

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED ADOPTION OF REGULATIONS

Title 4, Division 9, Chapter 8. Article 4
Motor Oil Fee

INITIAL STATEMENT OF REASONS

Background

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 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, that 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 within the Program. This required the program to enforce the new mandate. 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 was 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 procedure, and recordkeeping requirements. 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.

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.

Description of the Public Problem, Administrative Requirements, or other Conditions or Circumstances the Regulations are Intended to Address

The Department is authorized by BPC Sections 12027 and 13433 to make such regulations as are necessary for the purpose of carrying out the provisions of Division 5. The Department must take regulatory action to implement and amend the provisions of BPC Sections 13430 through 13434. The current motor oil fee is set at \$0.03 per gallon of motor oil first produced in California or imported into California for sale. The current fee is not sufficient to continue to operate the

Petroleum Products Program at its current level of service to the industry and the California motoring public and businesses. The volume of motor oil produced or sold in California continues to decrease due to longer recommended oil changes intervals, smaller engines, and fewer miles driven by motorists. This has impacted the revenue generated by the motor oil fee and has depleted the reserves that had been built up over the years.

Results of the Economic Impact Assessment

The Department has made an assessment 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 the continued oversight of the advertising and labeling of these products.

Economic Impact Analysis

Adoption of the proposed regulations may have a significant statewide adverse economic impact affecting those businesses required to pay the Motor Oil Fee because the proposal raises the current fee by 33.3% (increasing from \$0.03 to \$0.04 per gallon). Some businesses may also be minimally impacted due to reporting requirements made more specific. The last two fiscal years of fee payments from the businesses reporting motor oil sales to the Department were reviewed and the economic impact projections were based on that information.

Federal Regulations

The proposed regulations are not in conflict with any federal regulations contained in the Code of Federal Regulations. Moreover, the proposed regulations are not mandated by federal law or regulation.

Alternatives Considered

The Department must determine in the final statement of reasons that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency 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.

The Department did not consider alternatives to this regulatory proposal because it feels that this is the best and only alternative. The 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.” The Department has determined that establishing the fee at \$0.04 per gallon will provide the funding necessary to maintain the program at its current level of service to the industry and California motorists. This level of funding will also provide for the gradual replacement of old, archaic equipment which can no longer be serviced, and allow the Department to regulate new fuels as they enter the marketplace.

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. The Business and Professions Code requires the Department to “prescribe” the frequency, methods, refund procedures, and penalties for the motor oil fee. Because this is a fee payable on motor oil produced or imported into California, there is no alternative other than that set out in the proposal.

Purposes for the Regulation

Necessity

The California Business and Professions Code, Division 5, states that the Department may, by regulation, establish fees necessary to cover the cost of administration and enforcement of Chapters 14 and 15 (Petroleum and Automotive Products).

In order for the Petroleum Products Program to continue to operate at its current level of service to the industry and California motorists and businesses, it is necessary to increase the motor oil fee from \$0.03 per gallon to \$0.04 per gallon.

The current fee is not sufficient to continue to operate the Petroleum Products Program at its current level of service to the industry and the California motoring public and businesses. The volume of motor oil produced or sold in California continues to decrease due to longer recommended oil changes intervals, smaller engines, and fewer miles driven by motorists. This has impacted the revenue generated by the motor oil fee and has depleted the reserves that had been built up over the years.

The Department’s Division of Measurement Standards (Division) Petroleum Products Program (Program) has 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 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 thus ensuring California motorists have confidence in the products they must purchase to keep their vehicle operational and providing safety in the operation of those vehicles.

Clarity

This proposal will provide for clearer reporting and recordkeeping requirements, and refund procedures.

The Department has proposed the amended and/or new regulatory language to address questions, comments, and concerns that have been expressed by both the industry and the Department regarding specific provisions of the current regulations. Definitions have been updated and added for clarity, reporting procedures have been amended to make it easier to file motor oil fee returns, refund request procedures have been amended to make it easier for businesses to understand who is eligible for a refund and the refund process, to specify that the Department has authority to audit records, which records, and time keeping of those records by the motor oil fee payees.

