

REVISED NOTICE OF PROPOSED RULEMAKING

TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in Title 4, Division 9, Chapter 8, Motor Oil Fee.

The Department has determined that it is necessary to provide a third Revised Notice of Proposed Rulemaking regarding an increase to the Motor Oil Fee. Changes have been made to the Notice, Initial Statement of Reasons, and the regulation text to provide clarity.

The Department proposes to amend regulations contained in Title 4, Division 9, Chapter 8, to increase the motor oil assessment fee to \$0.04 per gallon and to modify the reporting, refund, and recordkeeping requirements for motor oil dealers including the implementation of a "Motor Oil Fee Return Form."

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95828. Comments may also be submitted to Kevin Batchelor, Chief, Enforcement Branch, by facsimile (FAX) at (916) 229-3026 or by e-mail at DMS@cdfa.ca.gov. Comments must be submitted prior to 5:00 p.m. on September 24, 2012.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Oil Substitution Act was enacted in 1931 (Stats 1931, Chapter 609). The provisions of that legislation are found in the Business and Professions Code (BPC), Division 5, Chapters 14, 14.5 and 15. The California Legislature determined that an act to prevent fraud or misrepresentation in the distribution and sale of gasoline and other motor fuels, distillate, kerosene and lubricating oil; regulating the distribution and sale of those products; regulating the advertising of gasoline or other motor vehicle fuels; and, prescribing specifications for products sold or offered for sale was necessary for the safety of motorists within California. The Department's Division of Measurement Standards (Division) Petroleum Products Program (Program) was given the responsibility for establishing and enforcing the quality standards for gasoline, diesel fuel, alternative engine fuels, motor oil, gear oil, kerosene, brake fluid, automotive transmission fluid, and engine coolants sold in California. Products, produced and offered for sale, are sampled and tested in the Program's laboratories to verify that they meet the established quality, performance and drivability standards established in state law as well as advertising and labeling of products. For the last 80 years, the Program has overseen the quality of the petroleum and automotive products sold in California.

The Program has continually made an effort to keep costs to a minimum and obtain the greatest benefit for each dollar spent. In 1979, legislation was enacted that replaced the Motor Fuel Pump License funding for the Program with a fee assessed on each gallon of motor oil manufactured or imported into California. This system of funding was developed through a cooperative effort on the part of the motor oil industry. The maximum fee was set at two cents (\$0.02) per gallon with the

provision that the Department could, by regulation, establish a lower rate when the funds collected were more than necessary for the administration and enforcement of Chapters 14 and 15 of Division 5 of the Business and Professions Code. The fee was initially set at \$0.014 per gallon and in 1996 the fee was increased to its maximum of \$0.02 per gallon. No General Fund monies have been allocated to the Program.

Even though the number of vehicles in operation in California has increased over the last ten years, the consumption of motor oil has remained constant due to smaller engines requiring fewer quarts of oil and extended oil change intervals.

Additional tasks have been delegated to the Program under the provisions of Chapters 14 and 14.5 without additional funding, which, coupled with inflation has accelerated the depletion of the Program's funds, i.e.:

- Legislation passed in 1999 placed the Provision for Air, Water and Pressure Gauges for service stations and required the Program to monitor and enforce. Originally the legislature provided general funds to enforce this program function, but these funds were removed during budget reductions in 2001. (BPC Section 13651)
- In 2002, the Program was tasked with oversight of the Developmental Engine Fuels Variance Program. (BPC Section 13405)

Thus, revenue has been unable to keep up with program costs.

Effective January 1, 2010 the fee cap was increased to \$0.05 per gallon and was immediately established at \$0.03 per gallon by legislation. The legislation allows the Department to amend the current regulations to re-establish the motor oil assessment fee amount (Stats 2010, Chapter 260). That \$0.01 increase partially mitigated the revenue shortfall but is not sufficient to maintain the Program.

