

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

INITIAL STATEMENT OF REASONS

The Legislature has charged the Department of Food and Agriculture (Department) with the responsibility of supervising weights and measures activities within California pursuant to California Business and Professions Code (BPC), Division 5, Section 12100. The Secretary of the Department is granted the authority to adopt such regulations as are reasonably necessary to carry out the provisions of Division 5 of the BPC (BPC Section 12027).

The Department works closely with the county sealers of weights and measures who carry out the majority of weights and measures enforcement activities at the local level. A primary weights and measures enforcement activity is ensuring the accuracy of commercial weighing and measuring devices because most goods and services are sold by weight or measure. The goal is to minimize the measurement error and create buyer/seller equity in commercial transactions through the periodic inspection and testing of commercial weighing and measuring devices, e.g., supermarket scales, gasoline dispensers, vehicle scales, taximeters, etc. The 55 sealers serving California's 58 counties are mandated to inspect and test all the commercial weighing and measuring devices within their jurisdiction (BPC Section 12210). The Department's role in this state/county system is to provide supervision and enforcement of the activities of county sealers by offering technical training, oversight, and support to facilitate uniform statewide application of the law.

The Department's Metrology Laboratory (Laboratory) is required to maintain the state's standards of measurement (mass, volume, distance, time, temperature, energy) that form the legal basis for most commercial transactions in California (BPC Section 12304). The Laboratory certifies about 23,000 test standards of various kinds used by county officials to inspect and test nearly 1.6 million registered commercial weighing and measuring devices in California (BPC Section 12310).

PROBLEM STATEMENT

The two tables in the California Code of Regulations (CCR) Title 4, Chapter 3. Device Inspection, Sections 4070 and 4075 that establish inspection and testing frequencies for commercial devices and the Department's annual device administrative fee

schedule are outdated and incomplete. The Department proposes to modify the two tables to include new commercial device types that are commonly used in the marketplace.

The provisions in CCR Sections 4071 – 4074 detailing how county sealers may request and implement an alternative inspection plan (alternative plan) are also outdated and the regulation needs to be modernized and reorganized to provide clarity to county sealers. The Department proposes to reorganize and restate the requirements so county sealers will have clear guidance on how to properly request an alternative plan. Updating the language will also provide an outline of essential information that must be included with the request for an alternative plan.

Revenue collected from the Department's current administrative fee schedule in Table A of CCR Section 4075 (fee schedule) no longer provides for necessary and reasonable costs to supervise, train, oversee, and investigate the weights and measures activities in the 58 counties throughout the state. The current fee schedule was adopted in 2012 and has not been modified since. The Department proposes to amend the fee schedule to allow the Department to recover its necessary and reasonable costs associated with the required activities in BPC Section 12241.

BACKGROUND

California's weights and measures laws in Division 5 of the BPC forge a close working relationship between the Department and county sealers, with legislative intent for state-level oversight over local officials performing enforcement work [BPC Sections 12103.5 and 12104 (a)]. County sealers are mandated to perform certain types of work (BPC Sections 12210 and 12212) and to report their work to the Department [BPC Section 12209 (c)]. By far the largest weights and measures activity at the county level is the inspection and testing of commercial weighing and measuring devices. The Department's FY 2018/19 expenditure report for California's weights and measures activity shows that statewide, Device Program activities accounted for 60.5% of county sealers' total staff time and 62.1% of total expenditures.

Many of the 1.6 million devices registered by county offices of weights and measures are inspected at the frequency prescribed in CCR Section 4070. However, in the mid-1970s, an alternative inspection plan was established in the CCR for commercial weighing and measuring devices as a substitute to testing on the prescribed basis. With a Department-approved alternative plan, county officials may test a commercial device type at a frequency other than the timeline established in Table 1 of CCR Section 4070. This allows county sealers to re-allocate resources to other weights and measures

programs. Alternative plans work especially well for certain device types, e.g., gasoline dispensers and grocery scales that are routinely serviced between inspections and have evidence of high accuracy and compliance rates. Since county sealers report their work annually to the Department [BPC Section 12209 (c)], the Department can readily compare the individual county device compliance rates against the statewide average. CCR Sections 4071 – 4074 details the processes and controls for requesting an alternative plan. The Department currently has twenty-seven (27) approved county alternative plans on file.

County annual device registration fees were established in the BPC in 1983. By 1985, 29 jurisdictions had instituted these fees via a county ordinance. Counties may not set fees greater than the maximum amounts authorized in BPC Section 12240. A county's established device fees are intended to offset its direct cost of inspecting and testing commercial weighing and measuring devices. Today, all but one county assesses annual device registration fees.

Historically, the source of funding for the Device Enforcement Program and Laboratory had been the state General Fund. It was widely recognized that the use of General Funds for state oversight activities created an orderly marketplace and was a benefit to all California consumers and businesses. However, in 2011, budget shortfalls within the General Fund resulted in complete elimination of General Fund spending authority for the Device Enforcement Program. In 2011, the Legislature provided alternative funding via statutory authority in BPC Section 12241 to adopt an annual device administrative fee through rulemaking. The Legislature also amended BPC 12240 that year to include the Department's administrative fee as part of the county device registration fee. In 2012, the Department adopted regulation that established the annual device administrative fee schedule in CCR Title 4, Section 4075.

The 2011 General Fund reductions were not enough to sufficiently reduce the State's deficit, and the Department incurred additional budget cuts in 2012. The Laboratory experienced a General Fund reduction of \$125,000, roughly thirty percent (30%) of its budget. Since BPC Section 12310 requires the Department to bear all direct costs associated with its certification services to county offices of weights and measures, the Laboratory was forced to reduce staffing and quickly became unable to fulfill its statutorily mandated work (BPC Section 12310). By Fiscal Year (FY) 2016/17, the reduction in staffing resulted in a thirty-three percent 33% backlog of Laboratory work orders that were county standards overdue for certification. Today, the backlogged work orders in the Laboratory have increased to about thirty-five percent (35%).

The delay in processing work orders affects the work of those counties waiting to receive current Laboratory certifications as those counties do not have access to their full inventory of test standards.

