

TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to adopt regulations to add Sections 4000.1, 4000.2, and 4000.3 (California Type Approval Fees) into Title 4, Division 9, Chapter 1, Article 1. This regulation proposal will impose application fees, deposit requirements for type approval work, and an administrative fee to maintain hard copy and electronic copies of California Type Approval Certificates upon persons or businesses who submit devices for type approval pursuant to Business and Professions Code (BPC) Section 12500.9.

The Legislature has charged the Department of Food and Agriculture (Department) with the responsibility for supervising weights and measures activities within California (BPC, Division 5, Section 12100). The Secretary of the Department of Food and Agriculture is granted authority to adopt such regulations as are reasonably necessary to carry out the provisions of the BPC.

BPC, Division 5, Section 12500.5 provides for the Secretary of the Department of Food and Agriculture (Secretary) to require the submission for approval of types and designs of weights, measures, weighing, measuring, and counting instruments or devices used for commercial purposes. The Secretary is also required to issue certificates of approval for those types or designs of commercial devices that meet the requirements of the BPC and the tolerances and specifications adopted pursuant to it. BPC 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. BPC Section 12500.9 requires the Secretary to charge and collect an application fee and reasonable deposit from persons submitting devices for approval as required by BPC Section 12500.5. Additionally, this section permits the Secretary to charge an annual administrative fee for the maintenance of type approval certificates in hard copy and electronic formats. These monies are to be deposited into the Department of Food and Agriculture Fund and used for the administration and conducting the responsibilities of the California Type Evaluation Program (CTEP).

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. Comments must be submitted prior to 5:00 p.m. on October 24, 2011.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Food and Agriculture proposes to adopt regulations into Title 4, Division 9, Chapter 1, Article 1, Sections 4000.1 (Application Fee, Deposit, and Approval Certificate Maintenance Fee) to implement the provisions of Business and Professions Code Section 12500.9 requiring the Secretary to charge and collect an application fee and reasonable deposit from persons submitting devices for approval as required by BPC Section 12500.5. Additionally, the legislation permits the Secretary to charge an annual administrative fee for the maintenance of type approval certificates in hard copy and electronic formats.

Specific Purpose - By Section

Chapter 1, Article 1

4000.1 Application Fee and Deposit Required

This section specifies the amount of:

- The Commercial Device Type Approval application fee.
- The required deposit prior to starting the evaluation of the submitted device.

4000.2 Type Evaluation Fees

This section specifies the amount of the type evaluation fees applicable.

4000.3 Annual database and hard copy maintenance fee

This section specifies the amount of the annual maintenance fee for the California Type Approval Certificate database and hard copy files.

There is no existing comparable federal regulation or statute to this proposal.

AUTHORITY AND REFERENCE

Pursuant to the authorization in Business and Professions Code Sections 12027 and 12107 and 12500.9, the Department proposes to adopt regulations to implement the requirements of BPC 12500.9 requiring the Secretary to charge and collect an application fee and reasonable deposit from persons submitting devices for approval as required by BPC Section 12500.5. Additionally, the legislation permits the Secretary to charge an annual administrative fee for the maintenance of type approval certificates in hard copy and electronic formats. These monies are to be deposited into the Department of Food and Agriculture Fund and used for the administration and conducting the responsibilities of the CTEP.

Section 12500.9 states:

“The Secretary shall charge and collect an application fee and reasonable deposit from persons submitting devices for approval as required by Section 12500.5. Costs incurred by the department that exceed the deposit shall be charged and collected upon completion of all prototype-approval testing. The fees shall be based upon the following criteria:

(a) The moneys collected are intended to compensate the Secretary for the costs of time, mileage, equipment, and administrative services expended in providing prototype-approval service.

(b) The Secretary may compensate county sealers of weights and measures, other weights and measures jurisdictions, or private laboratories for furnishing equipment and assisting the department in conducting prototype-approval activities.

(c) The amount of compensation provided for in subdivision (b) shall be based upon actual time, mileage, and equipment costs, as determined by the Secretary.

(d) The Secretary may charge an annual administrative fee for the maintenance of type approval certificates in hard copy and electronic formats.

(e) The Secretary may adopt rules and regulations necessary to implement the provisions of this section.

(f) All fees collected under the provisions of this section shall be deposited in the Department of Food and Agriculture Fund.”

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 a minor statewide adverse economic impact directly affecting businesses submitting weighing, measuring, or counting devices for type approval prior to marketing the devices for commercial use in California. It is anticipated that these fees will be rolled into the purchase price of the equipment by the manufacturer when the device is marketed for commercial use. The proposal does not affect the ability of California businesses to compete with businesses in other states as any device sold, rented, leased, or loaned for commercial use within California, regardless of where it came from, must be type approved. This proposal will affect small businesses as defined by Government Code Section 11342.610. The determination that the proposal would affect small business is based upon the fact that this regulation imposes new fees on businesses that seek type approval from the CTEP and/or seek to maintain CTEP Type Approval Certificates.

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 has determined that this proposal may make cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This determination was made based upon the fact that this regulation imposes new fees on businesses that seek type approval from the CTEP and/or seek to maintain CTEP Type Approval Certificates.

EFFECT ON HOUSING COSTS

None.

ALTERNATIVES

The Department must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency 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. The back-up contact person is Kevin Batchelor, Branch Chief, Division of Measurement Standards, at (916) 229-3050 or kbatchelor@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, are 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.

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.

Materials regarding this proposal can be found at: www.cdfa.ca.gov/dms.

DEPARTMENT OF FOOD AND AGRICULTURE

8/29/11

Date



Nate Dechoretz, Deputy Secretary