

## **TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE**

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to adopt regulations to add Section 4075 (Annual Device Administrative Fee) into Title 4, Division 9, Chapter 3, Article 3, to implement the fees provided for in Business and Professions Code Section 12241.

The Legislature has charged the Department with the responsibility of supervising weights and measures activities within California (Business and Professions Code, Division 5, Section 12100). Sections 12027 and 12107 give authority to the Secretary to adopt such regulations as are reasonably necessary to carry out the provisions of the Business and Professions Code, Division 5.

A public hearing is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be scheduled.

Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested person, may thereafter adopt the proposal substantially as set forth without further notice.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, CA 95828-1812. Comments may also be submitted by facsimile (FAX) at (916) 229-3026 or by e-mail at [DMS@cdfa.ca.gov](mailto:DMS@cdfa.ca.gov). Comments must be submitted prior to 5:00 p.m. on October 24, 2011.

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

The Department of Food and Agriculture proposes to add to Title 4, Division 9, Chapter 3, Article 3, Section 4075 (Annual Device Administrative Fee) to implement the fees provided for in Business and Professions Code Section 12241. The Department proposes to adopt regulations that impose an annual device administrative fee on registered businesses operating commercial weighing, measuring, and counting devices. The fee is based on device type and is applicable to every commercial device registered with each county office of weights and measures. Additionally, the proposal will identify payment schedules, payment due dates, and a maximum amount a county may retain from the collected fees to cover their actual costs associated with the collection of the fees.

## **Section 4075. Annual Device Administrative Fee**

The Department's proposal will impose an annual administrative fee based on device type and for every commercial device registered with each county office of weights and measures. Additionally, the proposal will identify payment schedules, payment due dates, the manner in which the fee is to be collected, and a maximum amount the county may retain from the collected fees to cover their actual costs associated with the collection of the fees.

## **AUTHORITY AND REFERENCE**

Pursuant to the authorization in Business and Professions Code Sections 12027, 12107 and 12241, the Department proposes to add Section 4075 to the California Code of Regulations, Title 4, relating to the collection of an administrative fee by County Weights and Measures Offices to recover the Department's costs associated with providing supervision and oversight of county sealers performing the duties described in Business and Professions Code Sections 12210 and 12211. These fees are to be collected at the same time as the device registration fees collected by county offices of weights and measures pursuant to Business and Professions Code Section 12240.

Business and Professions Code section 12241 states:

"12241. On or before January 1, 2012, the secretary shall establish by regulation an annual administrative fee to recover reasonable administrative and enforcement costs incurred by the department for exercising supervision over and performing investigations in connection with the activities performed pursuant to Sections 12210 and 12211. This administrative fee shall be collected for every device registered with each county office of weights and measures, and paid to the Department of Food and Agriculture Fund beginning January 1, 2012, and annually thereafter."

Any regulation shall be adopted, amended, or repealed in conformity with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

## **LOCAL MANDATE**

This proposal does not impose a mandate on school districts. This proposal will authorize County Weights and Measures offices that collect fees for commercial devices used in their jurisdiction to collect an administrative fee pursuant to 12240 for the Department. Counties may retain a portion of the administrative

fee collected to cover their actual costs associated up to but not to exceed 15% of the total amount due to the Department.

### **FISCAL IMPACT ESTIMATES**

This proposal does not impose costs on school districts for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500 of Division 4 of the Government Code). It imposes a mandate that a local agency that collects commercial device registration fees must also collect an administrative fee for the Department. That fee, minus a 15% reimbursement to the county for their expenses, would be sent to the Department for deposit into the Food and Agriculture Fund and be used to offset the Department's expenses of overseeing and supervising the county sealers of weights and measures. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any cost or savings in federal funding.

### **COST OR SAVINGS TO STATE AGENCIES**

The monies sent to the Department will offset the expenses of supervision, oversight and investigations of county sealers of weights and measures work pursuant to Business and Professions Code sections 12210 and 12211.

### **BUSINESS IMPACT / SMALL BUSINESS**

The Department has made an initial determination that the proposed regulatory action will have minor statewide adverse economic impact directly affecting business, not including the ability of California businesses to compete with businesses in other states.