Specific Purpose - By Section

Chapter 8

The current Section 4300 is amended:

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", "Motor Oil Dealer's Permit Number", "Date of Sale", "Quarter", and "Export or Exported". Based on questions, comments and concerns expressed by both the regulated industry and the Department over the last several years it became apparent that updated and additional definitions of terms were necessary.

The current Section 4302 is amended:

4302. Fee Responsibility and Exemption.

This section identifies who is responsible for payment of the motor oil fee, 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 requirement for a motor oil dealer, who has ceased business, to notify the Department will reduce the mailing of delinquent notices to motor oil dealers that are no longer in business and also allow the Department to clean up its database on a regular basis.

The current Section 4304 is amended:

4304. Fees and Returns.

This section establishes the motor oil fee amount, payment schedule, due dates, and payment return information requirements, provisions for annual payment for small volume sales or purchases of motor oil. Several motor oil fee payees have requested the ability to design their own electronic form for payment that they can populate from their database records for ease of filing. This provision also provides for once a year filing of returns by business which generate 5,000 gallons or less of motor oil. This reduces the paper work necessary for those businesses.

The return requirements include the gallons of motor oil, imported, sold, purchased or manufactured in California; the total amount of gallons of motor oil where fees were paid to suppliers; the net amount of gallons of motor oil to which the fees apply; a signature and title of the company representative who prepared the motor oil fee return; and the date the return form was signed. This information is necessary to verify that the gallonage of motor oil was reported correctly and that the amount of fees was correctly calculated and reported.

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. Some motor oil payees have been reluctant to provide the records necessary for the Department to audit and verify proper payment of motor oil fees. This proposal establishes that authority to examine records for audit and verification purposes.

The current Section 4306 is amended:

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 non-payments beyond one year will be repealed. The additional 1% penalty beyond one year has been deemed unnecessary because nearly all delinquencies are paid within the first year and this makes the regulation less burdensome.

The current Section 4307 is amended:

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. There have been many questions regarding who is eligible for a refund of motor oil fees paid on motor oil exported from California. Since there is confusion within the industry, this proposal will clarify who is eligible and the procedure that must be used to request a refund of motor oil fees paid. This will also make it easier and quicker for the Department to handle refund requests.

The current Section 4308 is amended:

4308. Records.

This section clarifies recordkeeping requirements for motor oil dealers. Motor oil fee payees have indicated that they are unclear as to the type of records they need to maintain regarding motor oil fee payments and for how long to keep those records. This proposal specifies what records must be kept and the time frame for keeping those records.

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 methods to demonstrate that the motor oil fee was collected. Some motor oil fee payees have questions about their ability to pass the motor oil fee they pay to the Department onto their customers. This proposal clarifies that they may pass on the fee and the method that can be used to notify their customers that the fee is being charged to them.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department has determined that this proposal does not impose a mandate on local agencies or school districts. The Department has also determined that no cost or savings to any other state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no cost or savings in Federal funding to the State will result from the proposed action.

The Department has also made an initial determination that the action will not have a significant statewide adverse economic impact on housing costs.

The proposal may have a significant economic impact on California businesses that produce or import motor oil. The Department has determined that

establishing the fee at \$0.04 per gallon will provide the funding necessary to maintain the program at its current level of service to the industry and California motorists. This level of funding will also allow for gradual replacement of old, archaic equipment that is no longer repairable and allow the Department to regulate new fuels as they enter the marketplace.

There will be no effect on California businesses to compete with businesses in other states.

Technical, Theoretical and/or Empirical Study, Reports, or Documents

Historical Motor Oil Fee payment records

Previous and current Program budgets

Motor oil sales statistics compiled over the last 30 years

Current fee reporting, refund and recordkeeping requirements

Capital outlay for equipment assessment

Business and Professions Code, Division 5, Sections 12027, 13431, 13432 and 13433.