

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

A revision to the Initial Statement of Reasons (ISOR) was posted on August 21, 2017. That revision did not include sufficient explanation of the necessity and purpose of the changes made. This Addendum to the ISOR provides the most up to date information and rationale for each change made. In some cases, additional background and explanatory material is included for further clarification of the corresponding sections in the original ISOR. In particular, pages 4-7 provide a detailed discussion of the rationale to increase the MOAF and to each change made to the Motor Oil Remittance Form (Form 41-054). Additional fiscal and economic impact analyses are included on pages 9 and 11 of this Addendum, respectively.

PROBLEM STATEMENT

On page 1, paragraph 2, the first sentence is changed to read "...such as gasoline, No. 2 diesel, and No. 1 diesel..." This edit corrects the improper placement of a comma in the sentence. The incorrect placement of the comma implies there is a regulated fuel type called "gasoline No. 2." In fact, that is not the name of a regulated fuel type. The correct placement of the comma corrects that typographical error.

On page 2, paragraph 2, the fourth sentence is changed to read, "...unless a regulation establishing a different MOAF amount is promulgated." This edit clarifies that the MOAF will remain in effect as the only fee allowed by the Legislature to be assessed on motor oil dealers, yet this rulemaking proposes to change the set rate of that fee.

On page 2, paragraph 2, the fifth sentence is made into a new paragraph to improve the formatting of the document.

On page 2, paragraph 2, a sentence is added before the last sentence, and the last sentence is changed. Combined the two sentences read, "The Secretary of the Department is granted the authority in BPC, Division 5, § 12027, to adopt such regulations as is reasonably necessary to carry out the provisions of that Division. Increasing the MOAF will allow the Program to implement its current regulatory activities which include a much broader scope of authority today than ever before." These edits include a statement of authority granted by the Legislature to the Department to adopt regulations for the administration of the Fuels, Lubricants, and Automotive Products program. The remaining edits are made to improve grammar and syntax.

On page 2, paragraph 4, edits are made to improve grammar and syntax including: replacing "Lastly, the" with "The" in the first sentence; replacing "found" with "finds" in the second and fourth sentence; and making the word "regulations" singular in the fifth sentence to remain consistent with the rest of the Chapter.

On page 3, paragraph 2, the first sentence is changed to read, "Without this rulemaking to increase the MOAF, the Program's recently expanded scope of authority and ability to perform the required regulatory testing and oversight activities will be negatively impacted." These edits

are made to clarify the scope of this rulemaking (to increase the MOAF) and improve grammar and syntax of the remainder of the sentence.

On page 3, paragraph 2, the second to last sentence replaces the word “rulemaking” with the phrase, “proposed regulation.” This edit clarifies that the proposed regulation provides the ability for more motor oil dealers to be approved to report annually, not the act of rulemaking itself.

BACKGROUND

On page 3, paragraph 3, the first and second sentence is removed because it is explained clearly in other sections of the ISOR and is redundant in this section.

On page 3, paragraph 3, the third sentence changes “Program” to “Department” to remain consistent with statute. The word “the” is added before the phrase, “. . . authority and responsibility under BPC. . .” in this sentence to improve grammar and syntax.

On page 3, paragraph 3, between the fourth and fifth sentences, two more sentences are added to read, “The Department is also charged with ensuring correct labeling and method of sale requirements of retail transactions. According to the Department’s “California Fuels, Lubricants, and Automotive Products Program Regulatory Oversight Report 2012-2016,” the Program has increased its regulatory efforts with collecting and analyzing fuels and automotive products by nearly fivefold in the last four years due to noncompliance of various regulated products.” This edit describes additional Departmental responsibilities and its recent increased activity in the marketplace to detect regulated products that do not meet specifications.

On page 3, paragraph 3, the last sentence is changed to read, “. . .over 3,800 samples of various fuels and automotive products,” and removes the phrase, “throughout the year for laboratory analyses.” This edit is made to specify the types of products collected and analyzed by the Department, and removes the redundant phrase to improve grammar and syntax.

On page 4, paragraph 2, the second sentence was changed to read, “In July 2015, professional scientist manager and supervisor salaries increased on average 38% and beginning July 2016, employee union contracts were further amended to increase rank and file salaries and benefits by approximately 5% per year over three consecutive years ending July 2018.” Those edits are made to improve grammar and syntax.

On page 4, paragraph 5, the first sentence is changed to read, “. . .primarily funded by the MOAF, the Department secured temporary funding through the Greenhouse Gas Reduction Fund in FY 2014/2015 that has since expired, and in FY 2016/2017 the Department secured additional funding. . .” This edit is made to specify two examples of alternate funding sources the Department utilized in the last five fiscal years as it continues to seek out other funding sources.

On page 5, paragraph 1, the last sentence replaces “rulemaking” with “regulation.” This edit clarifies that the proposed regulation sets the MOAF rate, not the act of rulemaking itself.

On page 5, paragraph 1, a sentence is added to the end of the paragraph that reads, “The proposed regulation will increase the Department’s MOAF revenue by an estimated \$1million

relative to the three cent (\$0.03) MOAF rate. The additional funding will greatly reduce the Department's deficit." This edit is made to quantify the positive impact the regulation will have on existing budget constraints and show the Department will significantly reduce the financial deficit using revenue from the proposed regulation.

