

DEPARTMENT OF FOOD AND AGRICULTURE

**PROPOSED REGULATION TEXT**

California Code of Regulations  
Title 4. Business Regulations  
Division 9. Division of Measurement Standards, Department of Food and Agriculture  
Chapter 8. Motor Oil Fee

Proposed changes are **underlined**  
Proposed deletions are **~~strikethrough~~**

**Chapter 8. Motor Oil Fee**

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

For purposes of fee responsibility under Sections 13430 and 13431 of the Business and Professions Code the following definitions apply:

- (a) “Motor oil” includes natural, synthetic and re-refined motor oils, whether or not in retail containers, and in addition, any product used as an additive to a motor oil used in the lubrication of internal combustion engines. Refinery base stocks, manufacturing additives used by motor oil dealers in the commercial compounding and production of motor oils, and other motor oil components are not motor oils for the purposes of fee responsibility unless they are used separately in the lubrication of internal combustion engines, in which case they are “motor oils” for the purpose of the fee responsibility.
- (b) For purposes of this ~~Subchapter~~Chapter, the term “additive” when used alone, means any product to be added to the motor oil in the crankcase of an internal combustion engine for the purpose of reducing friction, heat or wear of the internal moving parts.
- (c) “Internal combustion engine” means all engines producing power by internal combustion and includes 2-cycle and 4-cycle internal combustion engines and turbine engines. Internal combustion engines include engines powered by gasoline, ethanol, methanol, alcohol blended fuels, diesel, biodiesel, biodiesel blends, kerosene, hydrogen, compressed natural gas, liquefied petroleum gas, propane, or butane.
- (d) “Motor oil dealer” means any person, firm or corporation engaged in the business of producing, importing, packaging or otherwise preparing motor oil for market or selling or distributing motor oil.
- (e) “Motor oil dealer permit number” means the registration number provided by the Department to each motor oil dealer.
- (f) “Date of sale” is the date of transfer of the motor oil to the purchaser, as evidenced by an invoice, voucher or bill of lading.

(g) "Quarter" means a three-month period during a fiscal year. For each fiscal year, the first quarter commences July 1 and ends September 30, the second quarter commences October 1 and ends December 31, the third quarter commences January 1 and ends March 31, and the fourth quarter commences April 1 and ends June 30, all inclusive.

(h) "Export" or "Exported" means the delivery or shipment of motor oil by the dealer from a point in California to a point outside of California when, pursuant to the contract of sale, the motor oil is delivered by the motor oil dealer to:

- (1) The out of state point by facilities operated by the dealer; or
- (2) A carrier, customs broker or forwarding agent for shipment to a location outside of California.
- (3) A forwarding agent, export packer, customs broker or other person engaged in the business of preparing property for export, or arranging for its export to a location outside of California, or
- (4) A vessel clearing from a port in California for a port outside of California. However, motor oil consumed during a voyage clearing a California port is not exempt.

The motor oil is not exported if it is diverted in transit, for any reason, and is not actually delivered outside of California; regardless of documentary evidence held by the dealer for delivery of that motor oil for out-of-state shipment.

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13430 and 13431, Business and Professions Code.

#### **§ 4302. Fee Responsibility and Exemption.**

(a) The first motor oil dealer that produces, sells or distributes motor oil in California, whether or not packaged in retail containers, shall pay the fee for all such motor oil sold in California.

(b) Motor oil exported for sale outside California is exempt from the motor oil fee.

(c) A person assigned a motor oil dealer permit number and not actively engaged in the business of producing, distributing, or selling motor oil is required to notify the Department in writing within the next reporting period upon ceasing operations dealing with motor oil.

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13430 and 13431, Business and Professions Code.

#### **§ 4304. Fees and ~~Returns~~ Remittance Forms.**

(a) The motor oil fee provided for in Section 13431 of the Business and Professions Code is established at ~~four~~ five cents (~~\$0.04~~ \$0.05) per gallon effective January 1, 2018. ~~This section shall remain in effect until January 1, 2018 and as of that date the fee shall revert to three cents (\$0.03) per gallon, unless a regulation establishing a different fee is promulgated before January 1, 2018.~~

(b) Each person responsible for the payment of the motor oil fee shall file a ~~return~~remittance form with the Department no later than 30 days after each quarter ending September 30, December 31, March 31 and June 30. The ~~return shall be on a completed~~ “Motor Oil Fee ~~Return~~Remittance Form” (Form 41-054, Rev. ~~6/30/12~~1/1/18), hereby incorporated by reference, shall be completed and accompanied ~~by~~with payment of the motor oil fee due for ~~such transactions~~the reporting period. All motor oil dealers must prepare and submit to the Department a ~~return~~the remittance form in accordance with the general requirements for reporting contained in this ~~section~~Chapter.

- (1) A ~~return~~remittance form for each quarter shall include:
  - (A) The amount, in gallons of motor oil purchased, sold, manufactured in California, or imported into California.
  - (B) The total amount of gallons of motor oil with fees paid to suppliers.
  - (C) The net amount of motor oil gallons to which the fee is applied. This is calculated by the gallons reported in subparagraph (A) above of this paragraph minus the gallons reported in subparagraph (B) above of this paragraph.
  - (D) The signature and title of the representative of the entity authorized to prepare the return.
  - (E) The date the ~~return~~remittance form was signed.
- (2) ~~Returns~~Remittance forms and applicable supporting data shall be accurate and complete; and shall be computer generated, typed or legibly handwritten in English.