County sealers recognize that the Department's certification of their standards is an essential prerequisite to testing commercial devices (BPC Section 12210). In 2017 the California Agricultural Commissioners and Sealers Association sponsored legislation (SB 547, Chapter 429, Statutes 2017) modifying BPC Section 12241. The amendment allows use of the annual administrative fee revenues to augment the Laboratory's budget to maintain the facility, safeguard the state standards, and perform its mandated work as prescribed in BPC Sections 12303, 12304, 12305, and 12310. In FY 2018/19, the Department transferred \$20,000 from the annual administrative fees fund to the Laboratory to temporarily offset a portion of staffing costs.

In FY 2019/20 the Department submitted Budget Change Proposal (BCP) 8570-012-BCP-2020-GB, Weights and Measures Oversight and Services. This BCP requested \$799,000 Department of Food and Agriculture Fund annually for three years (starting in FY 2020/21); then, \$320,000 annually thereafter. The BCP requests two permanent positions and 3 limited-term positions to allow the Department to continue its mandated responsibilities. The BCP was approved by the Department of Finance and the Legislature and included in the Budget Act of 2020 – Senate Bill 808 (Mitchell, Statutes 2020).

LEGISLATIVE AND EXECUTIVE HISTORY

Assembly Bill (AB) 120 (Committee on Budget, Statutes 2011, Chapter 133) amended subdivision (f) of BPC Section 12240 to include the Department of Food and Agriculture administrative fee as part of the annual registration fee for a business that uses a commercial weighing or measuring device. This bill also enacted BPC Section 12241 requiring the Department to establish an annual device administrative fee to recover its costs related to supervising and inspecting county weights and measures activities described in BPC Sections 12210 and 12211.

AB 1623 (Yamada, Statutes 2012, Chapter 234) amended the provisions in subdivisions (n) and (t) of BPC Section 12240 to exclude the Department's device administrative fee from the maximum allowable assessment of annual device registration fees to business that operate commercial devices applicable to those subdivisions.

Senate Bill (SB) 547 (Hill, Statutes 2017, Chapter 429) extended the Department's authority to allocate a portion of the annual device administrative fee to recover costs for services provided by the Department's Metrology Laboratory in accordance with BPC Sections 12303, 12304, 12305, and 12310.

SB 800 (Committee on Business, Professions and Economic Development, Statutes 2017, Chapter 573) removed “Director” from the definition of “secretary” in BPC Section 12003.

SB 808, Budget Act of 2020, (Mitchell, Statutes 2020) makes appropriations relating to the state budget for the support of state government in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California. The Department’s Budget Change Proposal is included in Appropriation Item Number 8570-001-0111, Program 6575- Marketing, Commodities and Agricultural Services.

REGULATORY HISTORY

With the enactment of AB 120 in 2011, the Department began the rulemaking process to adopt an annual device administration fee schedule. The fee schedule was adopted in CCR Section 4075 in March 2012. This regulation has not been amended since then.

PURPOSE AND NECESSITY OF THE PROPOSED REGULATION

The purpose and necessity of this proposed regulation is to add newly introduced weighing and measuring device types to the table of inspection frequencies established in CCR Section 4070; to clarify the process for submitting an alternative inspection frequency plan (alternative plan) in CCR Sections 4071 – 4074; and to modify the annual device administrative fees in CCR Section 4075 to recover the necessary and reasonable costs of the Department’s mandated activities. The Department also proposes to make other necessary changes in formatting and grammar that are not substantive. The following are specific reasons for modifying the text:

Article 1. Frequency of Inspection

The Department proposes to change the title of this article to “Inspection Frequencies” as a grammatical change that does not change the requirements of this section. The purpose of this change is to clarify that Table 1 in CCR Section 4070 assigns commercial device types to five inspection frequency categories. It is necessary for the title of this article to read in the plural tense because there are various inspection frequencies established in that table.

Section 4070. Frequency of Inspection.

The Department proposes to change the title of this section and title of the table to “Inspection Frequencies” for the same reasons described above and to remain consistent with the change to the title of Article 1.

It is necessary to add the phrase, “and other devices required by law to be inspected by a sealer” to include certain device types that are not used for commercial and law

enforcement purposes, yet may be required to be inspected and tested in accordance with California law. For example, BPC Section 12210 (b) requires a sealer to “calibrate, test, weigh, and measure, and certify to the accuracy of” noncommercial devices when requested in writing by a person, firm or corporation and directed to do so by the board of supervisors of that county. Additionally, some precision scales (Class I and Class II), are used to measure certain valuable crops eventually manufactured into commodities (e.g., products made from cannabis) in a manner that does not technically meet the definition of “commercial purposes” in BPC Section 12500 (e), yet are required to be inspected by a sealer as per CCR Title 3, Section 8213. Requirements for Weighing Devices and Weighmasters. The proposed table in this section will apply to the inspection frequencies of those types of devices as well.

Section 12210 (a) of the BPC requires a county sealer to “inspect, try and test” all devices used for commercial purposes in that county. Throughout CCR Chapter 3, Sections 4070 – 4075, the current regulation interchanges the terms “inspect” and “test,” and fails to include the term “try,” as the statute states. The Department proposes to simplify and consolidate the phrase “inspect, try and test,” throughout Chapter 3 of this regulation into one inclusive term, “inspection.” For purposes of Chapter 3, unless otherwise specified in Table 1. Inspection Frequencies, the Department proposes that, for simplicity and clarity, the use of one term “inspection” applies to a sealer’s work of inspecting, trying, and testing a device for applicable specifications, tolerances, and other technical requirements adopted in Chapter 1 of this division. It is necessary to make this change for clarity and consistency regarding commercial device inspection activities of a sealer. Adding this statement also more closely aligns the requirements of this regulation with the sealer’s duties specified in statute.

The current language in this section uses the phrase, “weights and measures official.” Although that is a commonly used term, it is not defined in statute or regulation. On the other hand, the definition of “sealer,” is adopted in BPC Section 12008. When used generally and without qualification, “sealer” incorporates the State Sealer, county sealers, and their deputies and inspectors. It is necessary for the Department to make this regulation consistent with statute by replacing “weights and measures official” with “sealer.”

