

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
NOTICE OF PROPOSED RULEMAKING**

Title 4. Business Regulations
Division 9. Division of Measurement Standards, Department of Food and Agriculture
Chapter 1. Tolerances and Specifications for
Commercial Weighing and Measuring Devices
Article 1. National Uniformity, Exceptions and Additions

The California Department of Food and Agriculture (Department) proposes to amend California Code of Regulations (CCR), Title 4. Business Regulations, Division 9, Chapter 1. Tolerances and Specifications for Commercial Weighing and Measuring Devices, Article 1. National Uniformity, Exceptions and Additions, §§ 4001. Exceptions and 4002. Additional Requirements relating to Section 3.40. Electric Vehicle Fueling Systems – Tentative Code of the National Institute of Standards and Technology (NIST) *Handbook 44*, “Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.”

PUBLIC HEARING

A public hearing for this rulemaking will be held on December 17, 2018, at 10:00 a.m. in the Department’s Auditorium at 1220 N Street, Sacramento, CA 95814. The hearing will be adjourned earlier if all persons wishing to make a statement have been heard.

The public hearing will be conducted in accordance with Government Code § 11346.8, which allows any interested person, or his or her duly authorized representative, to provide oral or written statements, arguments, or contentions. The Department may impose reasonable limitations on oral presentations. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department by mail, fax, or email addressed to the primary contact person listed below. Please include ‘EVSE Rulemaking’ in the subject line of any letter, fax, or email regarding this rulemaking. The written comment period begins on November 2, 2018, and closes at 5:00 p.m. on December 18, 2018. The Department will only consider comments received at the office of the Division of Measurement Standards by that time.

CONTACT PERSONS

Primary Contact:

Samuel Ferris, Senior Environmental Scientist (Specialist)
California Department of Food and Agriculture
Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812
Main: (916) 229-3000
Fax: (916) 229-3026
Email: dms@cdfa.ca.gov

Backup Contact:

Kevin Schnepf, Environmental Program Manager I
California Department of Food and Agriculture
Division of Measurement Standards
6790 Florin Perkins Road, Suite 100
Sacramento, CA 95828-1812
Main: (916) 229-3000
Fax: (916) 229-3026
Email: dms@cdfa.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulation, the Initial Statement of Reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based using the contact information above. Please include 'EVSE Rulemaking' in the subject line of emails regarding this rulemaking.

AUTHORITY/REFERENCE

The Legislature has charged the Department with the responsibility of supervising weights and measures activities within California (California Business and Professions Code (BPC), Division 5 § 12100). The Secretary of the Department is granted the authority to adopt such regulations as is reasonably necessary to carry out the provisions of Division 5 of the BPC (BPC § 12027). Authority and reference for these regulations is provided in BPC § 12107, which requires the Secretary to adopt specifications and tolerances for weighing and measuring devices used commercially in California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC Division 5, Chapter 2 § 12107 requires the Department to establish specifications, tolerances and other technical requirements for all weighing and measuring devices used for commercial purposes in California. BPC § 12107 further requires the Department to adopt, by reference, the latest standards as recommended by the National Conference on Weights and Measures (NCWM) and published in the National Institute of Standards and Technology (NIST) *Handbook 44*, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices." The Department is authorized by BPC § 12107 to modify, amend, and reject the requirements in NIST *Handbook 44* as necessary for their application in California.

In 2015, the NCWM adopted Section 3.40. Electric Vehicle Fueling Systems – Tentative Code which was first published in the 2016 edition of NIST *Handbook 44*. The Department has determined that amendments to CCR, Title 4. Business Regulations, Division 9, Chapter 1., Article 1., §§ 4001 and 4002 are necessary for the following reasons:

- 1) A tentative code has only trial or experimental status and is not enforceable. Removal of these qualifying words will make clear that this regulation is the basis of enforcement for electric vehicle fueling systems used for commercial purposes, a.k.a., electric charging stations, electric vehicle supply equipment, EVSE.
- 2) Amending the regulations would clarify and make specific some technical requirements for commercial EVSE, including the recognition of California type evaluation, temperature ranges for system components, and align the definition of electricity as motor vehicle fuel with BPC § 13400 (b)(4).

