

**CALENDAR ITEM
C47**

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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 Sections 2270 and 2271 under Article 4.5 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). Section 2270 is being amended as a change without regulatory effect under Title 1, Division 1, Article 2, §100(a)(6). As of January 1, 2008, AB 740 (Chapter 370, Statutes of 2007) amended PRC Section 71200 (definitions) which renumbered the definition of “Voyage.” This change to statute requires a change to the Reference citation at the end of Section 2270. The Reference cited is amended from 71200 (m) to 71200 (q). Section 2271 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 set the fee at eight hundred fifty dollars (\$850) per vessel per voyage if the vessel has traveled outside of California. 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:

P.R.C. Section 71215 created the Fund and requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Marine Invasive Species Act. It also mandates that the Fee may not exceed one thousand dollars (\$1,000) per vessel voyage. This amount may be adjusted for inflation every two years. Under P.R.C. Section 71215(c), the State Board of Equalization shall collect the fee from the owner or operator of each vessel that arrives at a California port of place from a port or place outside 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

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California or moved outside the U.S. Exclusive Economic Zone (EEZ) prior to arrival at the subsequent California port or place.

The Fee was established initially at \$600 per voyage and has been reset (increased or decreased) via regulations several times since 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, Statutes of 2003). Accordingly, programs and budgets expanded as did the Fee. In 2006, the Governor and the Legislature again reauthorized and 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 (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 charged earlier 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 percent. These figures were based upon the experience of the shipping community and the Board of Equalization (BOE). Calculations were therefore based upon 8500 qualifying voyages per year. With these assumptions, the Commission (CSLC) 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

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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 "Annual Qualifying Voyage Fee", which is determined in accordance with subsection (b) entitled "Annual Qualifying Voyage Fee Adjustment Formula", of this Article.

The amount previously charged for the Fee 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. These call for expenditures of \$4,043,000 in Fiscal Year (FY) 2007/2008, \$4,493,000 in FY 2008/2009, \$4,536,000 in FY 2009/2010, and \$4,450,000 in FY 2010/2011. The other two assumptions were that the State would see about 7350 voyages each year against which the Fee could be levied, and that the State would likely see a compliance rate with Fee submittal of approximately 95 percent. These figures were based upon the experience of the shipping community and the BOE. Calculations were therefore set using 7000 qualifying voyages per year. With these assumptions, the Commission and the TAG concluded that the Base Fee could be set at \$625 per voyage.

During an annual review of the Fund status by BOE and Commission staff in January 2009, several assumptions used to set the Fee at \$625 per voyage were reevaluated. Currently, the State is seeing a compliance rate of approximately 98 percent; however, due to the global economic crisis the number of qualifying voyages arriving to California annually has decreased dramatically to approximately 5700. Projections provided by the maritime industry suggests further decreases in billable voyages to an estimated 5350 voyages annually through the year 2010. Based on the current Fee amount of \$625 per voyage, and the revised assumptions, projections estimate that revenues will not meet the costs of the Program mandated under the Act. Utilizing the revised assumptions, the Commission and the TAG concluded that the Fee could be set at eight hundred fifty dollars (\$850) per qualifying voyage, beginning on or about October 1, 2009. The TAG also decided that the CPI model was inadequate for adjusting the Fee, given its inability to address fluctuations in variables that affect revenues, such as Fee compliance rates and the volume of vessel traffic to California ports. The TAG therefore recommended returning to the flat fee model instead of the CPI Model. The Commission and the TAG concluded that this fee model would be sufficient to cover the

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program costs though FY 2010/2011.

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

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 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. Proposed Amendments.

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

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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 AMEND TITLE 2, DIVISION 3, CHAPTER 1, ARTICLE 4.5, SECTION 2271, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM SET FORTH IN EXHIBIT "A", TO BECOME EFFECTIVE ON OR ABOUT OCTOBER 1, 2009.
6. AUTHORIZE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS 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.

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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
~~Effective August 1, 2008~~ September 1, 2009

Section 2270. Marine Invasive Species Act; Definitions.

For purposes of this Article, the following definitions apply.

- (a) "Voyage" means any transit by a vessel destined for any California port from a port or place outside of the coastal waters of the state.
- (b) "Waters of the state" means any surface waters, including saline waters that are within the boundaries of the state.

Authority cited: Public Resources Code Section 71215 (b)

Reference cited: Public Resources Code Sections 71200 ~~(m)~~, (o), (g) and 71215

Section 2271. Fee Schedule for Marine Invasive Species Control Fund.

- (a) ~~Base and Annual Qualifying Voyage Fee. For the first 12-month period of this regulation commencing on or about, August 1, 2008, the Base~~ The Fee required under Public Resources Code Section 71215 is eight hundred fifty dollars (\$850) ~~six hundred 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 "Annual Qualifying Voyage Fee", which is determined in accordance with subsection (b) entitled "Annual Qualifying Voyage Fee Adjustment Formula", of this section.~~
- (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 for each year subsequent to 2008:~~

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

- (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 August 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 15th 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.~~

~~(e)~~ (b) 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.

~~(d)~~ (c) 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.

~~(e)~~ (d) (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