

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

**NOTICE OF PROPOSED RULEMAKING ACTION**

The California Department of Food and Agriculture (Department) proposes to amend California Code of Regulations (CCR) Title 4, Sections 4070 – 4075 relating to inspection frequencies and administrative fees established for weighing and measuring devices used for commercial purposes.

**PUBLIC HEARING**

A public hearing is not scheduled. A public hearing will be held if any interested person or his or her duly authorized representative submits to the Department a written request for a public hearing no later than 15 days prior to the close of the public comment period. Address the written request for a public hearing to the primary contact person below.

**WRITTEN COMMENT PERIOD**

The Department invites any interested person or his or her authorized representative to submit to the Department written comments relevant to the proposed regulatory action by email, fax, or mail addressed to the primary contact person listed below. Please include “CCR Title 4, Sections 4070 – 4075 Device Administration” in the subject line of any email, fax, or letter regarding this rulemaking. The public comment period begins on Friday, November 13, 2020, and closes at 5:00 p.m. on Thursday, December 31, 2020.

**AUTHORITY/REFERENCE**

The Legislature has charged the Department in Business and Professions Code (BPC) Division 5, Section 12100 with the responsibility of supervising weights and measures activities in California. The secretary of the Department is granted authority in BPC Section 12027 to adopt such regulations as are reasonably necessary to carry out the provisions of 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 and law enforcement purposes, and in BPC Section 12241 requiring the Department to establish in regulation an annual device administrative fee (administrative fee) for commercial devices registered in each county. The Department’s administrative fee is part of the annual device registration fee, assessed per device, as specified in BPC Section 12240 (f). The Department collects

these fees to recover necessary and reasonable costs to administer the Department's Device Enforcement Program, supervise and enforce the weighing and measuring activities of each county, and perform the mandated duties of the Department's Metrology Laboratory (Laboratory). The Laboratory's primary work is to certify each county's standards of weights and measures pursuant to BPC Sections 12305 and 12310. The Laboratory is also responsible for maintaining and safekeeping the state's standards of weights and measures. Sections 12310 and 12241 of the BPC provide for a portion of the Department's annual administrative fees to be allocated to the Laboratory to perform its work.

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

Current regulation in CCR Title 4, Section 4070 establishes the requirement to inspect devices used for commercial and law enforcement purposes in accordance with the table of inspection frequencies adopted in that section. The Department proposes to update the current table because it has not been modified since 1984. The table cites legacy regulation that has since been repealed and it does not specify all commercial devices commonly used in California's marketplace today.

Current regulation in CCR Sections 4071 – 4074 provides for a county sealer to request an alternative inspection frequency plan (alternative plan) specifying alternate inspection frequencies other than those adopted in CCR Section 4070. The Department proposes to make grammatical changes, reorganize, and clarify the requirements of county sealers to submit a written request to implement an alternative plan. Twenty-seven (27) counties have exercised the option to request an alternative plan. With this regulation, the Department proposes to add a 5-year term limit to the requirements of an alternative plan after which it will expire, and the county will revert to the inspection frequencies adopted in CCR Section 4070. After this term expires, a county sealer may submit a new written request detailing current information and justifications if that county believes an alternative plan continues to provide a valuable benefit.

Current regulation in CCR Section 4075 establishes the Department's administrative fees per device type. The administrative fees were first adopted in 2012 and have not been updated or amended. Revenue from administrative fees are insufficient to meet the necessary and reasonable costs incurred to administer the Device Enforcement Program, supervise and enforce the weights and measures activities of each county, and provide funding for mandated Laboratory services. Advancement in technology and the introduction of new devices in the marketplace have created a continually increasing workload for both the Device Enforcement Program and the Laboratory. These increases in both workload and technical complexity require additional personnel, specialized training, and modern equipment to complete the required tasks. Increased

fees will provide the means to hire and train additional personnel, acquire modern test equipment and purchase needed certified test standards. Trained staff will then be able to provide current training and guidance to county offices of weights and measures and reduce the growing backlog of work for both programs.

#### *Consistency and Compatibility with Existing State and Federal Regulations*

The Department determines that this regulation is consistent and compatible with other state regulations. No other state agency has been given authority to establish inspection frequencies or set annual administrative fees for weighing and measuring devices used for commercial purposes.

This regulation is not mandated by federal law or regulation. Moreover, the proposed changes to this regulation do not conflict with any federal regulations contained in the Code of Federal Regulations. The Department is not aware of any Federal laws or regulations relating to the administration of weighing and measuring devices used for commercial purposes in California.

