

**State of California
Office of Administrative Law**

In re:
Department of Food and Agriculture

Regulatory Action:

Title 04, California Code of Regulations

Amend sections: 4070, 4071, 4073, 4074,
4075

Repeal section: 4072

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2021-0312-02

OAL Matter Type: Regular (S)

This rulemaking action will permit use of new weighing and measuring devices, clarify the process for submitting an alternative inspection frequency plan, and increase annual device administrative fees.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/28/2021.

Date: April 28, 2021



**Eric Partington
Senior Attorney**

For: Kenneth J. Pogue
Director

Original: Karen Ross, Secretary
Copy: Samuel Ferris

REGULAR

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2020-10300	REGULATORY ACTION NUMBER 2021-0312-02S	EMERGENCY NUMBER
RECEIVED DATE OCT 30 '20 PUBLICATION DATE NOV 13 '20 Office of Administrative Law		For use by Office of Administrative Law (OAL) only 2021 MAR 12 P 3: 23 OFFICE OF ADMINISTRATIVE LAW	
AGENCY WITH RULEMAKING AUTHORITY Department of Food and Agriculture			AGENCY FILE NUMBER (if any)

ENDORSED - FILED
 In the office of the Secretary of State
 of the State of California
APR 28 2021
 1:21 P.M.

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Device Administration - Inspections and Fees	TITLE(S) 4	FIRST SECTION AFFECTED 4070	2. REQUESTED PUBLICATION DATE November 13, 2020
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Samuel Ferris	TELEPHONE NUMBER (916) 229-3000	FAX NUMBER (Optional) (916) 229-3055
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Device Administration - Inspections and Fees	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
4	4070, 4071, 4072 , 4073, 4074, 4075 per agency request 4072 request

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Samuel Ferris	TELEPHONE NUMBER (916) 229-3000	FAX NUMBER (Optional) (916) 229-3055	E-MAIL ADDRESS (Optional) sam.ferris@cdfa.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Kevin Masuhara Digitally signed by Kevin Masuhara Date: 2021.03.10 11:39:42 -08'00'	DATE March 8, 2021
TYPED NAME AND TITLE OF SIGNATORY Kevin Masuhara, Deputy Secretary	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 28 2021

Office of Administrative Law

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
Device Administration – Inspections and Fees
CCR Title 4, Sections 4070 – 4075
November 13, 2020

PROPOSED TEXT OF THE REGULATION

The proposed additions to original text are single underlined,
and proposed deletions are ~~single strikethrough~~.

Chapter 3. Device Inspection

Article 1. ~~Frequency of Inspection~~ Inspection Frequencies

Section 4070. ~~Frequency of Inspection~~ Inspection Frequencies.

~~The frequency of inspection~~ frequencies for weighing and measuring devices used for commercial and law enforcement purposes, ~~and other devices required by law to be inspected by a sealer, is~~ are established as in Table 1: Inspection Frequencies (By Device Type). The specified times are maximum times between inspections tests. More frequent inspections tests may be conducted if requested by the device user, ~~in~~ during a complaint investigation, or on the initiative of a sealer, ~~a weights and measures official~~. ~~The definitions of specific device classifications are as in Subchapter 1.~~ For purposes of this chapter, the term “inspection” applies to a sealer inspecting, trying, and testing a device for applicable specifications, tolerances, and other technical requirements adopted in Chapter 1 of this division.

