CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE
A. G. Kawamura, Secretary

DMS NOTICE
W – 10 – 5

December 27, 2010

Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Weights and Measures Officials Access to Weighmaster Records

The question of whether or not weights and measures officials are required to complete a questionnaire regarding their authority to inspect weighmaster records pursuant to Business and Professions Code Section 12716 was presented to the Department's Legal Office for interpretation.

The following conclusion, based on research and analysis, was offered by the Department's Acting Chief Counsel:

QUESTION PRESENTED

Do weights and measures officials have a legal obligation to complete a business owner's questionnaires before entering property to perform a routine weighmaster certificate inspection?

SHORT ANSWER

No. Business owners do not have the right to demand weights and measures officials complete questionnaires before allowing them access to perform their duties as it is not contemplated in the statutes governing weighmaster rights and responsibilities, case law or the Constitution.

BACKGROUND

During an attempted routine weighmaster certificate inspection pursuant to Business and Professions Code (BPC) Section 12716, A Department of Food and Agriculture Division of Measurement Standards (Division) Investigator and county weights and measures inspector were refused access to the weighmaster records. The business operator demanded that the Officials complete a "Public Servant" questionnaire before complying with the request to enter and inspect. The questionnaire sought information related to a government employee's authority to require information of the business, requires signature under oath and a witness signature. The questionnaire references a U.S. Supreme Court case as authority. *See Ryder v. U.S. 115 S.Ct. 2031 (1995).*

The Ryder case focused on the *de facto officer doctrine* which approves acts performed by a government official, even though it is later discovered that the legality of that official's election or appointment to office is deficient. The *Ryder* case concerned what actions are necessary for a citizen to overcome the doctrine and preserve his appeal rights. It is reasonable to assume that the business owner requested the Officials to complete the questionnaire in order to prepare a defense to any adverse decision that resulted from the inspection. However, the *Ryder* case did not include a discussion of questionnaires or suggest that an Officials' refusal to complete a questionnaire releases one from complying with law or regulation.

A weighmaster is any person who, for hire or otherwise, weighs, measures, or counts any commodity and issues a statement or memorandum of the weight, measure, or count which is used as the basis for either the purchase or sale of that commodity or charge for service. *BPC Sections 12700 et seq.*

BPC Section 12716 provides that for a period of four years, all copies of voided certificates, records, and worksheets required by this chapter and true copies of all weighmaster certificates issued shall, at all times, be open for inspection by the director or his representative, in this case the Division and county weights and measures officials.

DISCUSSION

The Fourth Amendment of the U.S. Constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches without probable cause. In the 1960s, the U.S. Supreme Court began carving out exceptions to the probable cause requirement for "administrative inspections." It is now well established that the warrant and probable cause requirements are dispensed with in favor of reasonableness standard that balances the government's regulatory interest against the individual's privacy interest; in all of these instances the government's interest has been found to outweigh the individual's.

The Supreme Court has held that government has greater latitude to conduct warrantless inspections of commercial property than of homes because of the fact that the expectation of privacy that the owner of commercial property enjoys in such property differs significantly from the sanctity accorded an individual's home. Two questions have emerged that guide official actions:

(1) Is there a reasonable expectation of freedom from government intrusion; and
(2) Did the Legislature provide for inspection in statute?

The business owner has no reasonable expectation of freedom from government intrusion because he was aware that inspection is a condition of licensing before seeking the license. In addition, record keeping and inspection requirements are provided for in BPC Section 12716.

CONCLUSION

There exists no statute, case law or Constitutional provision requiring weights and measures officials to complete questionnaires or make declarations "under penalty of perjury" to business entities in order to exercise their statutory authority to inspect. Regardless of the business owner's interpretation of the *Ryder* case and his intended use of the questionnaire, it does not provide an exemption to the record keeping and inspection requirements.

Sincerely,

Kristin J. Macey
Director

cc: Edmund Williams, County Liaison Office