

NOTICE OF PROPOSED REGULATORY ACTION

TITLE 2. ADMINISTRATION DIVISION 3. STATE PROPERTY OPERATIONS CHAPTER 1. STATE LANDS COMMISSION ARTICLE 4.7. PERFORMANCE STANDARDS FOR THE DISCHARGE OF BALLAST WATER FOR VESSELS OPERATING IN CALIFORNIA WATERS

The California State Lands Commission (Commission) will decide whether to adopt the regulations described below after considering all comments on the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to amend Article 4.7 of Title 2, Division 3, Chapter 1 of the California Code of Regulations. The proposed regulatory action would amend the compliance dates for the California interim and final ballast water discharge performance standards, incorporate the federal ballast water discharge standards into California regulation, establish requirements to monitor the functionality of ballast water treatment systems, and ensure that the Commission has access to obtain ballast water and sediment samples for compliance assessment and research purposes.

Specifically, the proposed regulatory action would:

- Amend Section 2291 to clarify the applicability provision and establish an effective date for the new regulations.
- Amend Section 2292 to repeal or amend existing terminology included within Article 4.7 in addition to adopting new terms to ensure clarity.
- Amend Section 2293 to delay the interim and final California performance standards for ballast water discharges. Additionally, amend Section 2293 to adopt the performance standards for the discharge of ballast water set forth in Section 151.2030(a) of Title 33 of the Code of Federal Regulations in accordance with the implementation schedule in Section 151.2035(b) of Title 33 of the Code of Federal Regulations, as required by Public Resources Code section 71205.3.
- Repeal current Sections 2294, 2295, and 2296.
- Adopt new Section 2294 to establish that Commission staff must be provided access to sampling ports and tanks to collect and analyze ballast water for compliance assessment and ballast water and sediment samples for research purposes.
- Adopt new Section 2295 to require monitoring, calibration, and functionality assessments of ballast water treatment systems and to require system operation in accordance with the treatment system's System Design Limitations.

- Adopt new Section 2296 to establish the criteria for ballasting exclusively with water from a Public Water System as an acceptable alternative ballast water management method.
- Adopt Section 2297 to set requirements regarding recordkeeping.

The proposed actions would assist with the implementation of the provisions of Public Resources Code sections 71200, 71201.7, 71202, 71204, 71204.3, 71204.5, 71205.3, 71206, and 71213 in accordance with authority granted by Public Resources Code sections 71201.7, 71202, 71204.3, 71204.5, and 71205.3.

WRITTEN COMMENT PERIOD

Any interested person or authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes on January 19, 2021. The Commission must receive all written comments by the end of that day. Submit written comments to:

Lina Ceballos-Osuna
Senior Environmental Scientist
Marine Invasive Species Program
Marine Environmental Protection Division
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento CA 95825

Written comments may also be submitted by email to cslc.mepdregulations@slc.ca.gov. Please include “**Article 4.7 Comments**” in the subject line of the email.

PUBLIC HEARING

Commission staff has not scheduled a public hearing on this proposed action. However, the Commission will hold a public hearing, pursuant to Government Code section 11346.8, if it receives a written request for a public hearing from any interested person, or authorized representative, no later than 15 days prior to the close of the written comment period.

AUTHORITY AND REFERENCE

Authority: Public Resources Code Section 71201.7 provides the Commission with the authority to adopt regulations as necessary to implement the provisions of the Act.

Public Resources Code sections 71204.3 and 71204.5 direct the Commission to adopt regulations governing ballast water management practices for vessels arriving at California ports. Public Resources Code section 71205.3 directs the Commission to adopt the federal ballast water discharge standards and to delay the implementation date of the California interim and final performance standards.