LEGISLATIVE HISTORY

On page 5, paragraph 5, the last sentence replaces "rulemaking" with "regulation." This edit clarifies that the proposed regulation implements, interprets, and makes specific the requirements of AB 808, not the act of rulemaking itself.

REGULATORY HISTORY

On page 6, paragraph 1, the second and third sentences are changed to read, "Prior to and during 2009 the volume of motor oil sold in California sharply declined by nearly 16%, consequently diminishing 2009 MOAF revenue. During the following years, Program revenue did not balance expenditures." It is necessary to add and relocate commas in the sentences to improve grammar and syntax.

On page 6, paragraph 1, the last sentence replaces "rulemaking" with "regulation." This edit clarifies that the proposed regulation will increase the MOAF and in return increase Department revenue, not the act of rulemaking itself.

DESCRIPTION OF THE PUBLIC PROBLEM AND CONDITIONS THE PROPOSED REGULATION INTENDS TO ADDRESS

On page 6, paragraph 3, the fifth sentence is made into a new paragraph and replaces "rulemaking" with "regulation." This edit is made to improve the formatting of the document. It also clarifies that the proposed regulation will increase the MOAF instead of reverting it, not the act of rulemaking itself.

PURPOSE AND NECESSITY OF THE PROPOSED REGULATION

This whole section is being changed because it lacks an appropriate description of the purpose and necessity for each edit made to the current regulatory text. The following edits replace the original language of this section of the ISOR:

CCR Title 4 § 4300(a)

The purpose of adding the word "as" following the words "any product used" is to make necessary corrections to the syntax error in the current text. This edit is necessary because the word "as" in this context implies that any other lubricating product added to motor oil for the function of lubrication in an engine is considered by this Chapter to be motor oil.

CCR Title 4 § 4300(b)

The purpose of changing the word "Subchapter" in the current text to "Chapter" is because there is not a subchapter of CCR, Title 4, Chapter 8. This change is necessary because the use of "Subchapter" is the improper hierarchical term to use in this context. The use of "Chapter" specifies that the definition of "additive" applies to all uses of the word in CCR, Title 4, Chapter 8.

CCR Title 4 § 4300(g)

The purpose of adding a comma after, "...March 31," is to make a necessary correction to grammar and syntax. It is necessary to make this edit to remain consistent with the syntax of the remainder of this subdivision and the Chapter.

CCR Title 4 § 4300 [NOTE]

The purpose of adding, "and 13431" to the Reference citations for this section, and making the word "Section" plural is because that statute describes the fee limits of the MOAF, outlines who shall pay the fee, and the conditions under which the fee is assessed. The proposed change is necessary because CCR, Title 4, § 4300 defines terms related to motor oil and fee responsibility used in BPC § 13431. Therefore, that statute is reference to this section of regulation. It is necessary to make "Section" plural to remain consistent with the grammar syntax of this and other sections of the Chapter.

CCR Title 4 § 4302 [NOTE]

The purpose of adding, "and 13433," as an Authority citation for this section and making the word "Section" plural, is because it gives the Department authority to prescribe the procedures for payment of the motor oil fee. This section of regulation allows for an exemption to pay the MOAF on oil exported outside California and describes a procedural requirement for motor oil dealers to inform the Department if they cease operations. This regulation has additional fee requirements a motor oil dealer must comply with. Therefore that statute provides authority to this section of regulation.

The purpose of adding a comma after "13431" in the Reference citations is to improve grammar and syntax. It is necessary to add a comma after "13431" in the Reference citation to correct the syntax error and to remain consistent with the syntax of this and other sections of this Chapter.

CCR Title 4 § 4304, 4306, and 4308

The purpose of making a global amendment throughout these sections is to remain consistent with the proposed change to the title of the administrative form used by motor oil dealers to remit payment to the Department. The proposed regulation replaces the word, "return(s)" with the phrase, "remittance form(s)." It is necessary to propose this edit because prior to initiating this rulemaking some motor oil dealers and Department personnel felt the form was not a "return" form. From their perspective, they felt if it was a "return" form the Department would be returning something back to motor oil dealers. On the contrary, that is not the intended purpose of the form. Instead, they felt it is an administrative form accompanying the "remittance" of the MOAF. To clarify and resolve the unclear use of the word "return" the Department proposes the title of the form be "Motor Oil Remittance Form," and throughout this Chapter replaces each use of the word "return" with "remittance form" regarding the form, the payment, or both as packaged and sent to the Department.

CCR Title 4 § 4304(a)

The purpose of changing "four" to "five"; "\$0.04" to "\$0.05"; making the increased fee effective on January 1, 2018; and removing the clause that will revert the MOAF to three cents (\$0.03) per gallon of motor oil is to increase the MOAF to its statutory maximum of five cents (\$0.05) per gallon of motor oil. It is necessary to increase the MOAF because the passage of

