

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

**FINAL STATEMENT OF REASONS**

**Update of Initial Statement of Reasons**

As authorized by Government Code section 11346.9(d) and section 11347.1, the California Department of Food and Agriculture (Department) incorporates by reference the modified Initial Statement of Reasons (ISOR) prepared for this rulemaking.

Notices of proposed changes to the regulations have been posted for public review and comment:

*45-Day Public Review and Comment Period:*

The 45-day public notice and comment period for this rulemaking record began on June 23, 2017, and closed at 5:00 p.m. on August 07, 2017.

No public hearing was scheduled by the Department or requested by the public.

*The first 15-Day Notice of Modified Text, Addendum to the ISOR, and Additional Documents Relied Upon:*

The 15-day public notice and comment period for this rulemaking record began on August 21, 2017, and closed at 5:00 p.m. on September 05, 2017.

Changes made to the proposed text, ISOR, and two additional documents relied upon were added to the rulemaking file. Following the 45-day comment period the Department recognized the "Motor Oil Remittance Form" (Form 41-054, Rev. 1/1/18) with its proposed revisions was not included as part of the proposed regulation text file posted to the Department's webpage during the 45-day public review and comment period. However, that form was made available upon public request during that timeframe. Descriptions and justifications of the revisions to the form were included in the Addendum to the ISOR during the 15-day public notice and comment period. The Department also included in the Addendum to the ISOR the purpose and justification for each edit made including edits to section 4304(c); clarifying the language regarding delinquent payments to the Department. The Department also made some non-substantive formatting and grammar edits to the Addendum to the ISOR.

*The second 15-Day Notice of Modifications to the Addendum to the ISOR:*

The second 15-day public notice and comment period for this rulemaking record began on September 26, 2017, and closed at 5:00 p.m. on October 11, 2017.

No edits were made to the proposed text of the regulation during this notice.

The Addendum to the ISOR was modified based on comments received by the public and other interested parties. The Department made substantive edits to the Addendum to the ISOR in the purpose and necessity section, and edited the fiscal impact of this proposed

regulation to other state agencies. The Department also made some non-substantive formatting and grammar edits to the Addendum to the ISOR.

*The third 15-Day Notice of Modifications to the Addendum to the ISOR:*

The third 15-day public notice and comment period for this rulemaking record began on October 18, 2017, and closed at 5:00 p.m. on November 2, 2017.

No edits were made to the proposed text of the regulation during this notice.

The Addendum to the ISOR was modified based on comments received by the public, the Department of Finance, and other interested parties. Edits and recalculations were made to the economic impact of the proposed regulation on California business and private individuals, and recalculations of the fiscal impact on other local and state agencies in the first fiscal year and each fiscal year thereafter. The Department also made some non-substantive formatting and grammar edits to the Addendum to the ISOR.

The Department is revising an existing reporting requirement that applies to business. It is necessary for the health, safety, or welfare of the people of the state that the regulations apply to business.

The Department inadvertently did not indicate all changes to Section 4307 in underline and strikeout.

### **Update of Documents Relied Upon**

The Department relied on information in the following documents while modifying the ISOR, and added them to the rulemaking file pursuant to Government Code section 11347.1:

- 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](http://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
- California Department of Food and Agriculture, Division of Measurement Standards, [www.cdffa.ca.gov/dms](http://www.cdffa.ca.gov/dms), “*Addendum to the Initial Statement of Reasons*,” September 2017

### **Mandate on Local Agencies or School Districts**

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

### **Summary and Response to Comments**

Copies of comments received are included following page 9 of this document. Assigned comment numbers referenced in the responses are annotated on the right margins of the comments received.

During the 45-day public review and comment period, the Department received comments from three entities:

- Mr. Dean Mouren-Laurens of Liquid Packaging Company on July 10, 2017;
- Ms. Alisa Reinhardt of California New Car Dealers Association (CNCDA) on July 28, 2017; and
- Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) on August 7, 2017.

During the first 15-day public review and comment period, the Department received comments from one entity:

- Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) on September 5, 2017.