The Department proposes to establish that fee at \$0.04 per gallon to maintain the current level of oversight and enforcement of the law and to provide for replacement of laboratory equipment that is outdated and for which parts are no longer available. Additionally, the Department is proposing to clarify and make more specific the reporting, refund and recordkeeping requirements on the "Motor Oil Fee Return Form" (Version 06/30/12) hereafter incorporated by reference. The motor oil fee increase and other clarifications will allow the Program to continue its mandated responsibilities to verify the quality of petroleum and automotive products being sold to the motoring public and prevent fraudulent or misleading advertising of these products in the marketplace. The Department will complete a comprehensive report on or before December 31, 2016 detailing: where and how income has been spent, an accounting of the capital improvements program, a review of efficiencies achieved during the four-year period, and an evaluation of income needs going forward.

There is no comparable federal regulation or statute that regulates the quality, advertising or labeling of petroleum and automotive products necessary for the operation of a motor vehicle.

The Department has determined that this proposal is not inconsistent or incompatible with existing state regulations.

SECTIONS AMENDED
Chapter 8

The current Section 4300 is repealed and replaced with the following new Section 4300:

4300. Definition of “Motor Oil” and Other Terms for Purposes of Fee Responsibility.

This section defines the terms “Motor Oil”, “Additive”, “Internal Combustion Engine”, “Motor Oil Dealer Permit Number”, “Date of Sale”, “Motor Oil Dealer”, “Quarter”, and “Export or Exported”.

The current Section 4302 is repealed and replaced with the following new Section 4302:

4302. Fee Responsibility and Exemption.

This section identifies who is responsible for payment of the motor oil fees, conditions under which a Motor Oil Dealer is to notify the Department upon ceasing operations dealing with motor oil and, exemptions from payment of the motor oil fee.

The current Section 4304 is repealed and replaced with the following new Section 4304:

4304. Fees and Returns.

This section establishes the motor oil fee amount, payment schedule, due dates, payment return information requirements and provisions for annual payment for small volume sales or purchases of motor oil.

New Section 4305 is established:

4305. Authority to Determine Compliance.

This section clarifies the authority of the Department to audit, examine, review, inspect, or otherwise determine the compliance or noncompliance of any motor oil dealer.

The current Section 4306 is repealed and replaced with the following new section 4306:

4306. Penalties.

This section specifies the penalties for late or nonpayment of the motor oil fee at ten percent of the amount due. The one percent per month penalty for nonpayment beyond one year will be repealed.

The current Section 4307 is repealed and replaced with the following new Section 4307:

4307. Refund of Fees Paid.

This section clarifies the procedures for requesting a refund of motor oil fees paid on motor oil that was subsequently exported from California.

The current Section 4308 is repealed and replaced with the following new Section 4308:

4308. Records.

This section clarifies recordkeeping requirements for motor oil dealers and provides for a comprehensive report from the Department on or before December 31, 2016.

New Section 4309 is established:

4309. Motor Oil Fees Reimbursement.

This section allows the Motor Oil Dealers who have reported the motor oil fees to the Department to reimburse themselves from their customers. It also provides options to demonstrate that the motor oil fee was collected.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that this proposal does not impose a mandate on local agencies or school districts.

The Department also has determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposal will have a statewide significant adverse economic impact affecting those businesses required to pay the Motor Oil Fee because the proposal raises the current fee by 33 percent (increasing from \$0.03 to \$0.04 per gallon). The increase is necessary because the Department will be unable to carry out its mandated enforcement responsibilities and maintain a reasonable reserve with the current fee set at \$0.03 per gallon. The Department has worked with industry stakeholders and determined that a fee of \$0.04 per gallon for a period of five years will minimally impact businesses paying the fee and also allow the Department to carry out its mandated functions.

The Department has made an initial determination that the amendments to the current regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department has considered alternatives that would lessen the adverse economic impact on business and invites individuals to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from regulatory requirements for businesses.