This proposal will have a minimal affect on small businesses as defined by Government Code Section 11342.610. The determination that the proposal will have a minor affect on small business is based upon information received from surveys of affected industry that determined the administrative fee does not significantly increase fees already required and the fact that this regulation does not place new requirements or restrictions on business. It has no impact at all on any entity that is not a state agency as defined in Section 11000 of the California Government Code.

### **ASSESSMENT REGARDING EFFECT ON JOBS / BUSINESS**

The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

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

The Department surveyed stakeholders and is aware of the following cost impacts that a representative private person or business would incur in reasonable compliance with the proposed action.

The projected annual total cost to the industry in California is \$1,459,841. County offices of weights and measures costs of \$218,976 for billing, collected and reimbursement to the Department would net \$1,240,865 annually for the Division of Measurement Standards programs.

## **EFFECT ON HOUSING COSTS**

None.

## **ALTERNATIVES**

The Department has determined that no reasonable alternative exists for the agency or has otherwise been identified and brought to the attention of the agency that would be more effective in carrying out the purpose for which the adoption of this regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

The text in AB 120, Chapter 133, Statutes 2011, will not allow the Department to consider discontinuing its oversight and training responsibilities, for consumers and industry will suffer without these programs.

## **CONTACT PERSONS**

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to David Lazier, Assistant Director, Division of Measurement Standards, at (916) 229-3044 or [dlazier@cdfa.ca.gov](mailto:dlazier@cdfa.ca.gov). The back-up contact person is Kevin Batchelor, Division of Measurement Standards, at (916) 229-3050 or [kbatchelor@cdfa.ca.gov](mailto:kbatchelor@cdfa.ca.gov).

## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department has prepared an Initial Statement of Reasons for the proposed action, has available all the information upon which the proposal is based, and

has available the express terms of the proposed action. A copy of the Initial Statement of Reasons and the proposed regulations in strikeout and underline form may be obtained upon request. The rulemaking file, and all information on which the proposal is based, is located at the Division of Measurement Standards, 6790 Florin Perkins Road, Suite 100, Sacramento, CA 95828-1812, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department's website located at [www.cdfa.ca.gov/dms](http://www.cdfa.ca.gov/dms).

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting David Lazier, Assistant Director, Division of Measurement Standards, at (916) 229-3044.

#### **WEBSITE ACCESS**

Materials regarding this proposal can be found at: [www.cdfa.ca.gov/dms](http://www.cdfa.ca.gov/dms).

DEPARTMENT OF FOOD AND AGRICULTURE

8/30/11

Date



Nathan Dechoretz, Deputy Secretary

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED ADOPTION OF REGULATIONS

Title 4, Division 9, Chapter 3  
Article 3  
Section 4075  
Annual Device Administrative Fee

INITIAL STATEMENT OF REASONS

**Background**

The Legislature has charged the Department of Food and Agriculture (Department) with the responsibility for supervising weights and measures activities within California [Business and Professions Code (BPC), Division 5, Section 12100]. The Division of Measurement Standards serves to provide technical training, oversight, support and coordination to county sealers and their staff in the course of their duties. The purpose of these functions is to minimize the measurement error in commercial transactions through periodic inspection and testing of commercial weighing and measuring devices and to provide California consumers and businesses confidence that all commercial transactions are honest and fair and that standards are uniformly applied throughout California.

The Secretary of the Department is granted authority to adopt such regulations as are reasonably necessary to carry out the provisions of the BPC (Division 5, Section 12027). BPC Sections 12100, 12101, 12103.5, 12104, 12105, 12107, 12107.1, and 12108 identify the responsibilities of the Department with regard to the supervision and oversight of the county offices of weights and measures.