During the second 15-day public review and comment period, the Department received comments from one entity:

- Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) on October 11, 2017.

During the third 15-day public review and comment period, the Department received comments from one entity:

- Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) on November 1, 2017.

The Department considered and responded to the comments made by commenters during each of the public review and comment periods by sequentially numbering and grouping similar comments found in each of the attached comment letters for ease of reference. The following are summarizations of comments and Department responses to those comments:

**Summary of Comments #1, 2, 4, 15, 27, 29, 39 and 41 (Grouped):** General opposition to increasing the MOAF and removing the reversion of the MOAF.

The Department thanks Mr. Dean Mouren-Laurens of Liquid Packaging Company (Comment #1), Ms. Alisa Reinhardt of California New Car Dealers Association (Comment #2), and Mr. Samuel Bayless of California Independent Oil Marketers Association (Comment #4, 15, 27, 29, 39 and 41) for their comments.

Sunset clause and deadlines. The commenters make general comments of opposition to set the MOAF to five cents (\$0.05) per gallon of motor oil and remove the language reverting the MOAF to three cents (\$0.03) per gallon of motor oil on January 1, 2018.

**Response to Comments #1, 2, 4, 15, 27, 29, 39 and 41:**

The Department acknowledges those comments of general opposition. However, the Department makes no changes to the proposed text of the regulation for the following reasons:

Business and Professions Code (BPC) § 13431 and § 13432 establishes a statutory maximum of five cents (\$0.05) per gallon of motor oil for the MOAF, and provides the Department the authority to set such fee at a reasonably necessary rate to cover the cost of administration and enforcement of the statutes. The Department receives no general fund money or any other funding source to implement the Fuels, Lubricants, and Automotive Products program. The Administrative Procedure Act (APA) establishes the necessary steps the Department must take to amend the regulation to set the MOAF to the statutory maximum of five cents (\$0.05) per gallon and remove the language reverting it to three cents (\$0.03) per gallon beginning January 1, 2018. The California Legislature has not provided an alternate source of funding to compensate for or replace the MOAF. Therefore, the Department must propose to increase the MOAF to comply with the aforementioned statutes, implement its mandated responsibilities, remain financially responsible, and maintain its budget. Maximizing the MOAF is necessary to fulfill the Department's requirement to cover its administrative costs to implement the program. The proposed regulation is also necessary because it maximizes the Department's current source of funding. In the last five years, the Department utilized additional temporary and partial funding sources such as the Cost of Implementation Fee Regulation or other alternate funding sources to cover its annual expenditures. As stated in the ISOR, in fiscal year 2016/2017 the Department secured additional funding of \$1.1 million per year from the Cost of Implementation Fee Regulation, administered by the California Air Resources Board, in accordance with Health and Safety Code, Division 25.5, Part 7, § 38597. The supplemental funding is only to be allocated for the Department's implementation and improvement of non-petroleum sourced alternative and renewable motor vehicle fuels. That alternate funding source is not to be used for activities associated with petroleum sourced fuels and products. To that end, the Department is still in need of improving its revenue to cover the necessary administrative costs and regulate petroleum sourced fuels and automotive products. The Department has followed all of the requirements of the APA with this rulemaking.

California's production, importation, distribution and retail sale of motor oil significantly declined by no less than 16% in the last five fiscal years and by 32% since fiscal year 2005/2006. The MOAF is directly related to the number of gallons of motor oil produced, imported, distributed, and sold in California. Consequently, revenue used by the Department to implement the Fuels, Lubricants, and Automotive Products program has also decreased since 2012. The Department acknowledges this fact in the ISOR and is in the process of exploring resolutions to the decreasing MOAF. Because the MOAF is directly related to the declining motor oil market, it is imprudent to keep the MOAF at the current rate or to decrease it to a lesser rate. That would result in a very significant loss of the Department's ability to perform mandated responsibilities.