The Department has determined that only businesses that first produce motor oil in California or first import motor oil into California would be affected by this regulatory proposal. This proposal will require businesses to report on a quarterly basis the gallons of motor oil produced or imported into California, multiplied by the motor oil fee and send the form along with the proper payment amount to the Department. The reporting on a "Motor Oil Fee Return Form" (Version 6/30/12) hereby incorporated by reference, will be supplied by the Department. The proposal also will require businesses requesting a refund of motor oil fees paid for motor oil transported outside of California, to submit to the Department the information specified in the regulation, i.e., a letter requesting the refund signed by the company owner or an authorized person within the company, a ledger sheet tabulating purchases and exports, copies of invoices showing that the motor oil fee was paid, bills of lading or shipping documents showing the motor oil was shipped out of California. The proposal limits refunds to three years from the time of payment of the motor oil fee.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department has determined that there will be an economic impact on businesses that currently pay the Motor Oil Fee by increasing the current fee amount of \$0.03 to \$0.04 which is an increase of 33 percent.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

To the best of the Department's ability, an assessment has been made that the proposed regulation will not: (1) create jobs within California; (2) create new businesses within California; or (3) affect the expansion of businesses currently doing business within California. The benefits of this regulation to the safety of California motorists are continued testing to ensure the quality of the products necessary to operate a motor vehicle, i.e., gasoline, diesel, motor oil, gear oil, automatic transmission fluid, engine coolant, and brake fluid, so that their vehicles will operate properly. It will also ensure that costs related to the mandated enforcement of California Business and Professions Code Chapters 14, 14.5 and 15 will be covered and that a reasonable reserve fund will be maintained. The Department has worked with industry stakeholders to identify the most appropriate fee level. For a period of five years, the new fee will result in a loss to motor oil dealers of \$0.01 per gallon and could increase the cost of motor oil by \$0.01 per gallon to consumers.

EFFECT ON SMALL BUSINESS

The Department has made an assessment that the proposed regulations may have an effect on small business. The Department has worked with industry stakeholders, including those that represent small businesses, to minimize the impact of the fee to all businesses. The fee increase

represents a 33 percent increase from the current fee; however, it was considered a reasonable increase in order to continue enforcement responsibilities and maintain a reasonable reserve. Small businesses will benefit from a reduction in reporting frequency.

BUSINESS REPORTING REQUIREMENT - FORMS

The Department is proposing to clarify and make more specific the reporting for the motor oil fee on the “Motor Oil Fee Return Form” (Version 06/30/12), the refund procedure for return of motor oil fees paid on motor oil exported from California, and recordkeeping requirements for affected businesses.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative 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 as, 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.

Business and Professions Code, Division 5, Chapter 14, Article 4, Section 13432 states that the fees provided in Section 13431 (\$0.05 per gallon) “are maximum fees and may be established at a lower rate by the director at any time the funds derived from such assessment are more than reasonably necessary to cover the cost of administration and enforcement of this chapter, including the maintenance of a reasonable reserve fund for such purposes.” Section 13433 directs the Department to “prescribe the frequency of payments of such assessments, the procedures for such payment, the procedures for refunds of payment, and penalties for late payment.” The Department must determine that this regulatory proposal is the only alternative effective for the purpose of carrying out those directives.

AUTHORITY

Pursuant to the BPC, Division 5, Sections 12027, 13431, 13432 and 13433.

REFERENCE

The Department proposes to amend the current regulations to implement, clarify and make specific the provisions of the BPC Section 13430 through 13434.

CONTACT PERSON

Inquiries about the notice may be directed to Kevin Batchelor, Chief, Enforcement Branch, or Kristin Macey, Director, Division of Measurement Standards at (916) 229-3000.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared a revised Initial Statement of Reasons for the proposed action, with all the information upon which its proposal is based, and has the express terms of the proposed action available. A copy of this document may be obtained upon request. The rulemaking file and all information on which the proposal is based are located at the Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95828 and also may be obtained upon request. Additionally, electronic versions of these documents for this rulemaking file may be obtained from the Department's web site located at www.cdfa.ca.gov/dms.

Following the written 45-day comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differs from, but is sufficiently related to, the action proposed they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting Kevin Batchelor, Chief, Enforcement Branch, Division of Measurement Standards, at (916) 229-3000.