Assembly Bill 808 in 2016 broadened the Department's authority and marketplace oversight responsibilities to include new and emerging motor vehicle fuel types, lubricants, and automotive products. The proposed change is necessary to implement the Department's additional mandated responsibilities while remaining financially responsible. Without this rulemaking the Department will experience a 25% or greater reduction in revenue per year, compared to its current revenue, and will not be able fulfil its mandated responsibilities. The Department's revenue has slowly declined while its expenditures have increased. Program expenditures such as salaries and benefits, overhead, and other administrative costs have all increased in the last two years. In July 2015, professional scientist manager and supervisor salaries increased on average 38%. Beginning July 2016 employee union contracts were further amended to increase rank and file salaries and benefits by approximately 5% per year for the next three years. The Department secured temporary funding through the Greenhouse Gas Reduction Fund in FY 2014/2015 which has since expired, and also secured Assembly Bill 32 Cost of Implementation funding that can only be used for the regulation and enforcement of alternative fuels. However, the Department's budget to administer the Fuels, Lubricants, and Automotive Products program remains deficient by approximately \$1.1 million. With increased administrative expenditures it is necessary to propose an increase of the MOAF to its statutory maximum, to reasonably cover the costs to administer the Fuels, Lubricants, and Automotive Products program and still remain financially responsible. The proposed increased MOAF will generate approximately \$0.89 million which will greatly reduce the Department's deficit. The Department is seeking alternate funding sources; however, at this time the Legislature has not provided authority to assess alternate fees. In the meantime, this rulemaking will provide for the maximum funding allowed by law to support the necessary and reasonable costs to administer the program.

The volume of motor oil manufactured and sold in California is in decline, causing a reduction in Department revenue. This is the result of vehicle manufacturers having engineered internal combustion or compression ignition engines with extended oil change intervals, and the introduction of non-petroleum powered vehicles with partially or fully electric motors no longer requiring motor oil. Since the MOAF is calculated based upon gallons of motor oil manufactured and sold in California, the Department's revenue will continue to decrease. This will severely and negatively impact the future revenue and ability of the Department to administer the program.

According to the Department's "California Fuels, Lubricants, and Automotive Products Program Regulatory Oversight Report 2012-2016," the Program continues to find noncompliant fuel, brake fluid, and transmission fluid indicating that continued marketplace oversight is necessary to protect those who produce motor vehicle fuels, lubricants, and automotive products, and California consumers who purchase those products.

CCR Title 4 § 4304(b)

New form edits:

The purpose of replacing the "Motor Oil Return Form (Rev. 6/30/12)" with the "Motor Oil Remittance Form (Form 41-054, Rev. 1/1/18)," and incorporating this new form by reference into § 4304, et seq. is to reflect the proposed MOAF increase from four cents (\$0.04) to five cents (\$0.05) per gallon of motor oil. This change is necessary for consistency with the proposed fee change in § 4300(a). In the past, some motor oil dealers contacted the Department and

expressed that the form was unclear, confusing, and difficult to complete. The Department seeks to clarify and simplify the form for those reasons. The new form contains revisions that improve clarity, readability, organization, and ease of use for motor oil dealers. The purpose of relocating the “For Office Use Only” box; the “First Time Applicant” checkbox; and the “Motor Oil Dealer Permit Number” field is to improve the organization of the form. These changes are necessary to allow information collected from the motor oil dealer to be at the top of the form while information to be added by Department personnel is located at the bottom of the form. It makes it simpler to complete it for both motor oil dealers and the Department. The purpose of adding the “Update Information” checkbox to the top of the form is to allow a motor oil dealer to notify the Department of any company related information that may have changed since the last time they remitted payment. It is necessary to make that change because currently the Department does not have a process for motor oil dealers to notify the Department of such changes. This new form is filed with the Department either on a quarterly or annual basis and allows the Department to capture any important changes made by the company. In turn, this will allow the Department to keep its files on motor oil dealers current.

The purpose of removing all procedural requirements and instructions in the current form (including the three paragraphs explaining the general process and requirements of who is to pay the MOAF, when payments are made, how much the fee currently is, annual reporting requirements, and other general instructions) is to add them to the attached, proposed two-page instruction sheet. These are necessary edits to improve the overall organization of the form, and to consolidate procedural requirements and instructions into the attached instruction sheet. The instruction sheet is organized into the same sections as those on the new form for ease of use and clear reference. Motor oil dealers may refer to, become familiar with, and seek guidance from the proposed instruction sheet while completing the form.

The purpose of adding Section A to the form is to separate the company’s information from the rest of the information on the form. It is necessary to improve the organization of the form to reduce time spent by the motor oil dealer to complete it and time spent by the Department to process it. The telephone number and email address fields are moved to Section A to keep the form consistent and organize the company’s information into one area of the form. The purpose of adding the company’s “Type” with four check boxes to Section A: “Producer/Blender,” “Packager,” “Distributor/Wholesaler,” and “Retailer” is so the motor oil dealer can designate the type of service they provide to California consumers. That edit is necessary because the Department needs to accurately track the number of motor oil dealers engaged in each of those types of activities. It allows the Department to tailor its correspondence, reports, presentations, publications, and meetings to the appropriate regulated motor oil dealers and provide targeted oversight, when necessary.

The purpose of adding Sections B and C to the form is to separate the company’s requirements to either report quarterly or annually, respectively. The “Quarter Ending” field is moved to Section B and renamed “Fiscal Quarter” to be consistent with § 4300(g) and § 4304(b). The purpose of adding the “Fiscal Year” field to Section C is to show which fiscal year the remittance applies. It is necessary to make these changes because prior to this rulemaking, some motor oil dealers approved to remit annual payment expressed confusion with filling out the current form since much of it refers to quarterly reporting. It was confusing for motor oil dealers who remit

payment annually to fill out a single line on the current form without knowing whether to complete the rest of the table in the form. These proposed edits provide clarity for those completing the form.

