and modified the implementation schedule for the performance standards for the discharge of ballast water. The purpose of the amendment to Article 4.7 is to modify Section 2294 Implementation Schedule for Interim Performance Standards for Ballast Water Discharges to reflect the change in statute.

NECESSITY

The amendment to Section 2294 Implementation Schedule for Interim Performance Standards for Ballast Water Discharges of Article 4.7 is necessary to make the regulations consistent with the governing statute (PRC Section 71205.3), as amended by Senate Bill 1781 (Chapter 696, Statutes of 2008).

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

Not Applicable

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The Commission Staff has determined that there are no alternatives which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private parties.

SMALL BUSINESS IMPACTS.

The commission finds that the adoption of the amendment to Title 2, Division 3, Chapter 1, and Article 4.7 will not have a significant adverse impact on small business. None of the businesses that will be governed by these proposed regulations can be considered a "small business" as defined in Government Code Section 11342.610.

Title 2, Division 3, Chapter 1, Article 4.7

The following is the initial statement of reasons for each of the regulations. Prior to the explanation for each provision, the text of the regulation is set forth, indented and underlined.

Performance Standards for the Discharge of Ballast Water For Vessels Operating in California Waters

Section 2294. Implementation Schedule for Interim Performance Standards for Ballast Water Discharges

Section 2293 applies to vessels in accordance with the following schedule:

- (a) Beginning January 1, 2010 ~~2009~~, for vessels constructed on or after that date with a ballast water capacity of less than or equal to 5,000 metric tons.
- (b) Beginning January 1, 2012, for vessels constructed on or after that date with a ballast water capacity greater than 5,000 metric tons.
- (c) Beginning January 1, 2014, for vessels constructed before January 1, 2009, with a ballast water capacity of 1,500 metric tons or more but not more than 5,000 metric tons.
- (d) Beginning January 1, 2016, for vessels constructed before January 1, 2009, with a ballast water capacity of less than 1,500 metric tons or greater than 5,000 metric tons.

SPECIFIC PURPOSE OF THE REGULATION

This section presents and describes the implementation schedule for the interim performance standards described in Section 2293. Senate Bill 1781 (Chapter 696, Statutes of 2008) amended Section 71205.3 of the Public Resources Code and modified the implementation schedule for the performance standards for the discharge of ballast water. The purpose of the amendment to Article 4.7 is to modify Section 2294 Implementation Schedule for Interim Performance Standards for Ballast Water Discharges to reflect the change in statute.

NECESSITY

The amendment to Section 2294 Implementation Schedule for Interim Performance Standards for Ballast Water Discharges of Article 4.7 is necessary to make the

regulations consistent with the governing statute (PRC Section 71205.3), as amended by Senate Bill 1781 (Chapter 696, Statutes of 2008).

**ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD
LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS.**

The Commission Staff has determined that there are no alternatives which would be more effective in carrying out the purposes of the proposed regulation or would be as effective and less burdensome to affected private persons.