**Description of the Public Problem, Administrative Requirements, or other Conditions or Circumstances the Regulations are Intended to Address**

Historically, a portion of the Division of Measurement Standards (DMS) budget has been funded by General Fund monies. Recent budget shortfalls within the California State General Fund Budget eliminated the General Fund monies allocated to the DMS. Recent legislation (AB 120, Chapter 133, Statutes 2011) provided a means for the Secretary to impose an annual administrative fee to be collected by county offices of weights and measures and reimbursed to the DMS to recover costs associated with providing supervision and oversight by the DMS of county sealers performing the duties described in BPC Sections 12210 and 12211. The administrative fees collected will replace the General Fund monies removed from the DMS' budget.

Section 12027 of the Business and Professions Code gives the Secretary authority to make such regulations as are necessary for the purpose of carrying out the provisions of Division 5. BPC Sections 12100, 12101, 12103.5, 12104, 12105, 12107, 12107.1, and 12108 identify the responsibilities of the Department with regard to the supervision and oversight of the county offices of weights and measures.

Due to the loss of General Fund monies, recent legislation was enacted that requires the Secretary to impose an annual administrative fee to be collected by county offices of weights and measures and reimbursed to the DMS to recover costs associated with providing supervision and oversight by the DMS of county sealers performing the duties described in BPC Sections 12210 and 12211. This fee would be collected in the same manner and as part of the device registration fees collected pursuant to BPC Section 12240. These monies are to be deposited into the Department of Food and Agriculture Fund and used for the administration and conducting the mandates of the DMS.

DMS provides training in various commercial device inspection activities that have the potential for putting county inspectors in unsafe, often dangerous situations where the risk is bodily injury, possibly death. These inspections include removing electric meters from socket and reconnecting to another source of electricity for test, exposing official to electrocution if not performed correctly. County officials also test devices under pressure (up to 10,000 lb per square inch), at extreme low temperature (as low as -243 F), and in potentially explosive environments.

DMS also provides training and oversight in testing for labeling requirements and net contents of packaged commodities. Determining the amount in the package requires a great deal of training, a thorough technical knowledge of the varying characteristics of different types of commodities, and a wide range of precise measuring equipment.

### **Specific Purpose and Factual Basis**

#### **Section 4075. Annual Device Administrative Fee**

The Department proposes to adopt regulations that impose an annual device administrative fee on registered businesses operating commercial weighing, measuring, and counting devices. The fee is based on device type and is applicable to every commercial device registered with each county office of weights and measures. Additionally, the proposal will identify payment schedules, payment due dates, and a maximum amount a county may retain from the collected fees to cover their actual costs associated with the collection of the fees.

## **Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities**

The Department has initially determined that this proposal does not impose a mandate on local agencies or school districts because these entities are not businesses operating commercial weighing or measuring devices.

The Department has also initially determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 8 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from this action because these entities are not affected.

The Department has initially determined that the proposed action will not have a significant adverse economic impact on housing costs.

The cost impact of the changes in the regulations on private individuals or businesses is expected to be minor because the additional fees that businesses will pay less than or equal to 10%.

## **Assessment**

The Department has made an assessment that the proposed regulation sections would not: (1) create or eliminate jobs within California; (2) create new business or eliminate existing businesses within California; and (3) affect the expansion of businesses currently doing business in California.

## **Purposes for the Regulation**

### **Necessity**

The Department is required by California law to provide county sealers of weights and measures instructions, recommendations, training and oversight that the sealers must follow in the discharge of their duties. (Business and Professions Code, Division 5, Section 12104)

This funding for the Division of Measurement Standards historically has come from the General Fund. Due to the state's budget crisis, the general fund monies for Division of Measurement Standards Programs that provided much of the oversight and training was eliminated and AB 120 (Chapter 133, Statutes 2011) provided a funding source contained in BPC Section 12241 which imposes an administrative fee on every commercial device registered in each county by the office of weights and measures. Because there is no funding source for the DMS Device Enforcement Program and the Quantity Enforcement Program until the proposed regulations are adopted, an economic hardship has been imposed on

the DMS. In order to mitigate the economic hardship, a quarterly payment schedule is proposed for the first year of the regulations in order to provide immediate funding for the Programs.