The Department proposes to replace *Table 1. Frequency of Inspection* with a modified table titled, *Table 1. Inspection Frequencies*. The current table is outdated and does not include all commercial devices used in the marketplace today. The proposed table has updated formatting that includes new device types not listed in the current table. It is necessary to adopt the new table to provide county sealers with all adopted inspection frequencies for both long-established and relatively new device types. The proposed

table better coordinates with the required monthly and annual reports each county office of weights and measures must submit to the Department [BPC Section 12209 (c)], and better harmonizes with the formatting and content of the proposed device administrative fee table in CCR Section 4075. The Department proposes to add the following measuring devices to the Table 1: Electric Vehicle Fueling Systems/Electric Vehicle Supply Equipment (EVSE), Compressed Natural Gas (CNG), and Liquid Carbon Dioxide (CO₂), and Miscellaneous Measuring Device. The weighing devices proposed to be added to the Table 1 are: Class I, Class II (Other than Prescription), Class III (Other than Prescription), Hanging, and Vehicle On-Board (Forklift), and Miscellaneous Weighing Device. The Miscellaneous Measuring Device and Miscellaneous Weighing Device line items are necessary to address a key issue the Department identified and intends to resolve with this proposed regulation – commercial devices newly introduced in the marketplace have no assigned inspection frequency. The Department proposes an annual inspection frequency for unspecified devices so it can collect necessary test data from county sealers to determine whether an annual inspection frequency is reasonable.

Prior to 1994, there existed a series of subchapters in CCR Title 4, Division 9. During that year, the Department repealed and replaced those subchapters with the current chapters adopted in regulation. The current Table 1 contains a column titled “DEFINITIONS” with references to various Articles of Subchapter 1 that are legacy and have no meaning today. It is necessary to update Table 1 and remove all references to repealed subchapters.

The Department proposes to add BPC Section 12008 to the note of this section as an additional reference citation. That law defines a sealer when the term is used in a generic sense. The remainder of the proposed changes to the text and table of this section are grammatical and not substantive.

Article 2. Alternatives to Specified Frequency of Inspection

The Department proposes to change the title of this article to “Alternative to the Specified Inspection Frequencies” to better coordinate and make consistent with the proposed change to the title of Article 1. It is necessary to make this change for reasons stated in Article 1, above.

Section 4071. Purpose of Article.

The Department proposes to replace the current text of this section with modified language. The Department proposes to remove the term “director of weights and measures” because the current definition of “county sealer” in BPC Section 12006

includes this phrase. In 2017, the Legislature enacted SB 800 (Committee on Business, Professions and Economic Development, Statutes 2017, Chapter 573) which removed “Director” from the definition of “secretary” in BPC Section 12003. It is necessary to replace the term “Director” with “secretary” throughout this article to be consistent with current statute.

The Department proposes to make other changes to this section that restate and clarify the provisions for requesting an alternative plan. The Department specifies that CCR Section 4074 is where the description of alternative activities related to weights and measures is adopted.

Section 4072. Findings

The Department proposes to change the title of this section to “Findings for an Alternative Plan” to make it coordinate better with the title of Article 2. It is necessary to make this change for reasons stated in Article 2, above.

The Department proposes to replace the current text of this section with modified language to remove legacy terms and correct grammatical errors. The Department replaces “Director” with “secretary” in this section for reasons stated in CCR Section 4071, above.

The Department proposes to reformat and reorganize this section to place its provisions in separate subdivisions (a) and (b) that will make it easier to read. The current language of item one (1) of this section reads “minimum frequency of inspection.” However, the current language of CCR Section 4070 states that the established frequencies of inspection are “maximum times between tests” and that more frequent tests may be conducted. Therefore, according to CCR Section 4070 there are no minimum frequencies of inspection. It is necessary to modify this section to remove any possible confusion that exists between these two seemingly conflicting regulations. Making this change will align the language of this section with CCR Section 4070. It is necessary to remove the phrase “end result type inspection” in item two (2). This phrase refers to package and price verification inspections, but it is not defined in statute or regulation. Additionally, performing package and price verification inspections is specified as an alternative weights and measures activity in CCR Section 4074. The Department proposes to further clarify the item three (3) to make clear that county offices of weights and measures are required by law to perform various weights and measures enforcement activities in accordance with BPC Division 5. The Department finds that extending established inspection and testing frequencies for certain device types creates efficiencies and cost savings by allowing a county sealer to redirect county resources to other weights and measures related activities.

The Department proposes to add BPC Sections 12103.5, 12210, and 12211 to the note of this section as reference citations. These laws provide authority to sealers to enforce all provisions of Division 5 including the inspection and testing of commercial devices, and perform compliance testing of packaged goods and commodities to determine whether the actual net weight of the contents is the same as the declared net weight on the package.

Section 4073. Approval of County Plans.

The Department proposes to change the title of this section to “Submittal and Approval of an Alternative Plan” to better describe the provisions and requirements of this proposed section. It is a requirement to submit a written request to the Department for the secretary’s review and approval. The current language of this section is vague because it does not describe what “compliance with adequate requirements” means. In fact, “adequate requirements” (the provisions, instructions, contents, and requirements) for submitting an alternative plan are currently adopted in CCR Section 4074 (a). The Department proposes to consolidate all necessary requirements and components of a written alternative plan into this section for ease of reference.

The current language of this section does not address the need for a county to reassess its resources from time to time and determine whether there still exists the need to implement an alternative plan. Over time, a county’s priority of enforcement activities may change. The Department proposes to set a five-year term limit to implementing an alternative plan, after which time it expires, and the county reverts to the inspection frequencies established in CCR Section 4070. The county sealer may then choose to submit a new written request in accordance with CCR Sections 4071 – 4073. To keep current with individual county resources, responsibilities, and priorities it is necessary to adopt this provision requiring county sealers to review and submit updated justifications for continuing an alternative plan on a five-year interval. This will provide the secretary with the relevant information that supports a county performing alternative activities related to weights and measures in lieu of inspecting commercial devices in accordance with CCR Section 4070.

Currently, there are 27 counties that implement an approved alternative plan. The Department proposes to add a new provision in subdivision (c) of paragraph (1) of this section to allow existing alternative plans to remain in effect until July 1, 2026. It is necessary to provide each of those counties time to reassess its current resources and determine its current needs to perform alternative activities related to weights and measures in lieu of inspecting commercial devices in accordance with CCR Section 4070.