The Fuels, Lubricants, and Automotive Products program is funded by the MOAF and utilizes that fee to oversee, regulate, and enforce the quality specifications, advertising,

labeling and method of sale requirements applicable to those producing and selling automotive fuels and related automotive products, including motor oil, transmission fluid, brake fluid, and engine coolants. Regulation and enforcement of specifications and standards for automotive fuels and products is critical to protect California vehicle owners and motorists. As discussed in the ISOR, since the last adjustment of the MOAF in 2013, the scope of mandated program responsibilities has increased significantly while Department revenue has decreased slightly. For example, newly formulated transmission fluids and motor oils, hydrogen fuel, compressed natural gas, and diesel exhaust fluid have expanded in the marketplace or have become new program responsibilities; now required to be included in the Department's budget. Department expenditures such as salaries, sampling equipment, new laboratory instrumentation and supplies, and vehicle maintenance have increased substantially due to circumstances beyond the Department's control.

The discussion of Alternatives 1 and 2 in the ISOR details the adverse consequences to the Department and California consumers of allowing the MOAF to revert to three cents (\$0.03) per gallon or maintaining it at four cents (\$0.04) per gallon. This reasoning applies to any "sunset" language that reverts the MOAF to a lesser value in the future. No other alternatives to this proposed regulation considered by the Department were better than the proposed regulation for California businesses, consumers, regulated motor oil dealers, and the Department. Because the Department must cover the costs of the Fuels, Lubricants, and Automotive Products program, it must reject the commenters' requests to revert the MOAF to three cents (\$0.03) per gallon of motor oil.

**Summary of Comment #3:** Increased MOAF financial impact on CNCDA members. The Department thanks Ms. Alisa Reinhardt of California New Car Dealers Association (CNCDA) for Comment #3.

The commenter expresses general opposition and concern on behalf of CNCDA regarding the financial impact the proposed regulation will have on its members. The commenter claims that the financial impact of this regulation to its members is actually two cents (\$0.02) per gallon of motor oil after January 1, 2018, not just one cent (\$0.01) cent per gallon as the original ISOR states. The commenter claims a financial impact of \$900 per month per member due to this proposed regulation.

**Response to Comment #3:**

In consideration of this and other comments received by the Department of Finance and other interested parties, the Department agrees with CNCDA and its concern that this proposed regulation, when compared to the current regulatory text, will actually result in a financial impact of one cent (\$0.01) per gallon of motor oil prior to January 1, 2018, and effectively a difference of two cents (\$0.02) per gallon of motor oil after January 1, 2018. The Department addressed this concern by reassessing and recalculating the fiscal and economic impact of this regulation to local and State government entities, California businesses, private individuals, and regulated motor oil dealers. The Department made changes to the financial assessment, assuming a two cent (\$0.02) rate differential, and

included the edits in the Addendum to the ISOR. Notice of modifications to the Addendum to the ISOR was posted during the third 15-day public review and comment period.

Nonetheless, the Department respectfully disagrees with the financial assessment made by CNCDA regarding the calculations of the financial impact of this proposed regulation to its members. CNCDA claims the proposed MOAF increase will result in an increased cost of \$900 per month to each of its members calculated at the two cent (\$0.02) MOAF rate differential. On the contrary, the Department calculates a fee increase of only \$75 ( $3,750 \times \$0.02$ ) per month or \$900 per year. CNCDA overstates the financial impact to its members by a factor of twelve. Accordingly, the Department feels a budget increase of \$75 per month, on average, represents a minimal economic impact on each of its members as a result of this proposed regulation.

**Summary of Comments #5, 9, 16, 21, 28, 33, 40 and 46 (Grouped):** Annual reporting requirements for motor oil dealers.

The Department thanks Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) for Comments #5, 9, 16, 21, 28, 33, 40, and 46. The commenter supports the proposed regulation to change a motor oil dealer's annual reporting requirement from less than 5,000 gallons to less than or equal to 30,000 gallons.

**Response to Comments #5, 9, 16, 21, 28, 33, 40 and 46:**

The Department acknowledges the support offered by this commenter. The Department makes no additional changes to the proposed regulation.

**Summary of Comments #6, 12, 13, 18, 25, 30, 37, 41, 43 and 50 (Grouped):** MOAF decreased over time.

The Department thanks Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) for Comments #6, 12, 13, 18, 25, 30, 37, 41, 43 and 50.