TABLE 1. FREQUENCY OF INSPECTION

DEVICE	DEFINITION		INSPECTION FREQUENCY		
	Subchapter	Article	Initial Only	Annual	Other
MEASURES					
Dry	1	19	X		
Glass Graduates	1	18	X		
Linear	1	23			Original Plus Annual Visual
Liquid	1	14		X	
MEASURING DEVICES					
Cryogenic	1	10		X	
Electric Watt-Hour	1	28			10 Years
Fabric	1	21		X	
Lubricant	1	6		X	
Hydrocarbon Vapor	1	9			10 Years
LPG Liquid	1	8		X	
Moisture	1	27		X	
Odometers	1	24		X	
Retail Meters	1	6		X	
Taximeters	1	25		X	
Vehicle Tank Meters	1	7		X	
Water (Domestic Service)	1	11			10 years
Water (All Other)	1	11		X	
Wholesale Meters	1	6		X	
Wire and Cordage	1	22		X	
SCALES					
Animal	1	3		X	
Automatic Bulk Weighing System for Grain	1	29		X	
Belt Conveyors	1	4		X	
Computing	1	3		X	
Counter	1	3		X	
Crane	1	3		X	
Dormant	1	3		X	
Hopper and Tank	1	3		X	
Livestock	1	3		X	
Meat Beam, Stockyard	1	3		X	
Monorail	1	3		X	
Portable Platform	1	3		X	
Prescription	1	3			2 Years
Railway Track	1	3		X	
Spring	1	3		X	
Vehicle	1	3		X	
TANKS OR COMPARTMENTS					
Liquid Gauged	1	12	X		
Dry, Measured	1	12	X		
Farm Milk Tanks	1	16			Original Plus Annual Visual

Table 1: Inspection Frequencies
(By Device Type)

<u>Submeter/Meter/Measuring Devices.</u>	<u>Scales/Weighing Devices.</u>	<u>Frequency.</u>
<ul style="list-style-type: none"> • <u>Electric Watt-Hour Submeter.</u> • <u>Hydrocarbon Vapor Submeter.</u> • <u>Water Submeter (Domestic Service).</u> 		<u>10 years.</u>
<ul style="list-style-type: none"> • <u>Electric Vehicle Fueling Systems/Electric Vehicle Supply Equipment (EVSE).</u> 	<ul style="list-style-type: none"> • <u>Prescription (Pharmacies).</u> 	<u>2 years.</u>
<ul style="list-style-type: none"> • <u>Fabric-/Wire- and Cordage-Measuring Device.</u> • <u>Grain Moisture Meter.</u> • <u>Grease and Lubricant Meter.</u> • <u>Hydrogen Gas-Measuring Device.</u> • <u>Liquid Measure (Standard).</u> • <u>Liquefied Gas Meters:</u> <ul style="list-style-type: none"> ○ <u>Carbon Dioxide Liquid-Measuring Device (CO₂).</u> ○ <u>Cryogenic Liquid-Measuring Device.</u> ○ <u>Liquefied Petroleum Gas (LPG).</u> • <u>Mass Flow Meters:</u> <ul style="list-style-type: none"> ○ <u>Compressed Natural Gas Meter (CNG).</u> ○ <u>Liquefied Natural Gas Meter (LNG).</u> • <u>Odometer.</u> • <u>Retail Meter.</u> • <u>Retail Motor Fuel Dispenser.</u> • <u>Retail Water Meter.</u> • <u>Tank (Liquid Test).</u> • <u>Taximeter.</u> • <u>Vehicle-Tank Meter.</u> • <u>Water Submeter (All Others).</u> • <u>Wholesale Meter.</u> • <u>Miscellaneous Measuring Device¹.</u> 	<ul style="list-style-type: none"> • <u>Automatic Bulk Weighing System for Grain.</u> • <u>Belt Conveyors.</u> • <u>Class I (Other Than Prescription).</u> • <u>Class II (Other Than Prescription).</u> • <u>Class III (Other Than Prescription).</u> • <u>Computing.</u> • <u>Counter.</u> • <u>Crane.</u> • <u>Dormant.</u> • <u>Hanging.</u> • <u>Hopper and Tank.</u> • <u>Livestock/Animal.</u> • <u>Meat Beam/Monorail.</u> • <u>Portable Platform.</u> • <u>Railway Track.</u> • <u>Spring.</u> • <u>Vehicle.</u> • <u>Vehicle On-Board (Forklift).</u> • <u>Miscellaneous Weighing Device².</u> 	<u>Annual.</u>
<ul style="list-style-type: none"> • <u>Farm Milk Tank.</u> • <u>Linear Measure (Standard).</u> 		<u>Initial, Plus Annual Visual Inspection.</u>

<ul style="list-style-type: none"> • <u>Dry Measure (Standard).</u> • <u>Dry, Measured (Tank or Container).</u> • <u>Glass Graduate (Standard).</u> • <u>Liquid Gauged (Tank or Container).</u> 		<u>Initial Only.</u>
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¹ "Miscellaneous Measuring Device" includes all other commercial measuring device types that are not specified in Table 1.