The Department proposes to add BPC Sections 12103.5, 12210, and 12211 to the note of this section as reference citations. These laws provide authority to sealers to enforce all provisions of Division 5 including the inspection and testing of commercial devices, and perform compliance testing of packaged goods and commodities to determine whether the actual net weight of the contents is the same as the declared net weight on the package.

Section 4074. Instructions to Sealers.

The Department proposes to change the title of this section to “Approved Alternative Activities Related to Weights and Measures” because the Department proposes to move the current language of CCR Section 4074 (a) to the proposed language of CCR Section 4073 (a) and consolidate it with the remaining requirements and components of that section. The proposed language in CCR Section 4073 (a) specifies alternative activities related to weights and measures. The Department proposes CCR Section 4074 (a)(4) an alternative plan with “other activities designated” by the county sealer and approved by the secretary. This is a necessary addition because the current list of alternative activities in this section is not exhaustive. A county sealer may have justification to implement other designated activities not already listed.

The current language in CCR Section 4074 (b) refers to “Alternative Programs” when in fact, it is a list of common activities related to weights and measures. To provide consistency within the language of this article, it is necessary to replace the word “program” with “activities” throughout this section and modify the text to allow county sealers to allocate resources to any kind of activity related to weights and measures if approved by the secretary.

The Department proposes to add BPC Sections 12103.5, 12210, and 12211 to the note of this section as reference citations. These laws provide authority to sealers to enforce all provisions of Division 5 including the inspection and testing of commercial devices, and perform compliance testing of packaged goods and commodities to determine whether the actual net weight of the contents is the same as the declared net weight on the package.

Article 3. Annual Device Administrative Fee

Section 4075.

When this section was first adopted in 2012, it was not given a title. The Department proposes to add “Administration” as its title because this section contains the administrative requirements for county sealers and the Department. This section also establishes the schedule of administrative fees in Table A.

The current requirements in CCR Section 4075 (c) require each county to remit administrative fees on a specified payment schedule during FY 2011/12 and FY 2012/13. Those requirements are legacy and no longer necessary. The Department proposes to remove them and update the regulation to require a semi-annual remittance schedule.

The Department proposes to modify the first provision of CCR Section 4075 (e) which allows a county to retain all the administrative fees collected for devices listed in BPC Section 12240 (n). The reason for this change is to address legislation [AB 1623 (Yamada, Statutes 2012, Chapter 234)] that modified language in BPC Section 12240 (n) to exclude the Department's device administrative fee from the maximum fees assessed for devices listed in that statute. With that act, this provision is legacy and no longer necessary. This amendment will align the regulation with the current statute.

The Department proposes further modifications to CCR Section 4075 (e). Currently, a county may retain up to fifteen percent (15%) of all other administrative fees to recover their actual costs to assess, collect, and remit the administrative fees to the Department. The Department proposes to amend the amount a county can retain to twelve percent (12%). The proposed increase in administrative fees will result in a proportional increase in the amount a county collects, and twelve percent (12%) of this larger amount will result in equal or greater funding to a county to cover its administrative costs. The proposed text also clarifies that a county may only retain an amount that recovers its actual administrative costs. The projected increase in revenue experienced by each county will assist them with recovering any necessary and reasonable costs to modify current billing procedures. For some counties, billing is done manually. For others, they may need to update their computer software. Proposing a decrease in the percentage of fees a county may retain (but not to exceed its actual costs) keeps the Department's administrative fees as low as practical.

The Department proposes to replace the current administrative fee schedule, Table A, with a new table titled, *Table A. Annual Device Administrative Fee Schedule*. The proposed table groups certain device types into four administrative fee categories: Fee Category 1 – fifty cents (\$0.50) per device; Fee Category 2 – \$2.20 per device; Fee Category 3 – \$16.00 per device; and Fee Category 4 – \$24.00 per device. The new table adds new devices used for commercial purposes that are not specified in the current table and better harmonizes with the devices specified in Table 1 of CCR Section 4070. Placement of a device in a specific fee category is based on the costs incurred by the Department to regulate the activities associated with each device type. Some new or complex devices require the Department to offer more frequent training, develop new training curriculum, and if necessary, acquire new test standards. With

some new or specialized device types, the Department's employees may conduct device inspections until such time that county sealers are able to acquire the necessary test standards.

More specificity in Table A will also help ensure the correct administrative fee is collected for each device type. Any device not specified in Table A may be reported as a "Miscellaneous Measuring Device", thereby placing it in Fee Category 2. Having new and technologically complex devices reported as "Miscellaneous" can prevent both a county and the Department from collecting the appropriate fee amounts necessary to recover their reasonable costs for device inspections. With this regulation the Department proposes to specify the following measuring devices: Electric Vehicle Supply Equipment (EVSE); Grain Moisture Meters; and Water Submeters (All Others) in Fee Category 2. The Department proposes to reassign Hydrogen Gas-Measuring Devices (Hydrogen), Liquefied Natural Gas Meters (LNG), and Compressed Natural Gas Meters (CNG) to Fee Category 3. The Department also proposes to clarify in Table A that the current "Liquefied Gas Meters" line item in Fee Category 3 already includes: Cryogenic, Liquefied Petroleum Gas (LPG), and Liquid Carbon Dioxide (CO₂).

The remainder of the changes of this proposed regulation are grammatical and do not change the requirements of the regulation.

ECONOMIC IMPACT ASSESSMENT (EIA)

The Department's four administrative fees in Table A of CCR Section 4075 are currently set at: ten cents (\$0.10) per device; \$1.10 per device; \$8.00 per device; and \$12.00 per device. With this rulemaking, the Department proposes to establish four fee categories and change each fee to be: Fee Category 1 – fifty cents (\$0.50) per device; Fee Category 2 – \$2.20 per device; Fee Category 3 – \$16.00 per device; and Fee Category 4 – \$24.00 per device.

The direct economic impact to a business equals the proposed increase in administrative fees per device type multiplied by the number of devices of each type owned by a business. For instance, a business that operates one or more commercial devices in Fee Category 1 (\$0.10 per device) will be assessed an administrative fee that is forty cents (\$0.40) more per device than what they currently pay. Likewise, the other three fee categories are proposed to increase by \$1.10, \$8.00, and \$12.00 per device, respectively.