Reference: The proposed regulations would implement, interpret, and make specific Public Resource Code sections 71205.3 (by adopting the federal standards and delaying the implementation date of the California standards), 71206, 71204, subd. (g), and 71213 (by clarifying requirements for allowing the Commission to take ballast water samples from arriving vessels to assess compliance and for research), 71204.3 and 71204.5 (by clarifying requirements for monitoring and operating ballast water treatment systems), and 71200 (by adding and modifying definitions used in the rest of Article 4.7).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

On January 1, 2020, AB 912 (Chapter 433, Statutes of 2019) became effective, amending sections of the Public Resources Code governing the Commission's Marine Invasive Species Program. The amendments direct the Commission to adopt regulations that require a master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water that arrives at a California port (hereafter "vessel") to implement the ballast water discharge performance standards set forth in Section 151.2030, subdivision (a) of Title 33 of the Code of Federal Regulations, or as that regulation may be amended. Public Resources Code section 71205.3 also requires the Commission to adopt regulations requiring a master, owner, operator, or person in charge of a vessel to comply with the implementation schedule set forth in Section 151.2035, subdivision (b) of Title 33 of the Code of Federal Regulations, or as that regulation may be amended, except as prescribed in Section 151.2036 of Title 33 of the Code of Federal Regulations, or as that regulation may be amended.

The proposed regulations would amend Article 4.7 of Title 2, Division 3, Chapter 1 of the California Code of Regulations. These amendments would amend the compliance dates for the California interim and final ballast water discharge performance standards, incorporate the federal ballast water discharge standards into California regulations, establish requirements to monitor the functionality of ballast water treatment systems, require that the Commission has access to obtain ballast water and sediment samples for research purposes and compliance assessment, and require vessels to keep certain records onboard and available for Commission staff to inspect.

The performance standards for ballast water discharges and the associated implementation schedule in proposed Section 2293, subdivision (a) are identical to those in current federal regulations, title 33 of the Code of Federal Regulations, sections 151.2030 and 151.2035, subdivision (b). However, without adopting these standards into California law, the Commission lacks authority to assess compliance and enforce these standards. Adopting the federal standards is beneficial because it will allow Commission staff to enforce these standards. While the U.S. Coast Guard is authorized to enforce the federal ballast water standards, it may not have the resources to inspect as many vessels for compliance with ballast water requirements as the Commission. Therefore, the Commission's ability to enforce the federal performance standards for the discharge of ballast water is expected to reduce the introduction of nonindigenous species by increasing inspection rates and promoting compliance with the performance standards.

The performance standards and implementation dates in proposed Section 2293, subdivisions (b) and (c) are particular to California law only but do not conflict with federal law because the compliance dates (January 1, 2030 for proposed Section 2293, subdivision (b), and January 1, 2040 for proposed Section 2293, subdivision (c)) are far in the future; regardless, the Commission is required by Public Resources Code section 71205.3 to adopt these regulations. The alternative ballast water management method proposed in Section 2296, to ballast with water from a Public Water System, is consistent with 33 CFR § 151.2035(a).

There are federal regulations that are comparable to the recordkeeping requirements in proposed Section 2297, such as 33 CFR 151.2070(d), which requires that certain records be kept available for Coast Guard inspectors for two years, and includes records taken by the control and monitoring equipment showing proper functioning, failures, calibration and repair events; while not identical, the proposed regulations are not expected to conflict with these comparable federal regulations. Both the Coast Guard's regulations and the Commission's regulations require these records to be kept on board the vessel and readily viewable during inspections. While the Commission's proposed regulations provide more specificity about what kind of monitoring information must be included, vessels can comply with both the Coast Guard's and the Commission's regulations without unreasonably impacting operations.

Establishing requirements for monitoring the functionality of ballast water treatment systems will help ensure these systems are operating as intended to effectively remove organisms from ballast water prior to discharge. Establishing the Commission's authority to take samples for research purposes will enable staff to collect data that can inform the development of future performance standards.

