

**CALENDAR ITEM  
C77**

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03/25/08  
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**CONSIDERATION OF REGULATIONS RESETTING THE FEE USED TO FUND  
CALIFORNIA’S MARINE INVASIVE SPECIES CONTROL PROGRAMS**

**PROPOSAL:**

The Commission proposes to amend Section 2271 under Article 4.5 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). This section would amend the fee to be paid by vessels calling at California ports (the Fee). The Fee is to be used for the Marine Invasive Species Control Fund (the Fund) under Division 36 of the Public Resources Code (P.R.C.) entitled, “Marine Invasive Species Act,” established under Chapter 491, Statutes of 2003 (the Act). The proposed regulation would establish a Base Fee of six hundred twenty five dollars (\$625) per vessel per voyage if the vessel has traveled outside of California. The proposed regulation would also implement an Annual Qualifying Voyage Fee Adjustment based on an Adjustment Formula utilizing the Consumer Price Index. Provisions are also included that authorize the Commission’s Executive Officer to appoint a technical advisory group (TAG) to provide recommendations with regard to the Fee.

**BACKGROUND:**

Under Section 71215(b)(2) of the Public Resources Code (P.R.C.), the Commission is authorized and directed to establish a fee (the Fee) to be used to fund the State’s marine invasive species program. The fee is currently capped at \$1000 per voyage, defined as a transit by a vessel destined for any California port from a port or place outside of California, but can be adjusted for inflation biennially.

The Fee was established initially at \$600 per voyage and has been reset (increased or decreased) via regulations several times since the January 1, 2000. For example, in 2003, the Governor and the Legislature reauthorized, expanded and renamed the law (Division 36. Marine Invasive Species Act, Chapter 491, Statues of 2003). Accordingly, programs and budgets expanded as did the Fee. In 2006, the Governor and the Legislature again reauthorized and

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further expanded the law and removed the 2010 sunset date. As a result, programs and budgets further expanded. Annual review of the Fund status by Board of Equalization and State Land Commission staff predicts that under conservative assumptions, a continued Fee set at \$400 will not cover budgetary needs beginning mid-2008.

Representatives from the community subject to the fee have concurred with the imposition of a flat fee for each voyage. Since January of 2000, the Commission Staff has met periodically with representatives from the regulated community in a Technical Advisory Group ("the TAG"). In 2000, the TAG took note of the fact that the budgets for the various programs through the end of 2003 have largely been established, so costs are essentially fixed. As a result, any reduction in the Fee for some would result in an increase in the Fee for others. The TAG therefore recommended a flat Fee for everyone.

The amount of the Fee earlier charged was based upon an analysis that entailed a number of assumptions, the primary one being that the financial needs for the program will be in accordance with the Budget Change Proposals, which have been submitted to date. The other two assumptions were that the State would see about 8500 voyages each year against which the Fee could be levied and that the State would likely see a compliance rate of approximately 95%. These figures were based upon the experience of the shipping community and the Board of Equalization. Calculations were therefore based upon 8500 qualifying voyages per year. With these assumptions, the Commission and the TAG concluded that the Fee could be set at \$400 per voyage.

In August 2007, staff from BOE and CSLC, after reviewing costs and other factors, recommended that the Fee be reset to \$700 per qualifying voyage. The TAG was asked to respond to this proposed Fee increase in October and November 2007. During the October 2007 meeting, TAG members asked the staff to consider an alternative Fee model, which would establish a base fee and an annually adjusted qualifying voyage fee based on the consumer price index (CPI Fee Model). Staff investigated this fee model and determined that it would have similar affects on the Fund as the existing fee model. Staff presented both models to TAG members in November 2007. The majority of TAG members recommended Staff adopt the CPI Fee Model. This regulatory action would, for the first 12-month period of this regulation, commencing on or about April 1, 2008, establish the Base Fee of six hundred and twenty five dollars (\$625) per vessel voyage. After the first 12-month period of this regulation, the owner or operator of a vessel shall pay an amount per qualifying voyage, called the

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“Annual Qualifying Voyage Fee”, which is determined in accordance with subsection (b) entitled “Annual Qualifying Voyage Fee Adjustment Formula”, of this section. The Commission and the TAG concluded that this fee model would be sufficient to cover the program costs though FY 2013/2014.

