

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED ADOPTION OF REGULATIONS

Title 4, Division 9, Chapter 3
Article 3
Section 4075
Annual Device Administrative Fee

INITIAL STATEMENT OF REASONS

Background

The Legislature has charged the Department of Food and Agriculture (Department) with the responsibility for supervising weights and measures activities within California [Business and Professions Code (BPC), Division 5, Section 12100]. The Division of Measurement Standards serves to provide technical training, oversight, support and coordination to county sealers and their staff in the course of their duties. The purpose of these functions is to minimize the measurement error in commercial transactions through periodic inspection and testing of commercial weighing and measuring devices and to provide California consumers and businesses confidence that all commercial transactions are honest and fair and that standards are uniformly applied throughout California.

The Secretary of the Department is granted authority to adopt such regulations as are reasonably necessary to carry out the provisions of the BPC (Division 5, Section 12027). BPC Sections 12100, 12101, 12103.5, 12104, 12105, 12107, 12107.1, and 12108 identify the responsibilities of the Department with regard to the supervision and oversight of the county offices of weights and measures.

Description of the Public Problem, Administrative Requirements, or other Conditions or Circumstances the Regulations are Intended to Address

Historically, a portion of the Division of Measurement Standards (DMS) budget has been funded by General Fund monies. Recent budget shortfalls within the California State General Fund Budget eliminated the General Fund monies allocated to the DMS. Recent legislation (AB 120, Chapter 133, Statutes 2011) provided a means for the Secretary to impose an annual administrative fee to be collected by county offices of weights and measures and reimbursed to the DMS to recover costs associated with providing supervision and oversight by the DMS of county sealers performing the duties described in BPC Sections 12210 and 12211. The administrative fees collected will replace the General Fund monies removed from the DMS' budget.

Section 12027 of the Business and Professions Code gives the Secretary authority to make such regulations as are necessary for the purpose of carrying out the provisions of Division 5. BPC Sections 12100, 12101, 12103.5, 12104, 12105, 12107, 12107.1, and 12108 identify the responsibilities of the Department with regard to the supervision and oversight of the county offices of weights and measures.

Due to the loss of General Fund monies, recent legislation was enacted that requires the Secretary to impose an annual administrative fee to be collected by county offices of weights and measures and reimbursed to the DMS to recover costs associated with providing supervision and oversight by the DMS of county sealers performing the duties described in BPC Sections 12210 and 12211. This fee would be collected in the same manner and as part of the device registration fees collected pursuant to BPC Section 12240. These monies are to be deposited into the Department of Food and Agriculture Fund and used for the administration and conducting the mandates of the DMS.

DMS provides training in various commercial device inspection activities that have the potential for putting county inspectors in unsafe, often dangerous situations where the risk is bodily injury, possibly death. These inspections include removing electric meters from socket and reconnecting to another source of electricity for test, exposing official to electrocution if not performed correctly. County officials also test devices under pressure (up to 10,000 lb per square inch), at extreme low temperature (as low as -243 F), and in potentially explosive environments.

DMS also provides training and oversight in testing for labeling requirements and net contents of packaged commodities. Determining the amount in the package requires a great deal of training, a thorough technical knowledge of the varying characteristics of different types of commodities, and a wide range of precise measuring equipment.

Specific Purpose and Factual Basis

Section 4075. Annual Device Administrative Fee

The Department proposes to adopt regulations that impose an annual device administrative fee on registered businesses operating commercial weighing, measuring, and counting devices. The fee is based on device type and is applicable to every commercial device registered with each county office of weights and measures. Additionally, the proposal will identify payment schedules, payment due dates, and a maximum amount a county may retain from the collected fees to cover their actual costs associated with the collection of the fees.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department has initially determined that this proposal does not impose a mandate on local agencies or school districts because these entities are not businesses operating commercial weighing or measuring devices.

The Department has also initially determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 8 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from this action because these entities are not affected.

The Department has initially determined that the proposed action will not have a significant adverse economic impact on housing costs.

The cost impact of the changes in the regulations on private individuals or businesses is expected to be minor because the additional fees that businesses will pay less than or equal to 10%.

Assessment

The Department has made an assessment that the proposed regulation sections would not: (1) create or eliminate jobs within California; (2) create new business or eliminate existing businesses within California; and (3) affect the expansion of businesses currently doing business in California.

Purposes for the Regulation

Necessity

The Department is required by California law to provide county sealers of weights and measures instructions, recommendations, training and oversight that the sealers must follow in the discharge of their duties. (Business and Professions Code, Division 5, Section 12104)

This funding for the Division of Measurement Standards historically has come from the General Fund. Due to the state's budget crisis, the general fund monies for Division of Measurement Standards Programs that provided much of the oversight and training was eliminated and AB 120 (Chapter 133, Statutes 2011) provided a funding source contained in BPC Section 12241 which imposes an administrative fee on every commercial device registered in each county by the office of weights and measures. Because there is no funding source for the DMS Device Enforcement Program and the Quantity Enforcement Program until the proposed regulations are adopted, an economic hardship has been imposed on

the DMS. In order to mitigate the economic hardship, a quarterly payment schedule is proposed for the first year of the regulations in order to provide immediate funding for the Programs.

Section 4075(d) has been proposed with specific reporting requirements for several reasons:

- It allows the DMS to gather information on the total number of device in each category of device within the state.
- It provides information so the DMS can anticipate the need to update and revise Examination Procedure Outlines based on the types of devices within the state.
- It provides a basis for the DMS to audit counties for accurate payment of fees to the state.

Alternative Considered

The Department must determine that no alternatives considered would be as effective in carrying out the purpose of this proposed regulation or would be as effective and less burdensome to the affected private persons other than the proposed regulation.

The text in AB 120, Chapter 133, Statutes 2011, will not allow the Department to consider discontinuing its oversight and training responsibilities, for consumers and industry will suffer without these programs.

This regulatory action has a minor adverse economic effect on businesses, but the California Legislature determined that it was more cost effective for businesses to continue the program under a fee arrangement.

Technical Theoretical and/or Empirical Study, Reports, or Documents

The Department has relied on the following for these regulation amendments:

California Business and Professions Code pertaining to Weights and Measures and Petroleum Products, Division 5, Chapters 1 through 17.

AB 120 (Committee on Budget), Chapter 133, Statutes 2011