The commenter states that if the MOAF is "extended," it should be associated with a strict timeline set to decrease as DMS (the Department) finds new funding sources. The commenter also says there should be a "sunset clause" included in the proposed regulation. CIOMA submitted repeated statements and tables in both the 45-day and 15-day comment letters. Comments about inclusion of a timeline and "sunset clause" in the proposed regulation are offered in Comments #6, 12, 18, 30, 41 and 43. Tables proposing a decreasing fee schedule over a period of time are in Comments #13, 25, 37, and 50. As part of the proposed decrease in the MOAF, the commenter suggests adding alternate funding sources in the form of motor vehicle fuel fees to offset the decreasing MOAF to share the financial responsibility of implementing the Fuels, Lubricants, and Automotive Products program over other emerging fuels and technologies entities. Lastly, the commenter offers an alternative proposal to decrease the MOAF by 50% if the gallons of motor oil assessed a fee fall below 50% of the number of gallons assessed a fee in 2018.

**Response to Comments #6, 12, 13, 18, 25, 30, 37, 41, 43 and 50:**

For the following reasons the Department rejects these comments and makes no change to the proposed regulation:

As described, the proposed decrease in the MOAF is beyond the scope of this rulemaking. Although the Department has statutory authority to set the MOAF at a level not to exceed the reasonably necessary costs to administer and enforce the program, which is specifically the scope of this rulemaking, it has not been given statutory authority to propose alternate fees on motor vehicle fuels. CIOMA proposed a plan that includes the addition of two other Department assessed fees in order to offset the decreasing MOAF. That would require the California Legislature to pass a bill to allow the Department to assess alternate fees; therefore, the Department rejects these comments as part of this rulemaking process.

The Department made the following assessments to specifically address these comments made by CIOMA:

Regarding CIOMA's proposed plan to decrease the MOAF rate over time, the Department respectfully disagrees with the comments made to include a strict timeline set to decrease the MOAF rate over time. At this time, there is no other fee the Department can legally assess on regulated entities that would justify a decreasing MOAF rate. Currently, the MOAF is proportionally related to the amount of motor oil produced, distributed, imported, or sold in the state. As the market share of motor oil decreases so does the Department's revenues for assessing that fee. To decrease the rate of the MOAF any further only exacerbates the already diminishing revenue source of the Department. The commenter proposes a table, repeated in Comments #13, 25, 37, and 50 of decreasing MOAF rates relative to time, and offset by two motor vehicle fuel fees proposed by CIOMA that are inconsistent with the California Constitution (explained below). In the table, the commenter proposes to decrease the MOAF in a stepwise fashion. It is financially irresponsible and imprudent to propose a strict plan over time to decrease the MOAF rate without another funding source approved and provided by the legislature. Therefore, the Department rejects the proposed comment to decrease the MOAF over time.

As part of the above-mentioned plan to decrease the MOAF, the commenter proposes the Department set fees on alternative motor vehicle fuel types. Specifically the commenter mentions funding sources such as fees set on "renewable diesel and biodiesel" by the gallon and "electric vehicle charging" by the kilowatt-hour. The Department does not have the statutory authority to impose a fee on any motor vehicle fuel. Motor vehicle fuel fees (taxes) are subject to the California Constitution, Article XIX Motor Vehicle Revenues, Section 2. That Article of the California Constitution requires any tax assessed on a motor vehicle fuel to be deposited into the Highway Users Tax Account, and only be used for specific purposes as defined in that section. Pursuant to that law, CIOMA's proposed fees on fuels are not to be collected by the Department or used to administer and enforce the Fuels, Lubricants, and Automotive Products program. The Department rejects the comment because the commenter's proposed alternate fees are inconsistent with the law, outside the Department's authority to impose, and does not specifically address the proposed changes in this rulemaking.

