

**To:** The California Department of Food and Agriculture, Division of Measurement Standards

**From:** Lucian Stacy, Chairman, RSA Advisory Committee

**Date:** April 20, 2025

**Executive Summary:**

This proposal advocates for the creation of a new regulation within the California Code of Regulations, Title 4, Division 9, that explicitly requires Registered Service Agencies (RSAs) to report commercial weighing and measuring devices found to be out of tolerance and not brought back into compliance during their service activities, and to report commercial weighing and measuring devices discovered to lack the required National Type Evaluation Program (NTEP) or California Type Evaluation Program (CTEP) approval. While current California law and regulations imply a responsibility for RSAs to ensure accuracy, a clear mandate for reporting will enhance the integrity of commercial transactions, improve consumer protection, and provide valuable data for the Division of Measurement Standards. This proposal draws upon existing California regulations, practices in other states, and relevant guidance from NIST Handbook 44 to support the need for this explicit reporting requirement.

**Justification:**

The fundamental principle of California Weights and Measures law is to ensure fairness and accuracy in all commercial transactions involving weight, measure, or count. Registered Service Agencies play a critical role in upholding this principle by servicing, repairing, and calibrating commercial devices. When an RSA encounters a device that falls outside the permissible tolerances and is not rectified during their service, or encounters a device lacking required type approval, it poses a direct threat to the accuracy of trade and the legality of its use.

**Existing California Laws and Regulations Implying the Requirement:**

Several existing aspects of California law and regulation suggest the underlying expectation that RSAs should address and be concerned with out-of-tolerance and unapproved devices:

- **Business and Professions Code § 12515:** Notification of Sealer After Sale, Repair, or Adjustment: This section mandates that RSAs notify the county sealer after servicing a device. While it doesn't explicitly mention reporting out-of-tolerance conditions or unapproved devices, the purpose of this notification is to keep the local authorities informed about the status of commercial devices within their jurisdiction. Discovering and leaving a device out of tolerance during a service call, or discovering a device lacking required approval, would be a significant piece of information relevant to the sealer's oversight.

- **California Code of Regulations, Title 4, Division 9, Chapter 4, § 4080 et seq.:**  
Registration of Service Agencies: The very act of registering as a service agency implies a responsibility to ensure the proper functioning and accuracy of the devices they service, and to ensure that devices are legal for trade. Allowing an out-of-tolerance or unapproved device to remain in service without any notification undermines this responsibility and the purpose of the registration program.
- **The Implicit Duty of Accuracy and Legality:** The entire framework of Weights and Measures law places a strong emphasis on accuracy *and* legality. RSAs, as trusted entities authorized to work on commercial devices, have an implicit duty to contribute to this accuracy and legality. Ignoring or failing to report a known inaccuracy or the use of an unapproved device contradicts this fundamental principle.

### **Practices in Other States:**

Several other states have already implemented regulations that explicitly require RSAs or similar entities to report out-of-tolerance devices:

- **Arizona: Arizona Administrative Code R3-2-311(F) states,** "A registered serviceperson shall report to the user any equipment or commercial device that does not conform to NIST standards." While the reporting is to the user, it highlights the recognition that service personnel have a responsibility to identify and communicate non-conformance. It is a logical extension that a regulatory body should also be informed in certain circumstances.
- **Wisconsin: The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP)** has the authority to "red tag" and prohibit the use of devices found to be out of tolerance, which can be done by state inspectors or licensed service companies. Licensed companies can also remove red tags after corrections are made. This suggests a system where non-compliant devices are actively managed, even if the initial discovery by an RSA without a subsequent repair isn't explicitly mandated for reporting.

(Further research would be needed to provide additional specific examples from other states. This proposal recommends the CDFA-DMS conduct a survey of other state regulations regarding RSA reporting requirements.)

These examples demonstrate that the concept of requiring service personnel to flag out-of-tolerance devices is not unprecedented and is seen as a vital component of maintaining measurement accuracy in other jurisdictions.

