

REQUEST FOR APPROVAL

To: Carroll Mortensen
Director, Department of Resources Recycling and Recovery

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: December 16, 2014

Decision Subject: Approval to Formally Notice Revisions to the Used Oil Regulations

Action By: December 16, 2014

Summary of Request:

Staff requests approval to begin the formal rulemaking process and to formally notice the attached proposed revisions to the used oil regulations. The proposed revisions include a large number of changes to make the regulations easier to understand, conform to changes made by Senate Bill 546 (Lowenthal, 2009), and change references from the Board to the Department. Other proposed revisions include the addition of documentation and record-keeping requirements to assist the Department with its fiduciary responsibility associated with the Used Oil Fund.

Recommendation:

Staff recommends approval of the proposed revisions to the used oil regulations and direction to staff to submit the rulemaking package to the Office of Administrative Law to begin the formal rulemaking process.

Director Action:

On the basis of the information and analysis in this Request for Approval and the findings set out herein, I hereby approve the proposed revisions to the used oil regulations and direct staff to submit the rulemaking package to the Office of Administrative Law to begin the formal rulemaking process.

Dated: 31 Dec. 2014


Carroll Mortensen
Director

Attachment:

1. Draft Proposed Revisions to the Used Oil Regulations
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Background Findings:

California became the first state to enact a comprehensive program to improve the recycling rate of used lubricating oil with the passage of the California Oil Recycling Enhancement Act (AB 2076, Sher, Chapter 817, Statutes of 1991) in October 1991. CalRecycle enacted regulations for the Used Oil Recycling Program in 1993 and subsequently revised the regulations in 1999.

Senate Bill (SB) 546 (Lowenthal, Chapter 353, Statutes of 2009) made a number of changes to the California Oil Recycling Enhancement Act. Some of these changes include: new incentives for rerefined oil (Public Resources Code §48651.5), changes to the lubricating oil fee (Public Resources Code §48650), changes to the recycling incentive payment structure (Public Resources Code §48652), changes to the manufacturers' fee payments (Public Resources Code §48650), and changing the funding for local government used oil programs from a block grant program to a payment program (Public Resources Code §48690).

CalRecycle staff proposes to revise the current used oil regulations in order to accommodate the changes instituted by SB 546 and to clarify procedures and processes. Staff held two informal workshops to solicit stakeholder input on the proposed regulations. Staff presented a draft regulatory proposal at the first workshop on May 27, 2014, and draft regulatory language at the second workshop on August 13, 2014. CalRecycle made multiple substantive changes to the proposed regulations based on comments received during these workshops and their subsequent comment periods.

Staff is proposing the changes listed below to the current regulations. Changes that were made after the informal workshops are marked with an asterisk (*). Upon approval by the Director, staff will prepare the rulemaking package and submit it to the Office of Administrative Law. Once approved by the Office of Administrative Law, staff will notify stakeholders about the start of the formal rulemaking comment period.

Universal changes throughout regulations:

- Removed question-and-answer formatting
- Removed all references to electric utilities
- Replaced all references to "the Board" with "CalRecycle"
- Removed all references to Block Grants

§18601. Definitions.

- Added definition for "Rerefined Oil"
- *Removed definition for "Rerefined Oil" as it is already defined in statute
- *Changed the definition of "curbside collection program" to clarify that such programs provide used collection opportunities from households on a monthly or more regular basis, instead of requiring that the collection occurs on a monthly or more regular basis
- *Added a definition for "lubricating oil seller"
- *Removed the definition for "rerefined oil" because it is already defined in statute
- *Added a definition for "rerefining incentive"

§18621. Oil Manufacturer Recordkeeping Requirements

- Added rerefined oil recordkeeping requirements

§18622. Oil Manufacturer Reports.

- Updated the fee calculation procedures to be consistent with Public Resources Code §48650

§18624. Payment of Manufacturers' Fees to CalRecycle

- Added a 10% penalty to late payments

§18626

- Removed the form CIWMB 36 from regulation

§18627. Refund of Lubricating Oil Payment

- Added clarifying language on the procedures for filing a refund claim.