The purpose of changing the titles of Columns A and C of the table is to simplify and clarify the form. The Department is consolidating procedural requirements and instructions on the attached instruction sheet, changing the title of column A to “Total gallons subject to fee,” and removing the formula “(column A – column B)” from the title of Column C. It is necessary to make those edits because it simplifies the presentation of the form. The total gallons subject to the MOAF is explained in the attached instruction sheet and replaces the current title of Column A. The formula in Column C is removed and added to the instruction sheet to simplify the form, and consolidate procedural requirements and instructions into the attached instruction sheet.

The purpose of adding Sections D, E, F, and G to the form is to separate the requirements of the MOAF calculation, penalty fee assessment, who to remit payment to, and where to send the form with attached payment, respectively. These edits are necessary to improve the organization of the form and clearly show each requirement separate from the others for ease of use by those completing the form and remitting payment. Procedural requirements and instructions for these sections are consolidated in the attached instruction sheet.

The purpose of adding the acronyms “(BPC)” and “(CCR)” to the statement of compliance at the bottom of the form is because those are the first uses of those acronyms on the new form. It is necessary to add acronyms to that statement to simplify reference to the laws and regulations used elsewhere in the attached instruction sheet.

The purpose of changing the “Printed Name and Title” field and separating it in the new form is to increase line space for each of those fields. Extra line space is needed because occasionally the printed name and job title of the responsible representative was too long to legibly fit in the line space provided.

The purpose of relocating the form number and revision date from the bottom left of the form to top left of the form is to consolidate into one area the form number and revision date with the Department’s contact information. The form number and revision date is relocated to make it easier for the motor oil dealer to find that information when requesting assistance from the Department. The Department logo is added to the top right to improve the professional image of the form. Department policy requires each form to have a professional image that duly represents the Department.

Other edits to this subdivision:

The purpose of removing the phrases “return shall be on a completed” and “by,” and adding the phrases “shall be completed” and “with” is to improve clarity and maintain correct syntax. These edits are necessary because it is not clear what the word “return” is referring to in the current language. The use of the word “return” changes meaning throughout the Chapter. Additionally, the Department proposes to remove the word “return” throughout the regulation and replace it with “remittance form.” It is still required for motor oil dealers to complete the information in the form and send payment along “with” it to the Department.

The purpose of removing the phrase “such transactions” and replacing it with “the reporting period” is because the regulation does not define “such transactions,” and it is ambiguous as to whose transactions are referenced. It is necessary to add the proposed phrase to keep the scope of the requirement directed toward a motor oil dealer completing the form and remitting payment quarterly or annually, whichever is applicable. Additionally, quarterly “reporting period(s)” are defined in this subdivision and the annual “reporting period” is defined in subdivision (f) of this section.

The purpose of replacing the word “section” with “Chapter” is for clarity and to be inclusive of other sections of this Chapter that have provisions of general reporting requirements. It is necessary to make this edit because general reporting requirements are found throughout this Chapter not just this section. Specifically, other reporting requirements are found in § 4303 (exemptions and cessation of operation), § 4306 (late fee) and § 4307 (refunds) which are all requirements that relate to completing the remittance form, and calculating the fee and penalty due during each reporting period. Therefore, it is necessary to include general reporting requirements from other sections of this Chapter with those of § 4304(b).

CCR Title 4 § 4304(b)(1)(C)

The purpose of adding the phrases “subparagraph” and “of this paragraph” and removing “above” is to improve clarity and maintain consistency with cross-references of the regulation. The use of the word “above” in this context is ambiguous. It is necessary to clarify the current language by using the proper hierarchal terms within the regulation so there is no confusion about the location of the reference being made.

CCR Title 4 § 4304(c)

The purpose of replacing all the language of this subdivision is because much of it is duplicative of the current language in subdivision (e) of this section. The current language is confusing and unclear to motor oil dealers. Prior to this rulemaking it was difficult to differentiate the intent and purpose of this subdivision from subdivision (e) of this section because currently they sound similar. The current language attempts to describe when a remittance form and payment are considered delinquent. Prior to this rulemaking some motor oil dealers expressed confusion about the exact day the remittance is due before it is considered delinquent. It is necessary to simplify and clarify the language of this section to help remove motor oil dealers’ confusion. With the proposed simpler language, remittance forms and payments can be prepared by motor oil dealers and processed more quickly by the Department. Additionally, the proposed language differentiates provisions in this subdivision (delinquent remittance) from those of subdivision (e) of this section (criterion for rejecting remittance) regardless of when remittance is submitted to the Department.

The purpose of adding a cross-reference to § 4306 is to refer readers to where the provisions of assessing a late fee for delinquent payments are found. The cross-reference to § 4306 is added because motor oil dealers have asked the Department what the late fee is and where it is stated in the regulation. This edit is necessary to resolve that concern and assist motor oil dealers from being assessed a late fee.

