

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
Device Administration – Inspections and Fees  
CCR Title 4, Sections 4070 – 4075  
March 9, 2021

**FINAL STATEMENT OF REASONS**

**UPDATED INFORMATIVE DIGEST**

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action. After considering all comments received, the Department of Food and Agriculture (Department) made no change to the proposed text of the regulation as described in the Notice of Proposed Action and Initial Statement of Reasons. The Department did not add any additional documents relied upon to the rulemaking file other than those already cited in the Initial Statement of Reasons.

**FINAL STATEMENT OF REASONS**

The Department notified the public of proposed changes to the regulation and posted them on its website for review and comment:

*Public Review and Comment Period:*

The public review and comment period for this proposed regulation began on November 13, 2020 and closed at 5:00 p.m. on December 31, 2020.

The Department did not schedule a public hearing and one was not requested by any other entity.

California Business and Professions Code (BPC) Division 5, Section 12100, charges the Department with the responsibility of supervising weights and measures activities in California. Pursuant to BPC Section 12027, the secretary of the Department is granted authority to adopt such regulations as are reasonably necessary to carry out the provisions of BPC Division 5. The Department's authority to promulgate this regulation is in BPC Section 12212 requiring the Department to establish in regulation the inspection frequencies of devices used for commercial purposes. In BPC Section 12241, the Department is required to establish in regulation an annual device administrative fee (administrative fee) for commercial devices registered in each county.

**UPDATE OF DOCUMENTS RELIED UPON**

In adopting the proposed regulation, the Department did not rely on any additional data, technical, theoretical or empirical study, or documents other than those identified in the Initial Statement of Reasons.

## **MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The Department determines that this proposed regulation does not impose a new mandate on local agencies or school districts. Existing laws and regulations require local agencies to inspect commercial devices in their jurisdiction and collect the Department's administrative fee. While this proposed regulation modifies the inspection frequencies of some devices and changes the administrative fees, it does not impose a new mandate for county offices of weights and measures. The proposed regulation will not affect any existing school districts' responsibilities, normal business operations, or incur additional non-reimbursable costs because devices owned and operated by school districts or other public municipalities are not regulated by the Department.

## **ALTERNATIVES CONSIDERED**

The Department determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the regulation is proposed; would be as effective and less burdensome to affected private persons than the adopted regulation; lessen the impact on small businesses; would be more cost effective to affected private persons; and equally effective in implementing the statutory policy or other provision of law.

## **INCORPORATION BY REFERENCE**

This proposed regulation does not adopt or incorporate by reference the provisions of any other document.

## **SUMMARY AND RESPONSE TO COMMENTS**

The Department included a copy of each written comment received during the rulemaking process in this rulemaking file. The Department sequentially numbered each written comment for ease of reference.

During the 45-day public review and comment period, the Department received written comments from three entities:

1. Kimberly Godsey of Minol USA and Zenner USA on December 21, 2020, comment 1;
2. Sheila Dey of Western Manufactured Housing Communities Association on December 24, 2020, comment 2; and
3. Don Millstein of the Utility Management & Conservation Association on December 21, 2020, comment 3.

The Department considered each written comment received and either responded to comments individually or grouped comments of a similar topic. The following are summarizations of public comments and the Department's responses to them:

**Summary of written comments 1 and 3 (Grouped):**

These commenters offer support of the proposed regulation only if it is modified to include provision that the proposed fee increases would be used to hire additional personnel at weights and measures submeter testing facilities. The commenters specifically identify the Los Angeles Weights & Measures testing facility as an example of their testing times being delayed by 3 to 6 months. They also feel other county weights and measures testing laboratories in the state have extensive delays with submeter testing. The commenters suggest specifying in the regulation a specific percentage of test time reduction and a specific percentage of increased laboratory personnel to decrease these delays.

**Response to this comment:**

The Department appreciates these comments and recognizes that occasionally there exists a delay in testing at some county weights and measures submeter testing laboratories. The Department does not have direct regulatory authority over reducing testing times or increasing personnel at county operated submeter testing facilities. Furthermore, California statutes do not allow for the Department's administrative fees to fund the operations of a county laboratory. Therefore, changing the regulation to include performance and personnel requirements for county operated testing laboratories is beyond the scope of this rulemaking action.

The Department feels it is important to note the difference between the counties' annual device registration fees provided for in BPC Section 12240 and the Department's annual device administrative fees provided for in BPC Section 12241. It is the county registration fee that funds the mandated work of a county office of weights and measures to enforce applicable laws and regulations for commercial weighing and measuring devices in their jurisdiction. On the other hand, the Department's administrative fees fund its mandated responsibilities to supervise and promote uniform weights and measures laws and regulations throughout the state. The new employees the Department intends to hire will provide training to county offices of weights and measures, including some training courses related to submeters. For these reasons, the Department declines to modify the proposed text of the regulation.

**Summary of written comment 2:**

This commenter requests the proposed regulation be withdrawn until after the COVID-19 crisis has ended. The commenter believes an increase of the administrative fees will create an additional and substantial financial burden on mobile home park owners. The commenter claims that other significant financial burdens experienced by mobile home park owners include a temporary, state mandated 25% rent cap for qualified tenants. The rent cap mandate restricts the park owner from collecting some utilities and other charges until the rent cap expires.

**Response to these comments:**

The Department appreciates this comment and understands that many Californians have been economically impacted by the COVID-19 pandemic. As explained in the Initial Statement of Reasons, the Department first adopted regulation in 2012 establishing the annual device administrative fee and has not proposed a fee increase since. Before any knowledge of a global pandemic, the Department recognized the need for a fee increase and began drafting this proposed regulation in 2018. The proposed fee increases in this regulation will offset the Department's current operating costs of the Device Enforcement program and the Metrology Laboratory. The amended fees will also assist the Department with reducing the growing backlog of work orders in the Metrology Laboratory. The Department will also be better funded to assist counties with device enforcement activities and provide statewide weights and measures training to county officials.

The Initial Statement of Reasons, Economic Impact Assessment (EIA), Fee Category 1 Section states that in California there are approximately 1.2 million registered submeter devices. This combined total includes electric, water, and hydrocarbon submeter types. The fee for these types of devices is proposed to increase by \$0.40 per device, per year. Each tenant space in a mobile home park that is equipped with all three types of submeters will experience a maximum combined fee increase of \$1.20 ( $\$0.40 \times 3$ ) per tenant space, per year. Tenant spaces not equipped with all three submeter types will experience an economic impact less than \$1.20 per tenant space, per year. Despite the economic effects of the pandemic, the Department does not believe that an increase of approximately \$0.40 to \$1.20 per tenant space, per year, is a significant statewide economic impact to small businesses (mobile home park owners) or California residents (mobile home park tenants). For these reasons, the Department declines to modify the proposed text of the regulation.