

## TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to repeal regulations contained in Title 4, Division 9, Chapter 1, Article 1, Section 4002.2(a). This regulation gave guidelines to sealers of weights and measures on recommended minimum test weights and test loads to be used when testing scales.

Business and Professions Code Section 12107 requires the Department to adopt the National Institute of Standards and Technology (NIST) Handbook 44 (HB 44) "Specifications and Tolerances, and Other Technical Requirements for Weighing and Measuring Devices", except as specifically modified, amended, or rejected by regulation adopted by the Secretary of the Department of Food and Agriculture (Secretary). Title 4, California Code of Regulations, Section 4002.2(a) was added, amending HB 44, specifically to allow county offices of weights and measures time to procure sufficient test standards to be able to apply the minimum amount of test loads to scales with capacities greater than 40,000 pounds. County offices of weights and measures now have sufficient test standards to meet the minimum test load of 12.5% required by HB 44 and the amended provision of Section 4002.2(a) is no longer necessary.

The Legislature has charged the Department with the responsibility of supervising weights and measures activities within California (Business and Professions Code, Division 5, Section 12100). Sections 12027 and 12107 give authority to the Secretary to adopt such regulations as are reasonably necessary to carry out the provisions of the Business and Professions Code, Division 5.

A public hearing 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, CA 95828-1812. Comments may also be submitted by facsimile (FAX) at (916) 229-3026 or by e-mail at [DMS@cdfa.ca.gov](mailto:DMS@cdfa.ca.gov). Comments must be submitted prior to 5:00 p.m. on January 17, 2011.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department of Food and Agriculture proposes to repeal Article 1, Section 2002.2(a), Recommended Minimum Test Weights and Test Loads, and the existing Table 4.

## **AUTHORITY AND REFERENCE**

Pursuant to the authorization in Business and Professions Code Sections 12027 and 12107, the Department proposes regulations to repeal existing Section 2002.2(a) and adopt by reference NIST Handbook 44 provisions as required by Section 12107.

## **LOCAL MANDATE**

This proposal does not impose a mandate on local agencies or school districts.

## **FISCAL IMPACT ESTIMATES**

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any cost or savings in federal funding.

## **COST OR SAVINGS TO STATE AGENCIES**

No additional costs or savings to state agencies are anticipated.

## **BUSINESS IMPACT / SMALL BUSINESS**

The Department has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This proposal does not affect small businesses as defined by Government Code Section 11342.610. The determination that the proposal would not affect small business is based upon the fact that this regulation does not place new requirements or restrictions on business. It has no impact at all on any entity that is not a state agency as defined in Section 11000 of the California Government Code.

## **ASSESSMENT REGARDING EFFECT ON JOBS / BUSINESS**

The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

## **COST IMPACTS ON REPRESENTATIVE 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.

## **EFFECT ON HOUSING COSTS**

None.

## **ALTERNATIVES**

The Department must determine that no reasonable alternative considered would be more effective in carrying out the purpose for which the adoption of this regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

## **CONTACT PERSONS**

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to David Lazier, Assistant Director, Division of Measurement Standards, at (916) 229-3044 or [dlazier@cdfa.ca.gov](mailto:dlazier@cdfa.ca.gov). The back-up contact person is Ed Williams, Director, Division of Measurement Standards, at (916) 229-3000 or [ewilliams@cdfa.ca.gov](mailto:ewilliams@cdfa.ca.gov).

## **AVAILABILITY OF INITIAL 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 the proposal is based, and has available the express terms of the proposed action. A copy of the Initial 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, is located at the Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, CA 95828-1812, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department's website located at [www.cdfa.ca.gov/dms](http://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 differ from but are 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 David Lazier, Assistant Director, Division of Measurement Standards, at (916) 229-3044.

**WEBSITE ACCESS**

Materials regarding this proposal can be found at: [www.cdfa.ca.gov/dms](http://www.cdfa.ca.gov/dms).

DEPARTMENT OF FOOD AND AGRICULTURE

11/12/10  
Date

Nate Dechoretz  
Nate Dechoretz, Deputy Secretary

**DEPARTMENT OF FOOD AND AGRICULTURE  
DIVISION OF MEASUREMENT STANDARDS**

The Department has illustrated changes to the original text in the following manner:

Proposed additions are underlined

Proposed deletions are ~~strikethrough~~

**Title 4, Division 9, Chapter 1, Article 1, Section 2.20 Scales**

**4002.2 Scales (2.20)**

~~(a) Recommended Minimum<sup>2</sup> Test Weights and Test Loads<sup>1</sup>. The recommended<sup>2</sup> minimum test weights and test loads for in-service tests (except railway track scales) are shown in Table 4. [See Table 4 for<sup>1</sup> and<sup>2</sup>]~~

<del>TABLE 4. RECOMMENDED<sup>2</sup> MINIMUM TEST WEIGHTS AND TEST LOADS<sup>1</sup></del>			
<del>Device Capacity (Pounds)</del>	<del>Recommended<sup>2</sup> minimums (in terms of device capacity)</del>		<del>Recommended<sup>2</sup> (where practicable)</del>
	<del>Test Weights (greater of)</del>	<del>Test Loads</del>	
<del>0 to 100</del>	<del>105%</del>		
<del>101 to 1,000</del>	<del>50% or 100 lb</del>	<del>105%</del>	
<del>1,001 to 40,000</del>	<del>25% or 500 lb</del>	<del>50%</del>	<del>Test weights to dial face capacity, 1,000d or test load to used capacity, if greater than minimums specified</del>
<del>40,000 +</del>	<del>12.5% or 10,000 lb</del>	<del>25%</del>	

<sup>1</sup>~~The term "test load" means the sum of the combination of field standard test weights and any other applied load used in the conduct of a test using substitution or build-up test methods.~~

~~Except for railway track scales, the recommended<sup>2</sup> minimum test of a Class III L scale shall consist of one test from zero to at least 25% of the scale capacity and then one strain load test to at least the used capacity of the device.~~

~~Each test is to be conducted using a known test load of at least 25% of scale capacity. This test load may be comprised entirely of test weights or a combination of test weights equal to at least 12.5% of scale capacity and a substitution load.~~

<sup>2</sup>~~The word "Recommended" will be deleted from this section as of January 1, 1998. This will make the amounts of test weights and test loads specified in Table 4 mandatory as of January 1, 1998.~~

NOTE: Authority cited: Sections 12027 and 12107 Business and Professions Code. Reference: Section 12107 Business and Professions Code.