Individual Large and Small Businesses

For rulemaking purposes, a business is considered large if it does not meet the definition of a small business in California Government Code Section 11342.610.

However, it is not necessarily the size of the business that determines the level of economic impact. Regardless of size, the economic impact to both large and small businesses is proportional to the number and variety of commercial devices they operate at each business location. Some affected businesses may operate as few as 2-3 commercial weighing and measuring devices while others may operate 25 to 100, or more. The Department recognizes that there are thousands of businesses that operate a total of 1.6 million commercial devices statewide. The Department estimates approximately sixty percent (60%) of these businesses are considered small businesses.

The Department's Division of Measurement Standards compiled device counts and financial data from fiscal expenditure reports over the past four fiscal years to estimate the individual and statewide economic impacts to both large and small businesses affected by this proposed regulation. In this analysis, the Department assumes FY 2020/21 to be first fiscal year this proposed regulation becomes effective, and FY 2022/23 to be the third fiscal year in this analysis. The Department incorporates these fiscal reports into the rulemaking file as documents relied upon. This economic impact assessment (EIA) is formatted to individually analyze the EIA of each of the Fee Categories (1-4). The Department then combined the EIA for each individual Fee Category to determine the total statewide EIA. The statewide EIA illustrates the estimated economic impact on affected businesses through the first three years of this proposed regulation. This approach makes it easier for a business to determine its expected EIA based on the number and types of devices it operates. The EIA of this proposed regulation is effective upon adoption and ongoing for the life of the regulation.

Fee Category 1

The four-year average number of devices assigned to Fee Category 1 is 1.2 million. Businesses operating these devices, e.g., apartment complexes and mobile home parks will experience an administrative fee increase of 40 cents (\$0.40) per device totaling approximately \$480,000 (1.2 million × \$0.40) in the first fiscal year this regulation becomes effective and ongoing thereafter. In the first three fiscal years this regulation becomes effective, businesses that operate Fee Category 1 devices will experience an administrative fee increase of approximately \$1.4 million (\$480,000 × 3).

Fee Category 2 – Overview

This fee category includes many types of weighing and measuring devices commonly used in the California marketplace at service stations, supermarkets, and hardware stores. The Department developed a separate EIA for the regulation of EVSE for

reasons detailed below. Compressed Natural Gas (CNG), Liquefied Natural Gas (LNG), and Hydrogen are proposed to be specified in Fee Category 3 and are not included in the Fee Category 2 analysis.

Fee Category 2 Devices – All Others except CNG, LNG, Hydrogen, and EVSE

The four-year average number of devices remaining in Fee Category 2 is 430,000. Businesses operating devices assigned to Fee Category 2 will experience an administrative fee increase of \$1.10 per device totaling \$473,000 ($430,000 \times \1.10) in the first fiscal year this regulation becomes effective and ongoing thereafter. In the first three fiscal years this regulation becomes effective, businesses that operate these types of devices will experience an administrative fee increase of approximately \$1.4 million ($\$473,000 \times 3$).

Fee Category 2 Devices – EVSE Specified – Growth of the EVSE Fueling Infrastructure and Forecasting Criteria

California leads the United States in commercial EVSE deployment. On a global scale, the United States is second only to China in EVSE installations. Worldwide, the EVSE fueling infrastructure is forecasted to increase at a compounding annual growth rate (CAGR) between thirty-three percent (33%) and forty-one percent (41%) according to two online articles published by Business Wire and MarketWatch in June 2020. The CAGR calculation is a useful statistical forecasting model that expresses constant growth on an annual basis. Another article published in June 2020 by Electrek cited CAGR information from the *Global EV Outlook 2020* technology report written by International Energy Agency (IEA). That report stated that the global market in 2019 experienced an EVSE deployment CAGR of sixty percent (60%) – the largest growth rate reported in a single year. As the leader of the North American EVSE infrastructure, California has grown at an almost constant CAGR of approximately twenty-five percent (25%) per year since 2017, but is expected to rapidly increase this rate for the next five years to help meet its clean energy and transportation electrification goals. The Department based its EIA on a reasonable CAGR of thirty-seven percent (37%) per year for the first three fiscal years because that is the average of the global EVSE deployment forecasts, and it keeps California in stride with the worldwide EVSE market.

In January 2020 the Department adopted regulations for the specifications and tolerances of commercial EVSE in CCR Title 4, Sections 4000, 4001, and 4002.11 with a series of phase-in periods for AC and DC EVSE. On January 1, 2021, newly installed AC EVSE are the first to be regulated. The next phase-in period applies to newly installed DC EVSE beginning January 1, 2023. Beginning January 2031, all AC EVSE must comply, and by January 2033 all DC EVSE must comply.

Effective January 1, 2021, newly installed AC EVSE will be subject to the economic impacts of this regulation. Newly installed DC EVSE will be subject to this regulation during the third fiscal year (January 1, 2023) and are included in the EIA encompassing that year.

The Department addresses the EIA of businesses that operate commercial EVSE separately from other Fee Category 2 devices because commercial EVSE have not been previously regulated and the Department does not have historical fiscal data on these devices. The Department used the U.S. Department of Energy’s Office of Energy Efficiency & Renewable Energy, Alternative Fuels Data Center (AFDC) to collect device counts of EVSE. The AFDC is an online repository for alternative fuel data that reports the number of EVSE nationwide. In December 2017, the Department downloaded EVSE data from the AFDC to estimate the number of EVSE installed in California at that time. In July 2020, the Department downloaded updated EVSE data from the AFDC to determine the latest number of EVSE installed in the state. AFDC data consistently indicates that approximately eighty percent (80%) of California’s EVSE fueling infrastructure is alternating current (AC) EVSE with the remainder being direct current (DC) EVSE.

For this component of the EIA, the Department created two tables to summarize its EVSE data. *Table EIA.1. – Actual EVSE Installations Reported on the AFDC Using 25% CAGR Projections* is a historic report of EVSE installed in the state from FY 2016/17 through FY 2019/20. Table EIA.1. shows that EVSE installations in California closely follow a twenty-five percent (25%) CAGR over the last four years. As of July 9, 2020, the AFDC reports 26,194 EVSE in California while the 25% CAGR projects 26,068 EVSE.