Anticipated Benefits of the Regulations

The proposed regulations would incorporate the federal ballast water performance standards into California law, delay the compliance dates for California's interim and final performance standards, prohibit discharge from vessels that do not operate their ballast water treatment systems according to the System Design Limitations and manufacturer's instructions, require that Commission staff be given access to sampling ports and ballast water tanks to take samples for research and compliance purposes, and impose recordkeeping requirements. The proposed regulations do not make changes to existing worker safety requirements, and the proposed requirement related to allowing Commission staff to take ballast water samples is subject to an exception for safety concerns.

The proposed regulations are expected to benefit both the State's environment and the health and welfare of California residents. Promulgation of the federal ballast water discharge standards into the Commission's regulations and prohibiting discharge from vessels which are not operating their ballast water treatment systems properly will promote the Marine Invasive Species Act's goal of moving the state expeditiously toward elimination of the discharge of nonindigenous species into the waters of the state or into water that may impact the waters of the state, based on the best available technology economically achievable. Nonindigenous species cause significant impacts to California's economy, human health, and the environment, and commercial shipping is a primary pathway for the introduction of nonindigenous species into California's waters. While the U.S. Coast Guard is authorized to enforce the federal ballast water standards, it may not have the resources to inspect as many vessels for compliance with ballast water requirements as the Commission. Therefore, the Commission's ability to enforce the federal performance standards for the discharge of ballast water is expected to reduce the introduction of nonindigenous species by increasing inspection rates and promoting compliance with the performance standards.

In addition, the proposed regulations will allow the Commission to collect samples for research and therefore be able to compile data that will increase the current knowledge about the functionality of ballast water treatment systems and the ability of these systems to meet discharge standards. Currently, there is very limited published data available, so the Commission's ability to collect this data would significantly aid with refining ballast water discharge standards in the future.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

During the process of developing the proposed amendments, the Commission has conducted an evaluation for any related regulations. The proposed regulations are consistent and compatible with existing state regulations governing the management of ballast water discharges. No other state agency has authority to promulgate ballast water discharge performance standards. The proposed regulations adopt federal performance standards for ballast water discharge, adopt requirements for the operation of ballast water treatment systems, and adopt procedures to assess vessel compliance with performance standards for the discharge of ballast water. There are no other state regulations that establish methods of assessing vessel compliance with the state's ballast water performance standards.

DETERMINATION ON MAJOR REGULATION DESIGNATION

Commission staff has determined that this proposed regulatory action is not a major regulation as defined by Government Code section 11342.548. This proposed action incorporates into California regulations the ballast water discharge standards that the regulated community is already required to comply with under federal law and delays implementation of the California interim and final performance standards. Because the regulated community is already required to comply with the federal standards, adoption of these standards into state regulation will not impose additional costs to the maritime shipping industry.

The costs associated with the implementation of the proposed regulations would largely be to the State in the form of the Commission's need to acquire compliance monitoring devices to perform rapid indicative assessments of organism abundance in ballast water samples during onboard inspections and to pay for detailed sample analysis of ballast water; staff expects these costs to range from \$10,000 to \$140,000 annually (see details in the Economic Impact Analysis).

LOCAL MANDATE

Commission staff has determined that the proposed regulatory action does not impose any mandates on local agencies or school districts.

FISCAL IMPACTS

Commission staff has determined that this proposed regulatory action:

- imposes no mandates or costs requiring State reimbursement to any local agency or school district pursuant to Government Code sections 17500 et seq.;
- may result in an estimated cost of \$10,000 to \$140,000 to the Commission. These costs are included in the state form STD. 399 and discussed in the Economic Assumption sheet included as part of the rulemaking record. No costs or savings are anticipated for any other state agency from this proposed action;
- will have no other nondiscretionary costs or savings imposed on local agencies; and
- will have no impact on costs or savings in federal funding to the State.

HOUSING COSTS

Commission staff has determined that this proposed action will have no impact on housing costs.

STATEMENT REGARDING ADVERSE ECONOMIC IMPACTS DIRECTLY AFFECTING BUSINESSES, INCLUDING ABILITY TO COMPETE

Commission staff has determined that the proposed regulations will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Through the Economic Impact Assessment, Commission staff has determined that the proposed regulations:

- (1) will have no significant impact on the creation or elimination of jobs within the State of California;
- (2) will have no significant impact on the creation or elimination of existing businesses within the State of California; and
- (3) will have no significant impact on the expansion of businesses currently doing business within the State of California.