² "Miscellaneous Weighing Device" includes all other commercial weighing device types that are not specified in Table 1.

Note: Authority cited: Sections 12027 and 12212, Business and Professions Code.
Reference: Section 12212, Business and Professions Code.

Article 2. Alternatives to the Specified Frequency of Inspection Frequencies

Section 4071. ~~Purpose of Article Alternative Inspection Plan Requests.~~

~~This article authorizes county sealers or directors of weights and measures, upon approval of the Director, to use plans for inspection of weighing and measuring devices other than those stated in Article 1 of this chapter. A portion of the sealer's resources will thus be made available for other weights and measures enforcement work which the Director finds to be necessary.~~

~~Upon granting such approval, the Director will instruct the sealer or director to perform such alternative work.~~

A county sealer may submit a written request to the Secretary to implement an alternative inspection plan including inspection frequencies different from those specified in Section 4070, Table 1. For purposes of this article, an alternative inspection plan is referred to as an alternative plan. Upon written approval by the Secretary, a portion of the county sealer's resources shall be made available for other activities related to weights and measures specified in Section 4074. Upon granting such approval, the Secretary will instruct the county sealer to perform such alternative activities related to weights and measures.

Note: Authority cited: Sections 12027 and 12212, Business and Professions Code.
Reference: Section 12212, Business and Professions Code.

Section 4072. ~~Findings. [Repealed]~~

~~The Director finds (1) that the minimum frequency of inspection required by Article 1 should be modified in some counties because of evidence of satisfactory and continuing~~

~~accuracy of certain weighing and measuring devices; (2) there is an increasing need to perform additional end result type inspections; and (3) that the performance of other enforcement work will assist the sealer in providing to consumers and commerce the services and protection required to be provided by the Business and Professions Code.~~

Note: Authority cited: Sections 12027 and 12212, Business and Professions Code.
Reference: Section 12212, Business and Professions Code.

Section 4073. Submittal and Approval of an Alternative County Plans.

~~County plans will be approved in writing by the Director upon request and compliance with adequate requirements.~~

(a) The written request specified in Section 4071 shall include, but is not limited to:

(1) A listing of devices formatted similar to Section 4070, Table 1, proposing the alternate inspection frequency for each specified device type. The alternative plan shall stipulate which device types will be inspected on a regular frequency, a variable frequency, or on the basis of a statistical sampling procedure.

(2) A description of the justification and findings that support the county's request. This includes, but is not limited to:

(A) Evidence of satisfactory and continuing accuracy of weighing and measuring devices that may be affected by the alternative plan;

(B) The alternative activities related to weights and measures that will be performed; and

(C) A description of the added benefits to consumers and businesses in the county.

(b) Once approved by the Secretary, the county sealer shall submit any reports requested by the Secretary regarding implementation of the alternative plan.

(c) The Secretary's approval will remain in effect for five years, after which the alternative plan will expire and all device inspection frequencies will revert to those established in Section 4070, Table 1. Alternative plans approved by the Secretary prior to July 1, 2021, will remain in effect until July 1, 2026.

(d) Notwithstanding subsection (c), the Secretary may withdraw, modify, or terminate the alternative plan at any time it is determined that the provisions of this chapter are not being fulfilled by the county sealer.

(e) If an alternative plan expires, requires modification, or has been withdrawn or terminated, a county sealer may submit a new written request in accordance with subsection (a). The Secretary shall evaluate the county's new request to implement an alternative plan and perform other activities related to weights and measures based upon the county's current resources and needs.

