

TITLE 4. BUSINESS REGULATIONS

Division 9. Division of Measurement Standards, Department of Food and Agriculture

Chapter 8. Motor Oil Fee

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend regulations contained in the California Code of Regulations (CCR), Title 4. Business Regulations, Division 9. Division of Measurement Standards, Department of Food and Agriculture, Chapter 8. Motor Oil Fee §§ 4300-4309, inclusive.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department by mail, fax, or email. The written comment period closes at 5:00 p.m. on Monday, August 7, 2017. The Department will only consider comments received at the Division of Measurement Standards' office by that time.

SUBMIT COMMENTS TO:

Samuel Ferris
Environmental Scientist
California Department of Food and Agriculture
Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812
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(916) 229-3055 (FAX)

Following the written comment period or public hearing, if one is requested, the Department, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY/REFERENCE

Business and Professions Code (BPC) § 12027 authorizes the Department to adopt these proposed regulations which implement, interpret, and make specific BPC §§ 13431, 13433, and 13434, inclusive.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department proposes to make changes to CCR, Title 4, Division 9, Chapter 8 §§ 4300, 4302, 4304, 4305, 4306, 4307, 4308, and 4309, rename and revise the Department's Motor Oil Return Form (Form 41-054), amend the annual motor oil assessment fee (MOAF) reporting criteria, and repeal subdivision (d) of § 4308 of that Chapter. As authorized by BPC §§ 12027 and 13431, the Department has authority to establish and set the MOAF up to the maximum statutory limit of five cents (\$0.05) per gallon of motor oil manufactured, distributed, or imported for retail sale in California.

Under BPC, Division 5, Chapter 2 § 12027, the Secretary of the Department may make such rules and regulations as are reasonably necessary to carry out the provisions of Division 5. The Department's Fuels, Lubricants, and Automotive Products Program (Program) is responsible for the administration and enforcement of BPC, Division 5, Chapter 14 (Fuels and Lubricants) and Chapter 15 (Automotive Products). Article 4 of Chapter 14 establishes the MOAF to fund the regulatory and enforcement activities of the Program. Currently, CCR, Title 4 § 4304(a) sets the MOAF at four cents (\$0.04) per gallon of motor oil. This section also provides that the MOAF revert to three cents (\$0.03) per gallon on January 1, 2018. The proposed regulation increases the MOAF to five cents (\$0.05) per gallon effective January 1, 2018, and removes the language reverting it. The Department proposes to rename the Motor Oil Fee Return Form to Motor Oil Remittance Form and revise it and the instructions that accompany it to reflect the fee increase. In addition, the Department proposes to increase the maximum fee assessable gallons allowed to qualify for annual MOAF reporting from less than 5,000 gallons to 30,000 gallons or less of motor oil produced, distributed, or imported for retail sale in California. Lastly, the Department proposes to repeal subdivision (d) of § 4308 as this requirement has been met by the Program and is no longer applicable.

Form Incorporated by Reference

Motor Oil Fee Remittance Form (Form 41-054, Rev. 1/1/18) incorporated by reference into § 4304.

Anticipated Benefits of the Proposed Regulations

Assembly Bill (AB) 808 (Ridley-Thomas, Statutes of 2015, Chapter 591) significantly expanded the scope of the Program's regulatory and enforcement activities to include many additional motor vehicle fuels (petroleum and non-petroleum), alternative and renewable fuels, other fuel blends, lubricants, and automotive products such as ethanol- and methanol-based gasoline blends, biodiesel, renewable diesel, new motor oil blends, re-refined motor oil blends, hydrogen gas, compressed natural gas, liquefied natural gas, and diesel exhaust fluid. The proposed regulations will ensure adequate funding for the broadened administration, implementation, and enforcement activities of the Program.

The additional products added to the Program's scope of authority under AB 808 support Governor Brown's goal to reduce emissions of toxic greenhouse gases, other known climate change pollutants, and reduce dependence on petroleum-based products. The proposed regulation will assist California with achieving the Governor's goals.

The proposed regulation will also protect California consumers, businesses, and retailers of motor vehicle fuels, lubricants, and automotive products by ensuring products not meeting specification are unavailable for retail sale in California.

The proposed regulation financially benefits a greater number of small to medium sized motor oil dealers qualifying to annually report the MOAF by reducing costs associated with quarterly reporting. That cost savings helps offset the increased fee for those small to medium sized motor oil dealers.