CCR Title 4 § 4304(d)

The purpose of replacing “their quarterly” and “Return” with the proposed language is to clarify this section. It is necessary to make those edits because not all motor oil dealers are required to remit payment on a quarterly form. Some are approved by the Department to remit payment annually. The proposed form has separate sections for remitting quarterly or annual payments to resolve this concern. These changes will maintain consistency with the rest of the Chapter and eliminate any confusion with whether there is a quarterly form or an annual form needed to remit payment to the Department. Only one form is proposed and made available for remitting payment to the Department.

The purpose of adding a comma after “Business and Professions Code” is to correct the syntax of the sentence. It is a necessary edit to maintain consistency throughout this Chapter. This edit does not change the meaning or intent of the regulation.

The purpose of removing “under the provisions of this Chapter” in the last sentence of this section is because it is redundant and wordy. Without changing the intent or meaning of the sentence, the Department simplified the sentence and clarified that § 4307 and its provisions are part of the Chapter. Other than this subdivision and § 4307, no other section in this Chapter refers to refunds.

CCR Title 4 § 4304(e)

The purpose of removing the first sentence of this subdivision is because it is redundant with the current language of subdivision (c) of this section. The Department proposes to add language stating that the form will be rejected by the Department if it is not complete, accompanied by full payment, or fails to comply with the other general reporting requirements of this Chapter. It is necessary to make this edit to simplify the language of this section while still maintaining the meaning and intent of the current language. Additionally, the proposed language differentiates provisions in subdivision (c) (delinquent remittance) from this subdivision (criterion for rejecting remittance) regardless of when it is submitted to the Department.

The purpose of adding the word “California” to the last sentence is for clarity and consistency with the Department’s normal business practices. It is necessary to make proper reference to the Department as, “California Department of Food and Agriculture” in formal documents and law.

CCR Title 4 § 4304(f)

The purpose of adding, “Notwithstanding subdivision (b) of this section” is to clarify that this subdivision provides for annual reporting requirements while subdivision (b) provides for quarterly reporting requirements. It is necessary to include this phrase so the provisions of this subdivision are consistent and concurrent with provisions of subdivision (b), and do not exclude them. These provisions are applicable to motor oil dealers approved by the Department to remit payment annually. With the addition of the proposed phrase it is necessary to rewrite the word “any” in lower case to maintain syntax.

The purpose of changing the annual reporting requirement from less than 5,000 gallons of motor oil to less than or equal to 30,000 gallons of motor oil is to increase the number of motor oil dealers that may request approval to remit payment annually instead of quarterly. There are

approximately 110 motor oil dealers that pay the MOAF. Currently, approximately 30 motor oil dealers producing less than 5,000 gallons of motor oil per year are qualified to request approval by the Department to remit payment annually. The Department found that motor oil dealers producing approximately 30,000 gallons of motor oil or less would benefit greatly from this proposed edit because a motor oil dealer's cost savings of remitting an annual payment helps offset the financial impact of the proposed increase to the MOAF. Other motor oil dealers' volumes of production markedly increased after the 30,000 gallon determinate point presumably because of the physical size of a motor oil dealer's property, large-scale manufacturing equipment and technologies, capacity to produce and contain large volumes of motor oil for distribution, and financial strength of larger motor oil dealers. This proposed edit allows about 30 more motor oil dealers to request an approval by the Department to remit annual payments. This proposed edit may be a cost benefit to each of those motor oil dealers of between \$150 and \$450 per year; depending on the volume of motor oil produced. Additionally, under the proposed language the Department will realize an estimated savings of \$27,900 each year by processing fewer remittance forms from low volume motor oil dealers.

The purpose of removing the remaining stricken phrases and adding the proposed language is to clarify the annual reporting requirement and specify a state fiscal year, July 1 to June 30, as the annual reporting requirement. The Department also clarifies that a motor oil dealer has 30 days to remit the form and payment once the reporting period ends on June 30. The current language was confusing and ambiguous as to how long motor oil dealers had to remit the form and payment. It is necessary to simplify the language and remove ambiguity of the current language. It is necessary to set a specific annual reporting period because with this proposed regulation approximately 28-32 more motor oil dealers may be approved to remit annual payments. The proposed reporting period benefits the Department's administration, collection, and processing of remittance forms and payments, and makes consistent and clear to motor oil dealers when annual payments are due.

CCR Title 4 § 4304 [NOTE], § 4305 [NOTE], § 4306 [NOTE], § 4307 [NOTE], § 4308 [NOTE], and § 4309 [NOTE]

The purpose of these edits is to remove "and 13433" from the Reference citations for these sections of regulation and to make appropriate syntax edits. That statute of code is a wholly enabling law providing general authority to the Department to prescribe and set procedures regarding payments, refunds, and late fees. It is necessary to remove that section of code from the Reference citations because it does not contain any statutory provisions or specific statutory requirements of implementation required by the Legislature that can be referenced in regulation.

In § 4304 [NOTE], § 4305 [NOTE], and § 4307 [NOTE] the comma in the Reference citations following "13431" is removed and the word, "and" is added to improve grammar and syntax. Those edits are necessary to maintain consistency with the syntax of this and other sections of the Chapter.

In § 4306 [NOTE], and § 4308 [NOTE], § 4309 [NOTE], the word, "Sections" is made singular to improve grammar and syntax. Those edits are necessary to maintain consistency with the syntax of this and other sections of the Chapter.