Table EIA.1. – Actual EVSE Installations Reported on the AFDC Using 25% CAGR Projections¹
(FY 2016/17 – FY 2019/20)

Fiscal Year (FY)	2016/17	2017/18	2018/19	2019/20
Actual EVSE Installed (AFDC)	13,347	--	--	26,194
25% CAGR Projections ¹	--	16,684	20,855	26,068

¹ Based on FY 2016/17 Actual AFDC Data

Table EIA.2. – 3-yr. Forecast of EVSE Installations in California Using 37% CAGR Projections spans FY 2020/21 through FY 2022/23 based on a thirty-seven percent (37%) CAGR. The Department uses the baseline count of 26,194 EVSE reported in FY 2019/20 to develop this forecast. This table calculates the numbers of new EVSE and the cumulative sum of EVSE installed per fiscal year. The numbers reported in the *Cumulative EVSE Subject to the Administrative Fee* row of this table are those that the Department determines will be affected by this proposed regulation and subject to the administrative fee. The criteria for these determinations are explained in detail below. Due to the projected rapid growth of the EVSE industry over the next three years, the direct EIA to affected business operating commercial EVSE will increase for each of the first three fiscal years. Thus, the Department analyzed each fiscal year individually and then combined the individual fiscal year’s EIAs to report the total EIA to affected businesses operating EVSE. The Department determines that the direct impact of this proposed regulation on affected EVSE businesses is equal to \$1.10 per device equivalent to the amount Fee Category 2 is proposed to increase.

Table EIA.2. – 3-yr. Forecast of EVSE Installations in California Using 37% CAGR Projections¹
(FY 2020/21 – FY 2022/23)

		Year 1	Year 2	Year 3
Fiscal Year (FY)	2019/20	2020/21	2021/22	2022/23
Actual EVSE Installed (AFDC)	26,194	--	--	--
37% CAGR Projections ¹		35,866	49,164	67,354
New EVSE Installations per FY ²		9,692	13,278	18,191
Cumulative New EVSE Installations ³		9,692	22,970	41,160
Cumulative EVSE Subject to the Administrative Fee ⁴		3,877	14,499	30,870

¹ Based on FY 2019/20 Actual AFDC Data.

² The Difference of Current FY EVSE Projections and Prior FY EVSE Projections.

³ The Sum of Current FY EVSE Installations and Prior FY EVSE Installations.

⁴ See analysis for descriptions of EVSE Subject to the Administrative Fee Per Fiscal Year.

Fee Category 2 Devices – Economic Impact to Businesses Operating EVSE

As of July 9, 2020, the AFDC reported 26,194 EVSE in the state. Since the Department's EVSE deployment forecast is based upon a thirty-seven percent (37%) CAGR, the Department projects there will be 9,692 new EVSE installed by end of FY 2020/21. Approximately eighty percent (80%) of those devices will be AC EVSE totaling 7,754 ($9,692 \times 0.80$). Because the first phase-in date of January 1, 2021 for AC EVSE begins halfway through FY 2020/21, only about half of these will be subject to this proposed regulation. The Department projects that 3,877 ($7,754 \div 2$) newly installed AC EVSE will be subject to the administrative fee in the first fiscal year. The Department's statewide EIA to affected EVSE businesses in the first fiscal year this regulation becomes effective is \$4,200 ($3,877 \times \1.10). This value is rounded for final reporting purposes.

For the second fiscal year, FY 2021/22, the Department forecasts there will be 13,278 newly installed EVSE in addition to the 9,692 from the prior year, totaling 22,970 new EVSE by end of FY 2021/22. Of these new EVSE in the state, eighty percent (80%) or 10,622 ($13,278 \times 0.80$) will be AC EVSE. In addition to the 3,877 AC EVSE installed in the prior year, the Department projects there will be 14,499 ($10,622 + 3,877$) AC EVSE subject to the administrative fee. In the second fiscal year this regulation becomes effective, the EIA to affected EVSE businesses is approximately \$16,000 ($14,499 \times \1.10). This value is rounded for final reporting purposes.

In the third fiscal year, FY 2022/23, the Department projects there will be 18,191 newly installed EVSE added to the 22,970 from prior years, totaling 41,160 new EVSE in the state. Of the 18,191 newly installed EVSE in the state, eighty percent (80%) or 14,553 ($18,191 \times 0.80$) will be AC EVSE. These are combined with the 14,499 AC EVSE subject to regulation from prior years, totaling 29,052 AC EVSE being subject to the administrative fee in FY 2022/23. In addition to the AC EVSE subject to the regulation, this is the first fiscal year DC EVSE are subject to the administrative fee. Of the projected 18,191 newly installed EVSE in the state this fiscal year, the Department projects there to be about twenty percent (20%) or 3,638 ($18,191 \times 0.20$) newly installed DC EVSE in the state. Because the effective date for newly installed DC EVSE begins January 1, 2023, only about half of the newly installed DC EVSE or 1,819 DC EVSE will be subject to the administrative fee. The sum of all regulated EVSE in FY 2022/23 is projected to be 30,870 ($29,052$ AC EVSE + $1,819$ DC EVSE). In the third fiscal year this regulation becomes effective, the EIA to all affected EVSE businesses is approximately \$34,000 ($30,870 \times \1.10). This value is rounded for final reporting purposes.

The sum of the EIA to affected EVSE businesses for the first three fiscal years is approximately \$54,000 ($\$4,200 + \$16,000 + \$34,000$). This value is rounded for final reporting purposes.

Fee Category 3 Devices – CNG, LNG, and Hydrogen Only

The Department addresses the economic impact of CNG, LNG, and Hydrogen device types separately from all other devices assigned to Fee Category 3 because they are currently part of Fee Category 2 and assessed an administrative fee of \$1.10 per device. Fee Category 3 is proposed to increase to \$16.00 per device. Businesses that operate CNG, LNG, and Hydrogen devices will experience an administrative fee increase of \$14.90 ($\$16.00 - \1.10) per device. The combined four-year average number of these device types is approximately 600. The Department determines that businesses operating these types of devices will experience an administrative fee increase of \$8,940 ($600 \times \14.90) in the first fiscal year this regulation becomes effective and ongoing thereafter. In the first three fiscal years this regulation becomes effective, businesses that operate these types of devices will experience an administrative fee increase of \$26,820 ($\$8,940 \times 3$).