#### *Anticipated Benefits of the Proposed Regulation*

This proposed regulation benefits each county sealer by specifying the inspection frequencies of commercial devices not currently listed in regulation, and further clarifies the requirements of a county sealer to request an alternative plan. The proposed regulation benefits the Department by providing necessary revenue to recover the Department's reasonable costs to supervise and enforce the weighing and measuring activities of each county and perform the mandated work of the Device Enforcement Program and the Laboratory.

This regulation promotes a marketplace where consumers and businesses can conduct their business in a fair, competitive, and transparent manner. Because of this regulation and the work performed by state and county sealers, consumers in California can be assured that devices used for commercial purposes, having been inspected and tested by a sealer, will perform correctly and accurately. Devices that do not comply are removed from service by a sealer until corrected. Likewise, California businesses are assured that all commercial devices, including those of competing businesses, are compliant with California regulation.

#### **DOCUMENTS ADOPTED AND INCORPORATED BY REFERENCE**

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

## **LOCAL MANDATE, FISCAL IMPACT, and HOUSING COSTS**

Although this regulation affects local agencies, it does not establish or impose a mandate on them. Also, this regulation does not apply to school districts. The Department determines that this proposed regulation:

1. Does not impose a mandate on local agencies or school districts;
2. Does not incur costs to any local agency or school district requiring reimbursement pursuant to Government Code Sections 17500 et seq.;
3. Does not incur costs or savings to any state agency;
4. Does not incur other non-discretionary costs or savings imposed on local agencies;
5. Does not incur costs or savings in federal funding to the state; and
6. Does not have a significant effect on housing costs.

## **STATEWIDE ADVERSE ECONOMIC IMPACT**

This proposed regulation will have an economic impact on small and large businesses that operate weighing and measuring devices used for commercial purposes. All businesses that own electric submeters, hydrocarbon vapor submeters, and domestic water submeters will be assessed forty cents (\$0.40) more per device. For most other businesses, the economic impact is twice what they are currently paying per device. In only a few cases, businesses will be assessed \$14.90 more per device because those device types are being reassigned to a different fee category. The Initial Statement of Reasons explains in detail which businesses and device types are affected by the proposed changes of this regulation. Despite the administrative fee increases, the Department determines that the economic impact to all affected businesses does not create a significant, statewide adverse economic impact directly affecting large and small California businesses, including the ability of California businesses to compete with businesses in other states.

## **RESULTS OF ECONOMIC IMPACT ASSESSMENT**

The Department determines that the proposed regulation:

1. Does not create or eliminate jobs in California;
2. Does not create new businesses in California, does not eliminate existing businesses in California; and
3. Does not affect the expansion of businesses in California.

### *Other Anticipated Benefits of this Regulation*

In addition to the anticipated benefits mentioned above, the Department determines there will be no other significant benefits to the health and welfare of California residents, worker safety, and the state's environment due to the adoption of this regulation.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

The Department is aware of cost impacts to a representative private person or business who operate a weighing or measuring device used for commercial purposes. Private persons or businesses who operate commercial devices are required to comply with the applicable inspection timeframes established in this proposed regulation and are required to pay the Department's administrative fees on an annual basis.

### **EFFECT ON SMALL BUSINESS**

This proposed regulation will affect small businesses that operate commercial weighing and measuring devices in the state. The Department is aware that these small businesses will be required to pay a higher administrative fee per commercial device. The cost impacts of this regulation are proportional to the number and types of devices a small business operates, not necessarily the size of the business. The Department is also aware that small businesses will be required to comply with the established inspection frequencies for their commercial devices.

### **REPORTING REQUIREMENTS**

This proposed regulation does not mandate reporting requirements for regulated businesses. The counties' reporting requirements associated with this regulation are not part of the changes proposed with this regulation.

### **CONSIDERATION OF ALTERNATIVES**

Government Code Section 11346.5 (a)(13) requires that the Department must determine 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 action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

## **CONTACT INFORMATION**

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## **AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Department will make the entire rulemaking file available at the above address for inspection and copying throughout the rulemaking process. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the Initial Statement of Reasons, and all supporting documents and information relied upon in the development of this proposed regulation. Please submit a request to the above address to receive a copy of the rulemaking file.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After receiving and considering all timely and relevant comments, the Department may adopt the proposed regulation substantially as described in this notice. If, however, the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the modified regulation. Please submit a request to the above address for a copy of the modified text of the regulation. Include "Device Administration" in the subject line of any email, fax, or letter regarding this rulemaking.

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by submitting a request to the above address.

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

The Department posts electronic copies of this rulemaking file on its website at:  
<https://www.cdfa.ca.gov/dms/regulations.html>