Section 4075(d) has been proposed with specific reporting requirements for several reasons:

- It allows the DMS to gather information on the total number of device in each category of device within the state.
- It provides information so the DMS can anticipate the need to update and revise Examination Procedure Outlines based on the types of devices within the state.
- It provides a basis for the DMS to audit counties for accurate payment of fees to the state.

### **Alternative Considered**

The Department must determine that no alternatives considered would be as effective in carrying out the purpose of this proposed regulation or would be as effective and less burdensome to the affected private persons other than the proposed regulation.

The text in AB 120, Chapter 133, Statutes 2011, will not allow the Department to consider discontinuing its oversight and training responsibilities, for consumers and industry will suffer without these programs.

This regulatory action has a minor adverse economic effect on businesses, but the California Legislature determined that it was more cost effective for businesses to continue the program under a fee arrangement.

### **Technical Theoretical and/or Empirical Study, Reports, or Documents**

The Department has relied on the following for these regulation amendments:

California Business and Professions Code pertaining to Weights and Measures and Petroleum Products, Division 5, Chapters 1 through 17.

AB 120 (Committee on Budget), Chapter 133, Statutes 2011

**DEPARTMENT OF FOOD AND AGRICULTURE  
DIVISION OF MEASUREMENT STANDARDS**

The Department has illustrated changes to the original text in the following manner:

**Proposed additions are underlined**

**Proposed deletions are ~~strikethrough~~**

Title 4, Division 9, Chapter 3, Article 3,  
Section 4075 (Annual Device Administrative Fee)

4075. The annual administrative fee for every commercial weighing, measuring, and counting device registered in California to be collected by each county office of weights and measures for the recovery of the Department's cost associated with providing supervision and oversight of county sealers performing the duties described in Business and Professions Code Sections 12210 and 12211 shall be collected as follows:

- (a) Each county office of weights and measures shall collect for the Department an administrative fee as specified in the Table A for every commercial device registered within their county.
- (b) The administrative fee shall be collected by each county at the same time as the location and device registration fee by the county office of weights and measures from those businesses registering commercial devices in that county.
- (c) The administrative fee shall be paid to the Department of Food and Agriculture Fund for every commercial device registered in the county beginning January 1, 2012 and annually thereafter. The administrative fee shall be paid to the Department for device registration fees collected between January 1, 2012 and March 31, 2012, no later than April 30, 2012; fees collected between April 1, 2012 and June 30, 2012, no later than July 31, 2012; fees collected between July 1, 2012 and September 30, 2012, no later than October 31, 2012; fees collected between October 1, 2012 and December 31, 2012, no later than January 31, 2013. Thereafter fees collected between January 1 and June 30 shall be paid to the Department no later than July 31 of the same year and for device registration fees collected between July 1 and December 31 no later than January 31 of the following year.
- (d) The administrative fee shall be accompanied by a letter of remittance, on county letterhead, that indicates the number of commercial devices in each device fee registration category, the total administrative fee paid for each category, the registration period, and the grand total administrative fee paid to the Department.

(e) County offices of weights and measures may retain a portion of the administrative fee collected to cover their actual costs associated up to but not to exceed 15% of the total amount due to the Department.

Table A

<u>Commercial Device Type</u>	<u>Administrative Fee per Device</u>
Electric Sub-meter Vapor Sub-meter Water Sub-meter	<u>\$0.20</u>
CNG Meter Fabric, Cordage, Wire Meter Grease and Lube Meter Odometer Retail Motor Fuel Dispenser Retail Meter Retail Water Meter Tank (Liquid Test) Taximeter Vehicle Meter Wholesale Meter Computing Scale Counter Scale Hanging Scale Prescription/Jeweler Scale Miscellaneous Measuring Device	<u>\$2.50</u>
Liquefied Gas Meter Dormant/Portable Platform Scale	<u>\$15.00</u>
Crane Scale Hopper and Tank Scale Livestock and Animal Scale Monorail and Meat Scale Railway Scale Vehicle Scale	<u>\$20.00</u>

NOTE: Authority cited: Sections 12027 and 12107 and 12241 Business and Professions Code.  
Reference: Section 12107 and 12241 Business and Professions Code.