~~(c) Any return not received by the Cashier, California Department of Food and Agriculture in Sacramento by the dates stated in subsection (b), not complete or not accompanied by the full fee due, is delinquent. A return that is postmarked not later than the fifth day of the month in which the return is due shall be deemed received by the date on which it was due. Any remittance form and accompanying motor oil fee received by the Department that is postmarked more than 35 days after the end of the reporting period as described in subdivisions (b) and (f) of this section, is considered delinquent. Delinquent payments are subject to a late penalty fee under the provisions of Section 4306 of this Chapter.~~

~~(d) A motor oil dealer may not take a credit on their quarterly the Motor Oil ~~Return~~Remittance Form for motor oil that is used for an exempt purpose pursuant to Business and Professions Code, Section 13431, during any quarter. Motor oil fees paid on motor oil later used for an exempt purpose may be refunded under the provisions of this Chapter upon request of the motor oil dealer under the provisions of Section 4307 of this Chapter.~~

~~(e) Any return not received by the Cashier, California Department of Food and Agriculture in Sacramento, by the dates stated in subsection (b), incomplete or not accompanied by the full fee due, is delinquent. The Department will reject any ~~return~~remittance form that is incomplete, not accompanied by the full fee due, or fails to comply with the reporting requirements of this Chapter. All payments to the Department must be made by check, draft, money order or cashier's check payable to the Cashier, California Department of Food and Agriculture.~~

~~(f) Notwithstanding subdivision (b) of this section, Anyany motor oil dealer with an annual volume of sales or purchases of motor oil less than 5000 or equal to 30,000 gallons may apply in writing to the~~

Department for authorization to file an annual ~~return~~ remittance form in lieu of a quarterly ~~return~~ remittance form. The annual reporting period shall be established beginning the month in which July 1 through June 30 after the written request is accepted by the Department. The ~~due date for annual returns~~ remittance form and accompanying motor oil fee shall be filed with the Department no later than is on the last day of the month following 30 days after the end of the annual reporting period.

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13431, and 13432 ~~and 13433~~, Business and Professions Code.

#### **§ 4305. Authority to Determine Compliance.**

Nothing in this Chapter limits the authority of the Department to audit, examine, review, inspect, or otherwise determine the compliance or noncompliance of any motor oil dealer.

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13431, and 13432 ~~and 13433~~, Business and Professions Code.

#### **§ 4306. Penalties.**

For any delinquency ~~in making a return~~ with filing a remittance form, or any deficiency in payment, the Department shall add to such delinquent payment a penalty of ten percent of the amount ~~which is due~~.

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13431 ~~and 13433~~, Business and Professions Code.

#### **§ 4307. Refund of Fees Paid.**

All requests for refund of payments made pursuant to Section 4304 of this Chapter shall be submitted to the Department within three years from the date the Department received the remittance form with the payment of the motor oil fee. Requests for refund shall contain the following information:

- (a) A letter requesting the refund, signed by the owner or an authorized person within the company;
- (b) A ledger sheet tabulating purchases and exports for which the refund is being requested;
- (c) Copies of invoices, vouchers, delivery receipts, etc., documenting that the Motor Oil Fee was paid; and,
- (d) Copies of invoices, vouchers, bills of lading, shipping documents, etc., documenting that the motor oil was exported from California.

Any person, who has reported and paid the motor oil fee on motor oil, which is later transported out of California, may request a refund.

Requests for refunds submitted later than three years from the date the Department received the remittance form with payment of the motor oil fee, or not supported by the required documentation, will be returned unprocessed to the sender.

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13431, and 13432 ~~and~~ 13433, Business and Professions Code.

#### **§4308. Records.**

Each person required to file a ~~return~~ remittance form pursuant to Section 13431, Business and Professions Code, shall maintain in California or, with the Department's permission at another location, an accurate record of all transactions subject to the motor oil fee assessment. Such records shall be subject to audit by the Department. The Department may require records kept outside of California to be copied and sent to California for audit. Alternatively, if the motor oil dealer elects to have all audits conducted out-of-state, the costs for the out-of-state audits will be reimbursed to the Department by the motor oil dealer under audit.

Any records which are required to be maintained pursuant to this Chapter or the Business and Professions Code must be kept in accordance with the following provisions:

(a) Motor oil dealers must maintain records for a minimum of four years.

(b) All records maintained pursuant to this Chapter must include the books of account that are ordinarily maintained by the average prudent businessperson.

(c) Records shall include sales invoices, purchase invoices, paid receipts, bills of lading, vouchers, shipping documents or other documents of original entry. An Automatic Data Processing (ADP) system must have built into its program a method of producing visible and legible records ~~which~~ that will provide the necessary information to determine compliance with the requirements of this Chapter.

~~(d) The Department shall produce a comprehensive report on or before December 31, 2016 that includes a summary of income based upon the records listed above, expenditures and capital improvements by work category for the Petroleum Products Program.~~

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13431 ~~and~~ 13433, Business and Professions Code.

#### **§ 4309. Motor Oil Fee Reimbursement.**

Nothing in this Chapter prohibits the motor oil dealer who has reported and paid the motor oil fee to the Department from obtaining reimbursement from their customers. When seeking reimbursement, the motor oil dealer must demonstrate on the invoice that the motor oil fee is collected by one of the following methods:

(1) The motor oil fee may be stated separately on the invoice; or

(2) The motor oil fee may be included in the selling price provided the invoice clearly states that the fee is included in the invoiced amount.

NOTE: Authority cited: Sections 12027 and 13433, Business and Professions Code. Reference: Sections 13431 and 13433, Business and Professions Code.