Fee Category 3 Devices – All Others except CNG, LNG, and Hydrogen

The four-year average number of devices remaining in Fee Category 3 is approximately 5,000. Businesses operating all other Fee Category 3 devices will experience an administrative fee increase of \$8.00 per device totaling \$40,000 ($5,000 \times \8.00) in the first fiscal year this regulation becomes effective and ongoing thereafter. In the first three fiscal years this regulation becomes effective, businesses that operate all other devices in Fee Category 3 will experience an administrative fee increase of \$120,000 ($\$40,000 \times 3$).

The sum of the EIA to all affected businesses operating Fee Category 3 devices including CNG, LNG, and Hydrogen is approximately \$50,000 ($\$40,000 + \$8,940$) in the first fiscal year and approximately \$150,000 ($\$120,000 + \$26,820$) over three fiscal years. These values are rounded for final reporting purposes.

Fee Category 4

The four-year average number of all Fee Category 4 devices is 7,000. Businesses operating these types of devices will experience an administrative fee increase of \$12.00 per device totaling \$84,000 ($7,000 \times \12.00) in the first fiscal year this regulation becomes effective and ongoing thereafter. In the first three fiscal years this regulation becomes effective, businesses that operate Fee Category 4 devices will experience an administrative fee increase of \$252,000 ($\$84,000 \times 3$).

Summation of all Statewide EIAs for the First Three Fiscal Years

The table below summarizes the total statewide EIA to all affected large and small business to be approximately \$1.1 million in the first fiscal year this regulation becomes effective. The total statewide EIA to affected businesses in the first three fiscal years this regulation becomes effective is approximately \$3.3 million.

Table EIA.3. – Summation of the Economic Impacts to all Affected Businesses Operating Commercial Devices in California
In US Dollars (\$)

Fee Category	Fee Increase (First FY)	Fee Increase (Three FYs)
Fee Category 1 ¹	480,000	1,400,000
Fee Category 2 ²	473,000	1,400,000
Fee Category 2 ³	4,200	54,000
Fee Category 3 ⁴	50,000	150,000
Fee Category 4 ⁵	84,000	252,000
Totals	1,091,200	3,256,000

¹ All Devices Assigned to Fee Category 1.
² All Devices Assigned to Fee Category 2 except CNG, LNG, Hydrogen, and EVSE.
³ All EVSE Devices Subject to the Administrative Fee.
⁴ All Devices Assigned to Fee Category 3 including CNG, LNG, and Hydrogen.
⁵ All Devices Assigned to Fee Category 4.

Fiscal Impact to Other Federal, State and Local Agencies

The Department determines this proposed regulation will not directly or indirectly affect other federal or state agencies other than this Department. No other federal or state agency has authority to inspect and test commercial devices or assess device administrative fees in California.

The county offices of weights and measures in California will experience a minor fiscal benefit from this proposed regulation to assess, collect, and remit the Department’s administrative fees. With current regulation, the Department calculates the maximum amount all counties statewide may retain is approximately \$105,000 per year. Despite reducing the maximum value a county may retain from fifteen percent (15%) to twelve percent (12%), the Department estimates all counties statewide, may keep about twice as much as they are able to currently retain, totaling approximately \$210,000 per year. This regulation will directly increase the revenues of all counties by approximately

\$105,000 (\$210,000 - \$105,000) statewide, per year, but not to exceed each county's actual, individual costs. This benefit begins in the first fiscal year this regulation becomes effective and is ongoing thereafter. The statewide increase in available county funds for the first three fiscal years this regulation becomes effective is approximately \$312,000 (\$104,000 × 3).

Public

Because this proposed regulation directly affects businesses that operate commercial devices in the state, it may also indirectly affect the general public who regularly purchase commodities and services from affected businesses. It is possible a business will choose to increase its retail prices to offset costs incurred to comply with this regulation. However, at this time there is no formal data to confirm or estimate whether this regulation will create an indirect increase in retail prices. Businesses regularly adjust their retail prices based on a myriad of other statewide economic factors that are beyond the scope of this proposed regulation.

Creation or Elimination of Jobs within California

The proposed regulation will not directly create nor eliminate jobs for large and small businesses in California even though it directly affects a business' costs to do business. There may be a nominal effect on the elimination of certain jobs if that business is adversely impacted by the increased annual device administrative fee. However, the Department does not find that this proposed regulation will cause such a significant direct impact to a business that it would need to increase or decrease its workforce in California.

Creation of New Businesses or the Elimination of Existing Businesses in California

This proposed regulation will neither directly create nor eliminate existing businesses in California. Although this proposed regulation will incur an economic impact to both affected small and large businesses, it is not significant enough to cause any one business to discontinue doing business or a new one to be begin doing business in the state.

Expansion of Businesses Currently Doing Business in California

This proposed regulation will not prevent California businesses from expanding to new locations in the state or closing existing locations. This regulation adopts new inspection frequencies and annual device administrative fees for commercial weighing and measuring devices. Although adopting an increase in administrative fees for state

oversight of the Device Enforcement Program and Laboratory will economically impact large and small business, the Department finds it will not directly promote expansion of a business currently doing business in California.

Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The Department determines there will be no significant benefit to the health of California residents, worker safety, and the state's environment due to the adoption of this proposed regulation. There will, however, be a benefit to the welfare of California residents that rely on the Department to oversee and ensure a fair and transparent marketplace. A consumer's confidence of making retail transactions in the state is paramount to promoting a prosperous economy. Confidence in retail transactions improves when consumers feel that commercial weighing and measuring devices operate correctly and provide accurate delivery of the commodity purchased.