Consistency and Compatibility with Existing State Regulations

The Department determined this proposal is consistent and compatible with existing state regulations. The Department is the only state agency with the authority to regulate fuel quality, labeling, and advertising requirements for motor vehicle fuels, lubricants, and automotive products.

Consistency and Compatibility with Existing Federal Regulations

The Department determined the proposed regulation is consistent and compatible with existing federal regulations. The proposed regulations are not mandated by federal law or regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None

Fiscal impact on public agencies including costs/savings to state agencies or costs/savings in federal funding to the state: None

Nondiscretionary costs/savings to local agencies: None

Cost to any local agency or school district for which Government Code §§ 17500 et seq. require reimbursement: None

Other nondiscretionary cost or savings imposed on local agencies: None

Significant effect on housing costs: None

Although the proposed action may affect individual California consumers and small businesses, the Department concludes the proposed regulation would not have a significant statewide adverse economic impact directly affecting California consumers and businesses, including the ability of California businesses to compete with businesses in other states.

EFFECTS ON PRIVATE PERSONS AND BUSINESSES, INCLUDING SMALL BUSINESSES

The proposed regulation financially affects all California consumers and businesses, including small businesses that purchase retail motor oil. The proposed regulation will permanently increase the MOAF from four cents (\$0.04) per gallon to five cents (\$0.05) per gallon. The current retail price of a gallon of motor oil is approximately \$20. Assuming the proposed fee is fully passed on to the consumer it will raise the retail price by one cent (\$0.01) per gallon an increase of no more than 0.05% ($\$0.01/\$20 \times 100\%$). Motor oil purchased in bulk by California businesses such as automotive repair shops and other businesses performing vehicle maintenance will increase by one cent (\$0.01) per gallon. The retail price

of a 55-gallon drum of petroleum motor oil is about \$400. The retail price of synthetic motor oil is greater than that. Again, assuming the MOAF is fully passed on to the consumer it will add fifty-five cents (\$0.55) to the current retail price of a drum of motor oil; an increase of no more than 0.14% ($\$0.55/\$400 \times 100\%$). The Department believes the proposed increase of the MOAF can be passed on to California consumers and businesses without statewide adverse economic impact.

The Department's proposal will affect all California businesses regulated as motor oil dealers and required to pay the MOAF. Over 150 motor oil dealers are subject to the MOAF, ranging from extremely large motor oil dealers to small specialty lubricant producers, blenders, or distributors. Motor oil producers will be required to pay an increased fee of one cent (\$0.01) per gallon of motor oil produced, distributed, or imported for retail sale in California. However, some motor oil dealers will benefit by qualifying to report the MOAF annually rather than quarterly. The Department believes there will not be a significant adverse economic impact on small to medium sized motor oil dealers considering that the administrative cost savings realized by annual reporting partially offsets or, in a few cases exceeds, the proposed MOAF increase.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that the proposed regulation: (1) is unlikely to eliminate jobs for motor oil dealers; (2) is unlikely to create new jobs in California; (3) are unlikely to eliminate existing businesses; (4) is unlikely to create new businesses in California; and (5) is unlikely to affect the expansion of businesses in California.

As stated in the above section, "*Anticipated Benefits of the Proposed Regulations*" (under the INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW), the proposed regulation provides benefits to the health and welfare of California residents, worker safety, and the state's environment by allowing the Division to: protect motorists from being sold automotive fuels, lubricants, and automotive products that do not meet labeling, advertising, method of sale, or quality and performance specifications; regulate and enforce an expanded scope of fuels and automotive products; support the Governor's goals to reduce greenhouse gasses; and financially benefit some small motor oil dealers.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), 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, 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.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Samuel Ferris, Environmental Scientist
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Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812
Fax: (916) 229-3055
Email: Sam.Ferris@cdfa.ca.gov

The backup contact person for these inquiries is:

Kevin Schnepf, Environmental Program Manager I
California Department of Food and Agriculture
Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
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Fax: (916) 229-3055
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Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Samuel Ferris at the above address.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and all the information upon which this proposal is based.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After receiving and considering all timely and relevant comments and holding the hearing, if requested, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Samuel Ferris at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Samuel Ferris at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the initial statement of reasons, and the text of the regulations in underline and strikeout can be accessed through the Division of Measurement Standards' website at: www.cdfa.ca.gov/dms/regulations.html

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