CCR Title 4 § 4306

The purpose of replacing the phrase, “in making a return” for “with filing a remittance form” is to remove the unclear word “return,” remain consistent with the proposed title of the new form, and improve the syntax of the sentence.

The purpose of removing the phrase “which is” is to simplify and clarify the sentence without changing the meaning or intent of the regulation. It is necessary to remove this phrase because it is unnecessary and its removal improves the readability and syntax of the sentence.

CCR Title 4 § 4307

The purpose of adding the phrase “of this Chapter” is to specify and clarify where in regulation § 4304, used as a cross-reference, is found. It is necessary to include this language to improve clarity, syntax, and consistency with the rest of the Chapter. The proposed edit also removes ambiguity, confusion, and specifies the location of this cross-reference in regulation.

CCR Title 4 § 4308(c)

The purpose of replacing the word, “which” with “that” is to improve grammar and syntax. Without changing the meaning and intent of the regulation, it is necessary to make this edit to correct grammar and syntax, and maintain consistency in this and other sections of this Chapter.

CCR Title 4 § 4308(d)

The purpose of removing this subdivision is because its requirement has been fulfilled by the Department. The Department has published its “California Fuels, Lubricants, and Automotive Products Program Regulatory Oversight Report 2012-2016.” That document is available to the public on the Department’s website or by contacting the Department directly. This subdivision is no longer necessary or required. If not removed, it will be an artifact of the previous rulemaking. It may also potentially become a source of confusion in the future.

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

On page 9, paragraph 3, bullet 7 is changed because the web address citation for this document, “www.dtsc.ca.gov, Technology Development/OPPTD_FLY_High-Efficiency-Oil-Filters.cfm” has a typographical error. A comma incorrectly placed after “www.dtsc.ca.gov,” breaks the document’s web address. The edit replaces the comma with a backslash to repair the document’s web address citation.

On page 9, paragraph 3, bullet 9 is changed because the web address citation for this document, “www.cdfa.ca.gov/dms/regulations.html” has been changed to a different web address. The edit replaces the old web address with the current web address:

“https://www.cdfa.ca.gov/dms/programs/Publications/Reports/FLAPP_Report2012-2016.pdf”

On page 10, paragraph 1, bullets 12 and 13 are added during the first 15-day notice of proposed changes to documents relied upon. The additional documents are:

- Department of General Services, Office of Fleet and Asset Management, <https://www.dgs.ca.gov/dgs/home.aspx>, “*State Fleet Breakdown – FAMS Data as of*

08/09/2017,” (August 2017), data table included in an email message sent on August 18, 2017

- American Automobile Association, www.texas.aaa.com, “AAA Engine Oil Research: AAA proprietary research into the differences between conventional and synthetic engine oil,” May 2017, <https://www.texas.aaa.com/automotive/advocacy/engine-oil-quality-study.html>, accessed on July 25, 2017

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

On page 10, paragraph 2, additional language is added to the end of the paragraph to read, “The current MOAF rate is set at four cents (\$0.04) per gallon of motor oil, and current regulation requires that the fee revert to three cents (\$0.03) per gallon unless another regulation is promulgated before January 1, 2018. The proposed regulation sets the MOAF to five cents (\$0.05) per gallon. Prior to January 1, 2018, the proposed regulation reflects a one cent (\$0.01) fee increase from the current MOAF rate, but after that date it reflects a two cent (\$0.02) fee increase to the MOAF. The economic impact analysis for this proposed regulation is calculated using the baseline MOAF rate of four cents (\$0.04) per gallon for financial impacts prior to January 1, 2018, and the rate of three cents (\$0.03) per gallon as the baseline for impacts after January 1, 2018. This applies to the remainder of this current fiscal year and subsequent fiscal years thereafter. This analysis is also based on a motor oil production volume of approximately 100 million gallons. For financial estimates of this current fiscal year the volume of motor oil produced is split equally, at 50 million gallons, between the first two fiscal quarters, July through December 2017, and the last two fiscal quarters, January through June 2018.”

The Department conducted a thorough analysis of the financial impact of this rulemaking. These edits are necessary to reflect the results of the analysis and describe the assumptions of the calculations for this current fiscal year and for each fiscal year thereafter.

On page 10, paragraph 3, the ninth sentence is edited to read, “For the remainder of the current fiscal year, the proposed regulation will increase the Program’s revenue by approximately \$1 million, relative to the three cent (\$0.03) MOAF rate. The total proposed revenue for FY 2017/2018 will be approximately \$4.5 million. Each fiscal year thereafter the increase in revenue is approximately \$2 million, relative to the three cent (\$0.03) MOAF rate. The total proposed revenue for each fiscal year thereafter is approximately \$5 million per year. Since motor oil dealers are required to pay the MOAF to the Department, using the same calculations as above, the proposed regulation translates to a financial cost to all motor oil dealers of approximately \$1 million, relative to the three cent (\$0.03) MOAF rate, for the remainder of this current fiscal year and approximately \$2 million for each fiscal year thereafter.”

The Department conducted a thorough analysis of the financial impact of this rulemaking. These edits are necessary to reflect the results of the analysis and to compare the financial impact to both the Department and motor oil dealers of the MOAF rate changing from three cents (\$0.03) per gallon to the proposed MOAF rate of five cents (\$0.05) per gallon.