California Code of Regulations, section 4304 (a) has a provision to revert the MOAF to its former rate of three cents (\$0.03) per gallon of motor oil, “unless a regulation establishing a different fee is promulgated before January 1, 2018.” The purpose of this rulemaking is to justify the Department’s financial need to establish an increase of the MOAF. That provision became effective in 2013 before the Department expanded its responsibilities under AB 808 in 2016. Although motor oil is in decline and alternative fuels and automobiles are slowly increasing in the market place, petroleum sourced fuels, lubricants, and automotive products remain the majority share of those markets. As described in the ISOR, the Department’s fiscal budget exceeds its revenues. It is financially irresponsible and imprudent of the Department to uphold the current “sunset clause” or propose a new “sunset clause” as part of this rulemaking. Because it is beyond the Department’s authority to impose any other fees to administer and implement mandated program responsibilities, a “sunset clause” is not an alternative that is more economical or less burdensome to California consumers, the regulated industry, or to the Department. Therefore, the Department rejects the comment to include a “sunset clause” in this rulemaking.

The commenter also proposes the Department decrease the MOAF by 50% if “the gallons of motor oil regulated by DMS (the Department) falls below 50% of total gallons sold on January 1, 2018,” (Comment #13, 25, 37 and 50). The MOAF is already based on gallons of motor oil produced, imported, distributed, or sold in California. Empirically, as the gallons of motor oil decrease in market share, whether by industry production, supply, or consumer demand, the MOAF collected by the Department will also be proportionally reduced to follow the relative motor oil market share in the industry. This alternative is not economically more reasonable or more beneficial to California consumers, the regulated community, or the Department. Therefore, the Department rejects this proposed comment for this rulemaking.

**Summary of Comments #7, 10, 11, 14, 19, 22, 23, 24, 26, 31, 34, 35, 36, 38, 44, 47, 48, 49 and 51 (Grouped):** The Department did not include alternate funding sources in the rulemaking.

The Department thanks Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) for Comments #7, 10, 11, 14, 19, 22, 23, 24, 26, 31, 34, 35, 36, 38, 44, 47, 48, 49 and 51.

Sunset clause and deadlines. The commenter offers multiple, generalized comments on exploring, considering, proposing, and implementing alternate sources of funding to create “fair share” responsibility of administering and enforcing all program responsibilities of the Fuels, Lubricants, and Automotive Products program. The Commenter also states that the Department has not reached out to CIOMA to explore alternate funding sources (Comment #24, 36, and 49). Some emerging industries mentioned that may share in the payment of future fees are electric vehicles and electricity as a motor vehicle fuel (Comment #10, 22, 34, 47); renewable natural gas, biodiesel, and renewable diesel (Comment #11, 23, 35, and 48); and tax on tires (Comment #14, 26, 38, 51).



**Response to Comments #7, 10, 11, 14, 19, 22, 23, 24, 26, 31, 34, 35, 36, 38, 44, 47, 48, 49 and 51:**

The Department rejects those comments because it has not been granted statutory authority by the California Legislature to adopt alternate funding sources, beyond setting fees for the MOAF, to cover the reasonably necessary costs to administer and enforce program activities. In order to amend a statute that provides the Department with authority to create or alter a funding source it must be proposed and lobbied for by stakeholders, industry, the regulated community, or other interested entities. It is not the Department's business practice to initiate proposals of legislative changes with the Legislature. Therefore, the Department rejects those comments because it does not have the authority to implement an alternate funding source through rulemaking, and because the comments do not directly address the proposed changes of this rulemaking. No additional changes to the proposed regulation were made.

**Summary of Comments #8, 20, 32 and 45 (Grouped):** Providing services as motor oil market declines.

The Department thanks Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) for Comments #8, 20, 32 and 45.

The commenter states that the Department has not proposed in this rulemaking how it will maintain a level of protection to consumers and fuel providers as the quantity of motor oil declines in the future.

