

TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in Title 4, Division 9, Chapter 8, Motor Oil Fee.

The Department proposes to amend regulations contained in Title 4, Division 9, Chapter 8, to increase the motor oil assessment fee to \$0.04 per gallon and to modify the reporting, refund, and recordkeeping requirements for motor oil dealers.

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be scheduled. Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested person, may thereafter adopt the proposal substantially as set forth without further notice.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95827. Comments may also be submitted to Kevin Batchelor, Branch Chief Enforcement Branch, by facsimile (FAX) at (916) 229-3026 or by e-mail at DMS@cdfa.ca.gov. Comments must be submitted prior to 5:00 p.m. on April 16, 2012.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 established quality, performance and driveability 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 and required the Program to monitor and enforce. 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 is 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 on Form 41-054 (Rev. 06/30/12), 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.

SECTIONS AMENDED

Chapter 8

The current Section 4300 is repealed and replaced with the following new Section 4300:

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 Permit Number”, “Date of Sale”, “Motor Oil Dealer”, “Quarter”, and “Export or Exported”.

The current Section 4302 is repealed and replaced with the following new Section 4302:

4302. Fee Responsibility and Exemption.

This section identifies who is responsible for payment of the motor oil fees, 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 current Section 4304 is repealed and replaced with the following new Section 4304:

4304. Fees and Returns.

This section establishes the motor oil fee amount, payment schedule, due dates, payment return information requirements and provisions for annual payment for small volume sales or purchases of motor oil.

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.

The current Section 4306 is repealed and replaced with the following new section 4306:

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 nonpayment beyond one year will be repealed.

The current Section 4307 is repealed and replaced with the following new Section 4307:

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.

The current Section 4308 is repealed and replaced with the following new Section 4308:

4308. Records.

This section clarifies recordkeeping requirements for motor oil dealers.

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 options to demonstrate that the motor oil was collected.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

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

The Department also has determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the proposal will have a statewide significant 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).

The Department of Food and Agriculture has made an initial determination that the adoption and amendments of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department of Food and Agriculture has not considered proposed alternatives that would lessen any adverse economic impact on business and invites individuals to submit proposals. Submissions may include the following considerations.

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from regulatory requirements for businesses.

The Department has determined that businesses that first produce motor oil in California or first import motor oil into California would be affected by this regulatory proposal. This proposal will require businesses to report on a quarterly basis, on a form supplied by the Department, the gallons of motor oil produced or imported into California, multiplied by the motor oil fee and send the form along with the proper payment amount to the Department. The proposal also will require businesses requesting a refund of motor oil fees paid for motor oil transported outside of California, to submit to the Department the information specified in the regulation, i.e., a letter requesting the refund signed by the company owner, a ledger sheet tabulating purchases and exports, copies of invoices showing that the motor oil fee was paid, bills of lading or shipping documents showing the motor oil was shipped out of California. The proposal limits refunds to three years from the time of payment of the motor oil fee.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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.

EFFECT ON SMALL BUSINESS

The Department has made an assessment that the proposed regulations will not affect small business. The Department has determined that approximately 27% of the businesses that submit motor oil fee returns to it meet the proposed once-per-year reporting requirement for sales of 5,000 gallons per year or less. The affect would be a 75% reduction in reporting requirements by those businesses.

BUSINESS REPORTING REQUIREMENT - FORMS

The Department is proposing to clarify and make more specific the reporting for the motor oil fee on Form 41-054 (Rev. 06/30/12), the refund procedure for return of motor oil fees paid on motor oil exported from California, and recordkeeping requirements for affected businesses.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its the attention 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 policy or other provision of law.

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.” 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.

AUTHORITY

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

REFERENCE

The Department proposes to amend the current regulations to implement, clarify and make specific the provisions of the Business and Professions Code, Section 13430 through 13434.

CONTACT PERSON

Inquiries about the notice may be directed to Kevin Batchelor, Enforcement Branch, Branch Division of Measurement Standards at (916) 229-3050 or Kristin Macey, Director, Division of Measurement Standards at (916) 229-3000.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the statement of reasons, and the proposed regulations in strikeout and underline form may be obtained upon request. The rulemaking file and all information on which the proposal is based are located at the Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, California 95828, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department’s web site located at www.cdfa.ca.gov/dms.

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differs from but is sufficiently related to the action proposed they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting Kevin Batchelor, Enforcement Branch Chief, Division of Measurement Standards, at (916) 229-3050.

DEPARTMENT OF FOOD AND AGRICULTURE

Date

Secretary