Note: Authority cited: Sections 12027 and 12212, Business and Professions Code.
Reference: Sections 12210 and 12212, Business and Professions Code.

Section 4074. Instructions to Sealers Approved Alternative Activities Related to Weights and Measures.

~~(a) Frequency of Inspection. The county sealer or director of each county desiring to participate in this program shall prepare a plan of inspection for devices and submit it to the Director for approval. The plan shall provide that all commercial devices shall be tested either on a regular frequency, a variable frequency, or on the basis of a statistical sampling procedure. The sealer shall initiate variable frequency or statistical sampling plans upon approval of the Director and submit to the Director such reports as he may require concerning the operation of the plan and the level of consumer protection provided. The Director may withdraw his approval and require modification or termination of the plan when he determines it is necessary for the purpose of this chapter.~~

~~(b) Alternative Programs.~~

~~(1) The additional resources made available to the sealers shall be used in the following weights and measures programs:~~

~~(A) Consumer commodities and package inspection.~~

~~(B) Accuracy of retail delivery of weighed, measured and counted commodities.~~

~~(C) Educational activities related to weights and measures enforcement.~~

~~(2) Unless otherwise designated by the Director, the sealer shall apportion the resources used in such alternative programs in his discretion to best accomplish the purpose of this chapter.~~

(a) The additional resources made available to a county sealer by provision of this article shall be used to implement one or more of the following alternative activities related to weights and measures:

(1) Inspection of consumer commodities and packages.

(2) Verifying accuracy of retail delivery of weighed, measured and counted commodities.

(3) Educational activities related to weights and measures enforcement.

(4) Other activities related to weights and measures proposed by the county sealer and approved by the Secretary.

(b) Unless otherwise designated by the Secretary, the county sealer shall apportion the resources needed to implement such alternative activities at the county sealer's discretion to best accomplish the purpose of this article.

Note: Authority cited: Sections 12027 and 12212, Business and Professions Code.

Reference: Sections 12210 and 12212, Business and Professions Code.

Article 3. Annual Device Administrative Fee

Section 4075. Administration.

~~The annual administrative fee for every commercial weighing, measuring, and counting device registered in California to be collected by each county office of weights and measures for the recovery of the Department's cost associated with providing supervision and oversight of county sealers performing the duties described in Business and Professions Code Sections 12210 shall be collected as follows:~~

~~(a) Each county office of weights and measures shall collect for the Department an administrative fee as specified in the Table A for every commercial device registered within their county.~~

~~(b) The administrative fee shall be collected by each county at the same time as the location and device registration fee by the county office of weights and measures from those businesses registering commercial devices in that county.~~

~~(c) The administrative fee shall be paid to the Department of Food and Agriculture Fund for every commercial device registered in the county beginning January 1, 2012 and annually thereafter. The administrative fee shall be paid to the Department for device registration fees collected between January 1, 2012 and March 31, 2012, no later than April 30, 2012; fees collected between April 1, 2012 and June 30, 2012, no later than July 31, 2012; fees collected between July 1, 2012 and September 30, 2012, no later than October 31, 2012; fees collected between October 1, 2012 and December 31, 2012, no later than January 31, 2013. Thereafter fees collected between January 1 and June 30 shall be paid to the Department no later than July 31 of the same year and for device registration fees collected between July 1 and December 31 no later than January 31 of the following year.~~

~~(d) The administrative fee shall be accompanied by a letter of remittance, on county letterhead, that indicates the number of commercial devices in each device fee~~

registration category, the total administrative fee paid for each category, the registration period, and the grand total administrative fee paid to the Department.

(e) County offices of weights and measures may retain the administrative fees collected from those business locations subject to the maximum annual registration fee set forth in Subsection (n) of Section 12240 of the Business and Professions Code and may retain up to 15% of all other administrative fees collected in accordance with this section.

(a) Each county office of weights and measures shall:

(1) Collect for the Department an annual device administrative fee (administrative fee) as specified in Table A: Annual Device Administrative Fee Schedule (By Device Type) for every weighing, measuring, and counting device registered in that county.