Commission staff has determined that the proposed regulations will benefit:

- (1) the State's environment by:
 - Enabling the Commission to assess and enforce compliance with the federal ballast water discharge performance standards, reducing significantly the risk of nonindigenous species introduction into California waters; and
 - reducing the likelihood of future environmental, human health, and economic impacts resulting from the introduction and establishment of nonindigenous species.

(2) the health and welfare of California residents by ensuring that vessels operating within California comply with the provision of the Act. This will reduce the risk of vessel-mediated introductions of:

- pathogens and parasites; and
- harmful and invasive nonindigenous species (for example, harmful algal blooms and toxic diatoms).

COST IMPACTS ON REPRESENTATIVE PERSONS OR BUSINESSES

There are no new costs imposed on persons or businesses by the proposed amendments. The regulated community is already obligated under federal law to comply with the federal performance standards in the proposed regulations; therefore, the Commission is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the ballast water discharge performance standards. None of the other proposed amendments, including, delaying the interim and final California performance standards, requiring access to sampling ports, and requiring recordkeeping, impose any costs on the regulated community.

SMALL BUSINESS DETERMINATION

The Commission staff finds that the adoption of this proposed action will not have a significant adverse economic impact on small businesses. The Commission is not aware of any small businesses that would be subject to the proposed regulations, but there may be some. However, since vessel owners and operators are already subject to the federal performance standards for ballast water discharge, the proposed regulations adopting these standards will not add any economic burden. Additionally, requiring adherence to the manufacturer's specifications and terms of treatment system approval would not impose an additional cost because federal law already requires vessel operators to operate treatment systems according to the specifications and terms of approval. Finally, the recordkeeping requirements are not expected to impose an economic burden.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the

purpose for which the action is proposed, 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 provision of law. The Commission invites interested persons to submit comments on potential alternatives to the proposed regulation during the written comment period.

CONTACT PERSONS

Direct inquiries concerning the substance of the proposed regulations to:

Lina Ceballos-Osuna
Senior Environmental Scientist
Marine Invasive Species Program
Marine Environmental Protection Division
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento CA 95825
Telephone: (916) 574-1864
Email: lina.ceballos@slc.ca.gov.

or: Emma Kennedy
Staff Attorney
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-0958
Email: emma.kennedy@slc.ca.gov

Requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Lina Ceballos-Osuna
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Marine Invasive Species Program
Marine Environmental Protection Division
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento CA 95825
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Email: lina.ceballos@slc.ca.gov.

AVAILABILITY STATEMENTS

Commission staff will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the Sacramento office listed above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, including the economic impact assessment, and relevant sources of information upon which the proposed rulemaking is based. Interested parties may obtain copies of any of the aforementioned files by contacting Lina Ceballos-Osuna as listed above, or by visiting the website listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT OF ORIGINALLY PROPOSED REGULATIONS

After considering all timely and relevant comments, the Commission may adopt the proposed regulation as described in this notice. If Commission staff makes any substantial and sufficiently related modifications to the proposed text, the modified text with changes clearly indicated will be made available to the public for at least fifteen days prior to the date that the Commission adopts the regulation. Interested parties shall send requests for copies of the modified regulation, if applicable, to the attention of Lina Ceballos-Osuna at the address indicated above. The Commission will accept written comments on the modified regulation for at least fifteen days after the date that it is available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, interested parties may obtain a copy of the Final Statement of Reasons by contacting Lina Ceballos-Osuna at the address, telephone number, or email address listed above or by accessing the website listed below.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice of proposed rulemaking, the initial statement of reasons, the proposed text of regulations, the economic impact assessment, relevant documents, and any future changes or modifications to the proposed text can be accessed through our website at: <http://www.slc.ca.gov>.