**Response to Comments #8, 20, 32 and 45:**

The Department respectfully disagrees with these comments for the following reasons, and no changes were made to the proposed regulation:

It is true the Department's program is a "fee for service" type program where the fees collected from regulated motor oil dealers are applied to administration and enforcement of the motor vehicle fuels, lubricants, and automotive products specifications. As stated in the ISOR, Lubes 'n' Greases reports that California motor oil production is in decline, yet by 2020 it is forecasted to level out at the current volume having a near 0% growth rate. Assuming the forecasted information is accurate; the proposed regulation increasing the MOAF will stabilize the Department's budget and improve the activities of the Department in the near future. The Department seeks to continue to improve its level of service to California consumers and fuel providers by increasing the MOAF through this rulemaking and applying the needed revenue to continue its various services. The Department could not find reliable forecasting information extending beyond 2020 while preparing this rulemaking and therefore rejects these comments.

**Summary of Comment #17:** State mandates to purchase electric vehicles or zero emission vehicles.

The Department thanks Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) for Comment #17.

The commenter indicates that the ISOR does not consider the growing number of mandates for government agencies to purchase electric or zero emission vehicles.

**Response to Comment #17:**

The Department appreciates this observation yet this comment is beyond the scope of this proposed rulemaking and neither supports nor opposes the proposed text of regulation.

**Summary of Comment #42:** Projections on the long term viability of the proposed MOAF increase.

The Department thanks Mr. Samuel Bayless of California Independent Oil Marketers Association (CIOMA) for Comment #42.

The commenter requests long term projections of the fee increase in light of the expected decrease of motor oil in the future, and provides the Department guidance in the form of questions to address this concern.

**Response to Comment #42:**

As stated in the ISOR, Lubes 'n' Greases reports that California motor oil production is in decline, yet by 2020 it is forecasted to level out at the current volume having a near 0% growth rate. Assuming the forecasted information is accurate; the proposed regulation increasing the MOAF will stabilize the Department's budget and improve the activities of the Department in the near future. The Department seeks to continue to improve its level of service to California consumers and fuel providers by increasing the MOAF through this rulemaking and applying the needed revenue to continue its mandated responsibilities. The Department could not find reliable forecasting information extending beyond 2020 while preparing this rulemaking. The ISOR also explains that the proposed rulemaking will effectively increase the Department's funds by two cents (\$0.02) per gallon of motor oil after January 1, 2018. That results in additional revenue of approximately \$0.89 million for fiscal year 2017/2018 and about \$2 million for each fiscal year thereafter; assuming the volume of motor oil remains at or about the forecasted volume into 2020.

Beyond this rulemaking, the Department secured additional funding of \$1.1 million per year that is only to be used for the regulation and enforcement of alternative fuels. That funding source only partially offsets the increased expenses of the specialized, costly, and time-intensive sampling and analyses of hydrogen and CNG used as alternative motor vehicle fuels. Despite the additional funding, the Department is still experiencing a financial deficit of approximately \$1.1 million to implement all its regulatory, oversight, and enforcement responsibilities. The additional revenue will allow the Department to continue to provide the protection to consumers and retailers of fuels, lubricants, and automotive products, and also replenish the Department's budget over the next few fiscal years.

In response to the first question offered by CIOMA: As explained above the latest forecasts of motor oil production are through 2020. The additional revenue generated with this rulemaking and that of the alternative fuels funding source will provide the Department the means to be able to continue oversight, regulation, and enforcement, and to replenish its budget.

In response to the second question offered by CIOMA: The Department reviews its operating costs annually in preparation of planning the successive fiscal budget. It is the Department's goal to streamline operating costs in relation to the level of mandated oversight and regulation the law requires.

In response to the third question offered by CIOMA: The Department has already secured additional funding to support alternative fuels. That funding source is to be used only for the oversight, regulation, and enforcement of the alternative fuels program. The Department has conducted webinars, meetings and consortiums with motor oil dealers, including CIOMA, and other interested entities to discuss and address the issue securing more "fair" and reasonable sources of funding. The Department continues to pursue discussions and welcomes feasible alternatives.

In response to the fourth question offered by CIOMA: As the ISOR states, the Department has considered the need for additional funding and secured \$1.1 million in fiscal year 2016/2017 for electric vehicles and other alternative fuels. That funding source relieves the burden of the MOAF to support those fuel types.

### **Assessment**

The Department has made an assessment that the proposed regulation would not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

### **Alternatives Considered**

The Department has determined 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.