(2) Collect administrative fees at the same time it collects its business location and device fees for each device registered in that county.

(3) Remit to the Department the administrative fees collected between January 1 and June 30 no later than July 31 of the same year and the administrative fees collected between July 1 and December 31 no later than January 31 of the following calendar year.

(4) Include with payment of administrative fees a letter of remittance, on county letterhead, that indicates the payment period, the number of devices in each device fee category, the total administrative fees paid for each category, and the grand total administrative fees paid to the Department.

(b) Each county office of weights and measures may retain up to a maximum of 12% of the total administrative fees collected to recover, but not exceed, its necessary and reasonable costs of assessing, collecting, and remitting administrative fees in accordance with this section.

Table A

Table A	
<i>Commercial Device Type</i>	<i>Fees</i>

Electric Sub-meter	\$0.10
Vapor Sub-meter	
Water Sub-meter	
CNG Meter	\$1.10
Fabric, Cordage, Wire Meter	
Grease and Lube Meter	
Odometer	
Retail Motor Fuel Dispenser	
Retail Meter	
Retail Water Meter	
Tank (Liquid Test)	
Taximeter	
Vehicle Meter	
Wholesale Meter	
Miscellaneous Measuring Device	
Scales less than 2,000 pounds capacity	

Liquefied Gas Meter	\$8.00
Scales 2,000 pounds to 10,000 pounds capacity	
Scales greater than 10,000 pounds capacity	\$12.00

**Table A: Annual Device Administrative Fee Schedule
(By Device Type)**

<u>Fee Category.</u>	<u>Submeter/Meter/Measuring Devices.</u>	<u>Scales/Weighing Devices.</u>	<u>Administrative Fee.</u>
<u>1</u>	<ul style="list-style-type: none"> • <u>Electric Watt-Hour Submeter.</u> • <u>Hydrocarbon Vapor Submeter.</u> • <u>Water Submeter (Domestic Service).</u> 		<u>\$0.50.</u>
<u>2</u>	<ul style="list-style-type: none"> • <u>Electric Vehicle Fueling Systems/Electric Vehicle Supply Equipment (EVSE).</u> • <u>Fabric-/Wire- and Cordage-Measuring Device.</u> • <u>Grain Moisture Meter.</u> • <u>Grease and Lubricant Meter.</u> • <u>Odometer.</u> • <u>Retail Meter.</u> • <u>Retail Motor Fuel Dispenser.</u> • <u>Retail Water Meter.</u> • <u>Tank (Liquid Test).</u> • <u>Taximeter.</u> • <u>Vehicle-Tank Meter.</u> • <u>Wholesale Meter.</u> • <u>Miscellaneous Measuring Device¹.</u> 	<ul style="list-style-type: none"> • <u>Weighing device with <2,000 pounds capacity.</u> 	<u>\$2.20.</u>
<u>3</u>	<ul style="list-style-type: none"> • <u>Hydrogen Gas-Measuring Device.</u> • <u>Liquefied Gas Meters:</u> <ul style="list-style-type: none"> ○ <u>Carbon Dioxide Liquid-Measuring Device (CO₂).</u> ○ <u>Cryogenic Liquid-Measuring Device.</u> ○ <u>Liquefied Petroleum Gas (LPG).</u> • <u>Mass Flow Meters:</u> <ul style="list-style-type: none"> ○ <u>Compressed Natural Gas Meter (CNG).</u> ○ <u>Liquefied Natural Gas Meter (LNG).</u> 	<ul style="list-style-type: none"> • <u>Weighing device with ≥2,000 pounds but ≤10,000 pounds capacity.</u> 	<u>\$16.00.</u>

4		<ul style="list-style-type: none"> • <u>Weighing device with >10,000 pounds capacity.</u> 	\$24.00.
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¹ “Miscellaneous Measuring Device” includes all other commercial measuring device types that are not specified in Table A.

Note: Authority cited: Sections 12027, 12107 and 12241, Business and Professions Code. Reference: Sections 12107 and 12241, Business and Professions Code.