The amount of the Base fee under this Law may be modified in the future. If the Commission finds that collection rates are higher or lower than anticipated, the Commission will have to consider again the appropriate amount of the Base fee. If that action is necessary, the modification will be made as an amendment to these regulations.

The Commission Staff considered alternatives to the proposed amendments, but found none that would be more effective in carrying out the purpose for which the action is proposed and less burdensome to those who would be affected.

**STATUTORY AND OTHER REGULATIONS:**

A. P.R.C. Sections 71200 through 71271

**PERMIT STREAMLING ACT DEADLINE:**

N/A

**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 the CEQA because it is not a “project” as defined by the 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 Gov. C. 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. C. section 11342, sub. (h)(2)(I)(vii).

**EXHIBIT:**

- A. Proposed Amendments.

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**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 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 AMEND ARTICLE 4.5, SECTIONS 2271, 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 ON OR ABOUT APRIL 1, 2008.
6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.

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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 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.

**Title 2, Division 3, Chapter 1**  
**Article 4.5. Marine Invasive Species Control Fund Fee**

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Section 2271. Fee Schedule for Marine Invasive Species Control Fund

(a) (1) Base and Annual Qualifying Voyage Fee. For the first 12-month period of this regulation commencing on or about April 1, 2008, the Base Fee fee required under Public Resources Code Section 71215 is ~~four~~ six hundred twenty five dollars (~~\$625~~) (\$400) per vessel voyage. After the first 12-month period of this regulation, the owner or operator of a vessel shall pay an amount per qualifying voyage, called the "Annual Qualifying Voyage Fee", which is determined in accordance with subsection (b) entitled "Annual Qualifying Voyage Fee Adjustment Formula", of this section.

(2) The Commission may elect to establish a new Base Fee. The new Base Fee shall be established through an assessment of the Fund condition, the number of vessel voyages, and changes in expenditures as a result of legislative changes, and in consultation with the technical advisory panel described in Subsection(e)(1) and (2). The new Base Fee shall thereafter be used to establish the Annual Qualifying Voyage Fee for subsequent years, through application of the provisions of Subsection (b)(1), (2) and (3) of this division unless and until a new Base Fee is established.

(b) Annual Qualifying Voyage Fee Adjustment Formula

(1) The following formula, hereafter called the "Adjustment Formula," shall be used to determine the adjusted Annual Qualifying Voyage Fee:

$$\left[ \frac{\text{Current CPI} - \text{Prior CPI}}{\text{Prior CPI}} + 1 \right] \times \text{Previous Year's Fee} = \text{Adjusted Annual Qualifying Voyage Fee}$$

(2) For the purposes of this division, "CPI" means the value indicated for each specified month in the U.S. Department of Labor, Bureau of Labor Statistics "CPI Detailed Report" published regularly, with reference to the numeric reported indexes for a specified month of such year. Consumer Price Index for All Urban Consumers, West Region (1982-84 = 100), CUUR0400SAO or its successor index. The December CPI value for All Urban Consumers, West Region will be used in the fee adjustment formula.

(3) Except as otherwise provided in this Subsection (b), the Annual Qualifying Voyage Fee shall be adjusted annually as of the first of April of each year regardless of whether application of the Adjustment Formula results in an Adjusted Annual Qualifying Voyage Fee which is greater or lesser than the

Previous Year's Fee, but the Adjusted Annual Qualifying Voyage Fee will never be lower than the Base Fee.

(4) On or about the 15<sup>th</sup> day of January of each year, Commission staff shall perform the calculation and publish on the Commission's web site, the amount of the Annual Qualifying Voyage Fee as recalculated each year.

~~(b)~~(c) The Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of the fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

~~(e)~~(d) The fee shall be collected from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

~~(d)~~ (e) (1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the fee required under Public Resources Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the fee, taking into account the provisions of Public Resources Code Sections 71200 through 71216.

(2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

Authority: Public Resources Code Section 71215(b)

Reference: Public Resources Code Sections 71200 and 71215