On page 11, between the first and second paragraphs, an additional paragraph of information is added to assess the fiscal impact of the proposed regulation to the State of California's agencies. This edit is used to calculate the difference between the estimated financial costs and benefits of the proposed regulation to State agencies, including this Department. The edit is added to read:

“The Department sought to estimate the overall fiscal impact to the State of California's agencies. In a report compiled by the California Department of General Services (DGS), Office of Fleet and Asset Management, the number of state owned vehicles that require oil change services includes: 12,788 sedans and SUVs; 21,309 trucks, vans, and buses; 979 motorcycles; and 3,945 other general purpose vehicles, farm equipment, and construction equipment. The following is an oil change interval cost estimate for the State fleet:

Assume State owned sedans and SUVs require on average 1.25 gallons of motor oil per oil change and each automobile is serviced no more than three times per year, the MOAF increase for those automobiles is \$959.10 ($12,788 \times 1.25 \times 3 \times \0.02).

Assume State owned trucks, vans, and buses require on average two (2) gallons of motor oil per oil change and each truck, van and bus is serviced no more than three times per year, the MOAF increase for trucks is \$2,557.08 ($21,309 \times 2 \times 3 \times \0.02).

Assume State owned motorcycles require on average 0.5 gallons of motor oil per oil change and each motorcycle is serviced no more than twice per year, the MOAF increase for motorcycles is \$19.58 ($979 \times 0.5 \times 2 \times \0.02).

Assume State owned general purpose vehicles, farm equipment, and construction equipment require on average 3 gallons of motor oil per oil change and each general purpose vehicle is serviced twice per year, the MOAF increase for general purpose vehicles is \$473.40 ($3,945 \times 3 \times 2 \times \0.02).

The total estimated ongoing cost of this regulation to State agencies will not exceed \$4,009.16 per fiscal year. The estimated ongoing financial benefit of the proposed regulation to the Department is \$27,900 per fiscal year. The assessment of this proposed regulation is an ongoing financial benefit to the State, as a whole, of \$23,890.84 [$\$27,900$ (financial benefit to the Department) - $\$4,009.16$ (estimated cost to other State agencies to service their State vehicles)] per fiscal year.

Since this proposed regulation will become effective halfway through this current fiscal year, FY 2017/2018, State agencies will experience an estimated cost of \$2,004.58 between January 1 and June 30, 2018, assuming, on average, each agency incurs half of the cost of purchasing motor oil to service their vehicle fleet during that time. During the next fiscal year and ongoing thereafter, motor oil dealers will experience an estimated cost of \$4,009.16 per year as calculated above.

The Department will not experience a financial benefit from this regulation until after July 1, 2018, the beginning of the next fiscal year. The proposed regulation clarifies the annual reporting period to be the State fiscal year, from July 1 to June 30. Those motor oil dealers affected by the proposed regulation, changing the annual reporting criteria from 5,000 gallons to 30,000 gallons, will still be required to remit payment on a quarterly basis until June 30, 2018, when the annual

reporting period goes into effect. Motor oil dealers approved by the Department to remit payment on an annual basis will not be required to remit payment until the end of the next fiscal year ending June 30, 2019. Therefore, during the current fiscal year, FY2017/2018, the Department will not experience a financial benefit. After July 1, 2018, the Department will begin to experience the ongoing financial benefit estimated at \$27,900 per year by not processing as many quarterly remittance payments.

In summary, the net financial cost of this proposed regulation to all State agencies in the current fiscal year is estimated to be \$2,004.58. In the next fiscal year and ongoing thereafter, the proposed regulation provides for an estimated net financial benefit of \$23,890.84 per fiscal year.”

The Department conducted a thorough analysis of the financial impact of this rulemaking. These edits are necessary to reflect the results of the analysis for this current fiscal year and for each fiscal year thereafter.

On page 11, paragraph 3 is changed to read:

“For example, after July 1, 2018, if a motor oil dealer producing 30,000 gallons of motor oil produces the same or similar number of gallons in the future, the proposed regulation will increase that motor oil dealer’s annual MOAF assessment from three cents (\$0.03) per gallon, totaling \$900, to five cents (\$0.05) per gallon, totaling \$1,500. That motor oil dealer experiences an increased cost of \$600 per fiscal year. Under this proposed regulation, that company may be approved by the Department for annual reporting realizing a cost savings of approximately \$450 per year. Despite the increased MOAF, that company will net a slight increased cost of about \$150 (\$600 - \$450) per year with this rulemaking. Now assume a motor oil dealer produces 5,001 gallons of motor oil per year and produces the same or similar number of gallons in the future. That motor oil dealer’s MOAF assessment will increase by \$100.02 per year with this proposed regulation. Using a similar calculation, after July 1, 2018, that company will realize a net financial benefit of \$349.98 (\$450 - \$100.02) per fiscal year by reporting annually. As oil production decreases the net savings of this rulemaking increases for those qualified to pay annually.”

The Department conducted a thorough analysis of the financial impact of this rulemaking. These edits are necessary to reflect the results of the analysis and to show that there is a financial benefit to some small volume motor oil dealers.