## **NIST Handbook 44:**

NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," provides the technical standards for commercial devices. While it doesn't directly mandate reporting procedures for service agencies, it establishes the tolerances that define whether a device is operating accurately. RSAs rely on Handbook 44 to determine if a device is within acceptable limits. Encountering a device outside these defined tolerances is a direct indication of non-compliance with the national standard for commercial accuracy, making it a significant finding that warrants attention. Additionally, the requirement for NTEP approval for many device types is a fundamental aspect of ensuring devices meet the standards outlined in Handbook 44 before they are used in commerce.

## **Proposed Regulation:**

To address this critical gap and strengthen the integrity of commercial measurements in California, the RSA Advisory Committee proposes the following addition to the California Code of Regulations, Title 4, Division 9:

- a) Section [New Section Number]: Reporting of Out-of-Tolerance and Unapproved Commercial Devices by Registered Service Agencies  
Duty to Assess Tolerance and Approval: When performing installation, repair, calibration, or any other service on a commercial weighing or measuring device, a Registered Service Agency (RSA) or its registered serviceperson shall assess the device's compliance with the applicable tolerances as specified in NIST Handbook 44 or other relevant standards adopted by the Division of Measurement Standards, *and shall verify that the device has the required and valid National Type Evaluation Program (NTEP) or California Type Evaluation Program (CTEP) approval, if such approval is required for that device type.*
- b) Reporting Requirement for Uncorrected Out-of-Tolerance Devices: If, during the course of service, an RSA or its registered serviceperson identifies a commercial weighing or measuring device that is found to be out of tolerance and is not brought back into compliance with the applicable tolerances during that service call, or if the RSA or registered service person discovers the device lacks the required and valid NTEP or CTEP approval, the RSA shall submit a written report to the [Specify Authority: e.g., the County Sealer of the county in which the device is located, and/or the Division of Measurement Standards] within [Specify Timeframe: e.g., 72 hours] of completing the service.

- c) Report Content: The report shall include, at a minimum, the following information:
- The name and contact information of the RSA.
  - The name and contact information of the device owner or user.
  - The location of the device.
  - A description of the device (make, model, serial number, capacity, etc.).
  - The date of service.
  - A clear statement that the device was found to be out of tolerance, *or that the device lacks the required and valid NTEP or CTEP approval, or both.*
  - The specific tolerance exceeded and the measured error, if applicable.
  - A statement indicating whether the device was brought back into compliance. If not, the reason why (if known).
  - If the device lacks NTEP or CTEP approval, a statement indicating that fact and the basis for determining the lack of approval.
- d) Record Keeping: The RSA shall maintain a record of all such reports for a period of [Specify Timeframe: e.g., two years].

#### **Benefits of the Proposed Regulation:**

- Enhanced Consumer Protection: Ensures that regulatory authorities are aware of potentially inaccurate commercial devices and devices that are illegal for commercial use, allowing for timely intervention and preventing consumer harm and illegal trade.
- Improved Data Collection: Provides the Division of Measurement Standards with valuable data on the prevalence and nature of out-of-tolerance devices and the use of unapproved devices, aiding in targeted enforcement and education efforts.
- Increased Accountability: Reinforces the responsibility of RSAs in maintaining the accuracy *and legality* of commercial devices.
- Greater Transparency: Creates a more transparent system where issues of non-compliance are formally documented.
- Alignment with Best Practices: Brings California in line with other states that recognize the importance of reporting out-of-tolerance devices.
- Prevention of Illegal Device Usage: Prevents unapproved devices from being used in commercial transactions, further protecting consumers and businesses.

#### **Conclusion:**

The RSA Advisory Committee strongly believes that implementing a regulation requiring the reporting of out-of-tolerance and unapproved commercial devices by Registered Service Agencies is a necessary step to further strengthen the integrity of weights and measures in California. This proposed regulation builds upon existing legal principles, aligns with practices in other states, and supports the fundamental goal of ensuring accurate and fair commercial transactions. We urge the Division of Measurement Standards to give this proposal serious consideration and move forward with its adoption.

Respectfully submitted,

Lucian Stacy

Chairman, RSA Advisory Committee