Other Benefits of the Regulation

The Department will be able to fulfil its mandate to supervise and investigate the weights and measures activities of county officials. This includes the Department being better funded to hire additional support staff and acquire resources to draft official test procedures used by county sealers to inspect and test commercial devices, provide ongoing training to county officials who inspect and test commercial devices, and to develop new test procedures to certify state and county standards used to inspect and test commercial devices. Training provided by the Department prepares county sealers to provide high quality weights and measures oversight for the constituents of their county. The Laboratory will be able to meet its legal mandate to perform timely certification services of standards used by the counties and industry and reduce, and ultimately eliminate, its workload backlog by 2025.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

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 or 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. The alternatives described below apply to both affected large and small businesses in California.

Alternative 1 – Do Nothing

Doing nothing allows the current tables in CCR Sections 4070 and 4075 to remain outdated. The tables do not list all applicable devices commonly used today. Confusion may persist on how a county can report its work on monthly and annual reports because of the inconsistencies of the current tables. Devices not listed in current regulation do not currently have an established inspection and testing frequency, and therefore may not be inspected and tested by certain counties. Also, a county may not be assessing an administrative fee for devices not currently listed in regulation. Without an appropriate fee structure, the Department will be unable to maintain the Laboratory, safeguard the state standards, and perform its mandated duties as prescribed in BPC Sections 12303, 12304, 12305, and 12310.

Adopting this proposed regulation will eliminate confusion in the industry and among state and county sealers, harmonize the tables in current regulation, coordinate the tables with county reporting efforts, and further protect California consumers and businesses alike.

Alternative 2 – Propose Less of an Administrative Fee Increase.

Although proposing less of a fee increase will reduce the economic impact of this regulation to affected businesses, it fails to meet the fiscal needs of the Department. The current administrative fees were adopted in 2012 and are no longer adequate. Originally, the administrative fees were allocated only to recover the Department's cost of supervision and enforcement of the Device Enforcement Program, but not the Laboratory's work. In 2017, the Legislature enacted additional, statutorily mandated responsibilities of the Department to allocate a portion of the administrative fees to support the work of the Laboratory. This act of law further supports the Department's recent need to increase the administrative fees. With this proposed regulation, the Department has carefully analyzed, determined, and proposed the minimum fee increase to cover its necessary and reasonable costs to supervise the Device Enforcement Program and the work of the Laboratory.

The Department has not identified any other alternatives than the ones identified above.

PRESCRIPTIVE REQUIREMENTS

This proposed rulemaking does not adopt new prescriptive requirements.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

The Department is aware of the economic impact incurred by this proposed regulation and that large and small businesses operating commercial devices will be directly impacted. The economic impact of this regulation is proportional to how many commercial devices a business operates. However, the economic impact of this regulation is not significant enough to cause a statewide adverse economic impact to affected businesses.

DOCUMENTS RELIED UPON

The Department relied on the following technical, theoretical, and empirical studies, reports, or other documents to draft the proposed regulatory language of this rulemaking:

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2. California Department of Food and Agriculture, Division of Measurement Standards, <https://www.cdfa.ca.gov/dms/>, Administrative Services Unit, DMS Notice G-18-03R, "2016/17 Fiscal Year Expenditure Report," <https://www.cdfa.ca.gov/dms/notices/general/2018/G-18-03R.pdf>, accessed on 9/28/20.
3. California Department of Food and Agriculture, Division of Measurement Standards, <https://www.cdfa.ca.gov/dms/>, Administrative Services Unit, DMS Notice G-19-04, "2017/18 Fiscal Year Expenditure Report," <https://www.cdfa.ca.gov/dms/notices/general/2019/G-19-04.pdf>, accessed on 9/28/20.
4. California Department of Food and Agriculture, Division of Measurement Standards, <https://www.cdfa.ca.gov/dms/>, Administrative Services Unit, DMS Notice G-20-02, "2018/19 Fiscal Year Expenditure Report," <https://www.cdfa.ca.gov/dms/notices/general/2020/G-20-02.pdf>, accessed on 9/28/20.

5. California Department of Food and Agriculture, Division of Measurement Standards, <https://www.cdffa.ca.gov/dms/>, "Budget Change Proposal, 8570-012-BCP-2020-GB, Weights and Measures Oversight and Services," FY 2020/21, https://esd.dof.ca.gov/Documents/bcp/2021/FY2021_ORG8570_BCP3693.pdf, accessed on 9/28/20.
6. Legislative Analyst's Office, <https://lao.ca.gov/>, "An Analysis of California's Weights and Measures Programs," https://lao.ca.gov/reports/1985/358_0285_an_analysis_of_californias_weights_and_measures_programs.pdf, Report 85-26, December 1985, pages 10 and 34-37, accessed on 10/20/20.
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8. Statista Inc., "Number of publicly available EVSE chargers in Canada," <https://www.statista.com/statistics/862342/number-of-publicly-available-electric-vehicle-chargers-in-canada/#:~:text=Number%20of%20publicly%20available%20EVSE%20chargers%20in%20Canada%202012%2D2019&text=This%20statistic%20represents%20the%20total,975%20were%20%22fast%22%20chargers.>, accessed on 7/23/20.
9. Electrek, "Electric car charge points soar to 7.3 million chargers, 60% growth in public chargers," <https://electrek.co/2020/06/15/electric-car-charge-points-data/>, June 15, 2020, page 2, accessed on 7/23/20.
10. International Energy Agency (IEA), <https://www.iea.org/>, "Global EV Outlook 2020," <https://www.iea.org/reports/global-ev-outlook-2020>, June 2020, page 8, accessed on 7/23/20.
11. MarketWatch, Inc., <https://www.marketwatch.com/>, "Electric Vehicle Charging Station Market (2020-2025) Share, Size, Regional Trend, Future Growth, Leading Players Updates, Industry Demand, Current and Future Plans by Forecast to 2025," <https://www.marketwatch.com/press-release/electric-vehicle-charging-station-market-2020-2025-share-size-regional-trend-future-growth-leading-players-updates-industry-demand-current-and-future-plans-by-forecast-to-2025-2020-06-04>, June 4, 2020, page 2, accessed on 7/23/20.
12. Business Wire, A Berkshire Hathaway Company, <https://www.businesswire.com/portal/site/home/>, Technavio Report: "Electric Vehicle (EV) Charging Station Market 2020-2024," <https://www.businesswire.com/news/home/20200611005583/en/Electric-Vehicle-EV-Charging-Station-Market-2020-2024>, June 11, 2020, synopsis, accessed on 7/23/20.