On page 11, paragraph 4 is changed to read:

“The following is the Department’s retail cost analysis of motor oil under this rulemaking. The Department’s estimated retail price of petroleum sourced motor oil is approximately \$20 per gallon and synthetic motor oil is approximately \$28 per gallon. The American Automobile Association released a report similarly estimating the average retail price of a gallon of conventional motor oil to be \$22.40 and the average retail price per gallon of synthetic motor oil to be \$36. Assuming the proposed fee increase is fully passed on to the retail consumer, after January 1, 2018, the retail price per gallon of petroleum sourced motor oil will increase by no more than 0.1% ($\$0.02/\$20 \times 100\%$), and no more than 0.07% ($\$0.02/\$28 \times 100\%$) for synthetic motor oil. Therefore, the proposed increase of the MOAF amounts to no more than a 0.1% increase to California consumers, businesses, local government, and State agencies making retail purchases of motor oil by the gallon.”

The Department conducted a thorough analysis of the financial impact of this rulemaking and these edits are necessary to reflect the results of the analysis, differentiate research done by the Department to estimate the retail price of motor oil from recent information published by the American Automobile Association who also estimates the retail price of motor oil, and to show the reader that both the Department and the American Automobile Association report similar estimates. However, the American Automobile Association's estimate for the retail price of synthetic motor oil is greater than the Department's. These edits are also necessary to clarify that all California consumers and government entities making retail purchases of motor oil by the gallon may be affected by this proposed regulation.

On page 12, paragraphs 1 and 2 are edited to read:

“For example, if an individual consumer uses approximately 1.25 gallons of motor oil per oil change, and performs two oil changes per year, the consumer requires approximately 2.5 gallons of motor oil per year. With this proposed rulemaking, after January 1, 2018, the consumer will pay an additional 5 cents (\$0.05) per year (2.5 gallons × \$0.02) to perform equivalent maintenance to that vehicle.

The estimated retail price of bulk motor oil sold in a 55-gallon drum is approximately \$400 per drum of conventional motor oil, or more for synthetic motor oil. Assuming the proposed fee increase is fully passed on to the purchaser of bulk motor oil, after January 1, 2018, the retail price per drum of conventional motor oil will increase by one-dollar and ten cents (\$1.10). Therefore, the proposed increase of the MOAF amounts to no more than a 0.28% ($\$1.10/\$400 \times 100\%$) per drum increase to California consumers, businesses, local government, and State agencies purchasing retail motor oil in bulk drums.”

The Department conducted a thorough analysis of the financial impact of this rulemaking. These edits are necessary to reflect the results of the analysis. These edits are also necessary to clarify that all California consumers and government entities making retail purchases of motor oil in bulk drums may be affected by this proposed regulation.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

On page 12, paragraph 4 the first sentence is changed to read, “...other California businesses, it initially determined the proposed regulation would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.” The edit is made to simplify the meaning of the sentence and improve syntax.

On page 12, paragraph 6 the first and second sentences replace “rulemaking” with “regulation.” These edits clarify that the proposed regulation will not increase or decrease the number of motor oil dealers nor will it increase reporting requirements and paperwork, not the act of rulemaking itself.

On page 12, paragraph 7, the percentage of increase of the retail price of bulk motor oil is changed from “0.14%” to “0.28%.” The Department conducted a thorough analysis of the financial impact of this rulemaking and these edits are necessary to reflect the results of the analysis.

ESTIMATED COST OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES

On page 13, paragraph 1, number 2 is edited to read, “Will result in a nominal cost to other state agencies of \$2,004.58, statewide the current fiscal year, and \$4,009.16 each fiscal year thereafter.” The Department made edits to this statement after conducting a thorough fiscal analysis of this proposed regulation on all State agencies and estimated a nominal cost of \$2,004.58, statewide this fiscal year, and \$4,009.16 each fiscal year thereafter. However, the financial benefit to the Department is estimated to be \$27,900 each fiscal year beginning July 1, 2018. Therefore, this rulemaking will not have a significant statewide adverse economic impact on State agencies.

On page 13, paragraph 2, an additional sentence is added to the beginning of the paragraph to read, “Although there is a nominal cost to State agencies, beginning July 1, 2018, there is a net financial benefit to the State, as a whole, of \$23,890.84 per fiscal year. The nominal cost increase to each local government’s current annual budget for the purchase of motor oil is estimated to be no more than 0.1% for retail purchases by the gallon and no more than 0.28% for retail purchases of bulk drums.”

The Department conducted a thorough analysis of the financial impact of this rulemaking. These edits are necessary to reflect the results of the analysis. This edit is added to be consistent with other edits made to the economic analysis section of the ISOR, to summarize and clarify the statement in number 2 of the above paragraph, and to specify the cost increase to all government entities by a percentage of their current budget for the purchase of motor oil.

On page 13, paragraph 3, the last sentence is moved to the edits proposed in the above paragraph and reworded. The Department conducted a thorough analysis of the financial impact of this rulemaking. These edits are necessary to improve consistency, remove redundancy, and to relocate the estimated percentages to the above paragraph that relates specifically to public agencies.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES

On page 13, between the third and fourth paragraph, another paragraph is added to read, “The Department 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 or 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.” This edit is added to include the requirement that the Department must consider all reasonable alternatives proposed by the Department and any others during public comment, and will determine if those are more effective at implementing the statute.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

On page 14, paragraph 4 the phrase, “regulations do” is changed to the singular tense “regulation does,” to improve grammar and syntax. It also improves consistency with the language of the rest of the ISOR.