The purpose and specific necessity of each of these amendments is discussed in the Initial Statement of Reasons for this rulemaking.

Anticipated Benefits of the Proposed Regulation

The proposed regulation meets the Department's statutory mandate to adopt by reference, the requirements in NIST *Handbook 44*, Section 3.40., and make necessary modifications to address California's specific needs. California has, by far, more electric vehicles and public-access EVSE than any other state in the nation, and the growing infrastructure needs uniform, enforceable standards to promote transparency, equity, and provide consumer and business protection. Consumers will feel confident with making purchases of electricity as motor vehicle fuel while businesses are able to compete in a fair and equitable marketplace.

Other benefits of the proposed regulation are discussed below in the *Results of Economic Impact Assessment/Analysis* section of this document and further discussed in detail in the Initial Statement of Reasons document.

Consistency and Compatibility with Existing State Regulations

The Department has initially determined this proposal is consistent and compatible with existing California regulations. The Department is the only state agency with the authority to regulate electricity commercially sold and delivered by EVSE as motor vehicle fuel. After conducting a review for any California regulations that would relate to or affect this proposed regulation, the Department has concluded that these are the only regulations that concern the specifications, tolerances, and other technical requirements for the delivery of electricity as motor vehicle fuel dispensed by EVSE. Therefore, no other California regulations are inconsistent or incompatible with the proposed regulation.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department makes the following initial determinations:

- 1) Mandate on local agencies and school districts: None
- 2) Fiscal impact on public agencies including costs/savings to state agencies or costs/savings in federal funding to the state: None
- 3) Nondiscretionary costs/savings to local agencies: None
- 4) Cost to any local agency or school district for which Government Code §§ 17500 et seq. require reimbursement: None
- 5) Other nondiscretionary cost or savings imposed on local agencies: None
- 6) Significant effect on housing costs: None

Although the proposed action may affect individual California small businesses that manufacture, own, or operate EVSE, the Department concludes the proposed regulation will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS, INCLUDING SMALL BUSINESSES

The Department is not aware of any cost impacts that a representative private person would necessarily incur in the reasonable compliance with the proposed regulation. The proposed regulation protects the interests of private persons who use commercial EVSE to charge their battery electric or plug-in hybrid vehicles by enabling the Department to oversee, regulate and enforce requirements in NIST *Handbook 44*, Section 3.40.

The Department is aware of cost impacts that representative small and large businesses would necessarily incur in the reasonable compliance with the proposed regulation. The proposed regulation economically affects all California businesses, including small businesses, that manufacture, own, or operate commercial EVSE. Manufacturers of commercial-use EVSE will incur a one-time cost to the Department when they submit their new models for type evaluation if they haven't already obtained a Certificate of Conformance from the National Type Evaluation Program. Small and large EVSE manufacturing businesses, owners, and operators of commercial EVSE may need to invest in retrofitting, upgrading, or replacing currently manufactured models of noncompliant commercial EVSE to comply with the proposed regulation. Owners or operators of commercial EVSE will incur an annual device registration fee for testing and sealing services rendered by local county weights and measures departments. The Department estimates the proposed regulation may incur direct and indirect costs of \$9.94 million for the first three fiscal years to all businesses that manufacture, own, or operate commercial EVSE in California. Thereafter, all businesses that manufacture, own, or operate commercial EVSE in California will incur an indirect cost of \$1.44 million for annual device registration services provided by local county weights and measures departments. Refer to the *Economic Impact Assessment/Analysis* section of the Initial Statement of Reasons for more detail.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department initially concludes that the proposed regulation: (1) is unlikely to eliminate jobs in California; (2) is unlikely to create new jobs in California; (3) is unlikely to eliminate existing businesses in California; (4) is unlikely to create new businesses in California; and (5) is unlikely to affect the expansion of businesses in California.