§18628. Tracking of Used Oil Fee Payment to CalRecycle (New Section)

- Added requirement that lubricating sellers must provide the following information to their customers for each sale that is 100 gallons or greater in volume:
 - The name of the entity that paid the initial oil fee to CalRecycle for the volume of oil that is being sold; and
 - The year and quarter in which the initial fee was paid to CalRecycle

§18632. Modified Manifest Receipt Requirements

- Modified requirements for estimating lubricating and industrial oil volumes to apply only to loads that contain lubricating oil
- Added provision stating that any modified manifest receipts that do not show separate lubricating oil and industrial volumes will be assumed to represent only industrial oil

§18643.0. Registration and Certification of Used Oil Recycling Facilities and Rerefining Facilities

- Added procedures and requirements for registration of out-of-state used oil recycling facilities
- Added procedures and requirements for registration of used oil rerefining facilities
- *Added more detailed appeals process for denied applications

§18643.2. Recertification of Used Oil Rerefining Facilities

- Added recertification procedures for used oil rerefining facilities
- *Added more detailed appeals process for denied re-certifications

§18643.3. Certification and Registration Status of Used Oil Recycling Facilities.

- *Added more detailed appeals process for denied re-certifications/re-registrations

§18643.7. Availability of the List of Certified Used Oil Recycling Facilities.

- Modified so that CalRecycle will post the list to its website instead of making it available to the public upon request

§18650.3. Information to be Included in a Certification Application.

- Added requirement for contact information of certified collection center and operator
- Removed requirement for applicant to include store hours on their application
- Removed requirement for applicant to include copies of advertising with their application

§18650.4. Certification Process.

- *Modified to allow CalRecycle to authorize people to conduct field investigations of certified collection center applicants
- *Added more detailed appeals process for denied certifications of used oil collection centers
- *Modified so that applicants are disallowed from reapplying for certification for three months after a denial

§18651.2. Operational Procedures for Certified Used Oil Collection Centers.

- Required certified collection centers to maintain oil logs if they are accepting both on-site and do-it-yourself (DIY) oil

- Clarified that vouchers issued by certified collection centers to the public in lieu of a cash payment for DIY oil would not be subject to certain restrictions
- *Removed log requirements from operational requirements; moved to incentive claim section
- *Raised maximum limits for receipt of DIY oil to 55 gallons from 20 gallons

§18651.8. Applying for Reimbursement of Contaminated Oil Costs

- Clarified that reimbursements for halogen-contaminated oil are subject to a maximum of \$5,000 in disposal costs, while polychlorinated biphenyl-contaminated oil is not subject to this maximum

§18651.10. De-Certification of a Certified Collection Center.

- Added procedures and requirements for the de-certification of a certified collection center
- *Added more detailed appeals process for cancelled certifications

§18653.4. Review of Registration Applications

- *Added more detailed appeals process for denied registrations

§18655.2. Used Oil Eligible for the Recycling Incentive.

- Clarified that industrial generators may only claim a recycling incentive for used lubricating oil generated from vehicles that they own or lease for their own use
- Clarified that curbside collection programs may only claim the recycling incentive for used oil collected from households

§18655.5. Operating More Than One Certified Used Oil Collection Center, Industrial Generator, or Curbside Program.

- Removed requirement for operators to get approval in writing from CalRecycle to operate multiple used oil collection entities

§18655.9. CalRecycle Claim Processing.

- Changed the incentive claims processing time to 35 days for operators with fewer than 50 sites, and 75 days for operators with 50 or more sites

§18656.0. Rerefined Oil Incentive. (New Section)

- Added procedures and requirements for claiming the rerefined oil incentive described in Public Resources Code Section 48651.5
- *Added requirements for centers to submit used oil logs if the center is filing an incentive claim for both on-site and DIY oil
- *Added more detailed appeals process for denied/adjusted incentive claims

§18657.1. Processing of Rerefining Incentive Claims.

- *Added more detailed appeals process for denied/adjusted incentive claims

Article 8 and Article 8.1

- Removed both Articles pertaining to the used oil Block Grant program