The Department believes there will be an economic impact to EVSE manufacturers and charging station owners and operators as a result of this rulemaking.

The proposed regulation will not have a direct economic impact on companies that currently manufacture commercial EVSE compliant with the requirements of NIST *Handbook 44*,

Section 3.40. Manufacturers of noncompliant EVSE that wish to produce and sell their products in California after the regulation becomes effective on January 1, 2020, will have to modify or upgrade their EVSE to meet the new standards. All manufacturers will be able to continue marketing noncompliant EVSE for non-commercial use or out-of-state sales. The Department believes this will partially mitigate the economic impact on manufacturers of noncompliant EVSE. The delayed effective date of January 1, 2020, of the proposed regulation will allow adequate time for manufacturers to redirect their noncompliant EVSE inventory to other states, further reducing any adverse economic impact.

Owners and operators of existing noncompliant commercial EVSE will be required to modify, retrofit, or replace those devices. This will include small businesses that own EVSE. The Department cannot determine how many businesses will choose to modify existing commercial EVSE and how many will purchase and install new, compliant devices. It is also possible that some EVSE owners may choose to offer electric vehicle charging at no cost as a service and convenience to their customers, in which case these businesses will not be subject to the proposed regulation.

The Department believes the adoption of EVSE complying with the specifications and requirements of NIST *Handbook 44*, Section 3.40. will have a net positive economic impact on drivers of battery and plug-in hybrid electric vehicles. California law SB 454 (Corbett, Statutes of 2013, Chapter 454) requires that all public-access, commercial EVSE be available to all drivers whose vehicles have compatible plugs and accept payment by credit card or mobile technology, or both. SB 454 prohibits any requirement for a subscription or membership in any group. Because these requirements lead to increased competition in the marketplace, the Department does not believe the cost of recharging a vehicle will rise significantly because of the proposed regulation. Standardization of specifications and requirements will promote increased consumer confidence. The Department believes this in turn will lead to more consumers purchasing electric vehicles and so increase demand for retail charging.

Anticipated Benefits of the Proposed Regulation

The proposed regulation supports the Governor's Zero Emissions Vehicle (ZEV) initiatives. It will facilitate the development of an adequate EVSE infrastructure, thus helping grow the ZEV market; two paramount factors positively influencing California's long-term transportation strategy. Electric vehicles do not emit greenhouse gases, and cleaner air will benefit all Californians, especially those with asthma or other breathing disorders. This proposed regulation will help improve air quality and reduce the medical risks to Californians associated with pollution caused by high-carbon emitting vehicles creating a positive impact to public health and the environment.

Other benefits of the proposed regulation are discussed above in the *Informative Digest/Policy Statement Overview* section of this document and further discussed in detail in the Initial Statement of Reasons document. Also, a more detailed discussion of the economic impact of the proposed regulation can be found in the Initial Statement of Reasons for this rulemaking.

CONSIDERATION OF ALTERNATIVES

Government Code § 11346.5 (a)(13) requires the Department to 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.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above office address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the Initial Statement of Reasons, and all the information upon which this proposal is based.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After receiving and considering all timely and relevant comments and holding the public hearing, the Department may adopt the proposed regulation substantially as described in this notice. If 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 revised regulation. Requests for copies of any modified regulation can be made by emailing dms@cdfa.ca.gov or calling (916) 229-3000. Please include 'EVSE Rulemaking' in the subject line of emails regarding this rulemaking. The Department will accept written comments on the modified regulation for 15 days after the date it is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Department by email at dms@cdfa.ca.gov or calling (916) 229-3000.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Electronic copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the proposed text of the regulation in underline and strikeout will be posted at www.cdfa.ca.gov/dms/regulations.html by the Division of Measurement Standards.