

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
Hydrogen Gas-Measuring Devices (3.39)
CCR Title 4, § 4002.9

May 31, 2019

NOTICE OF PROPOSED REGULATORY ACTION

The California Department of Food and Agriculture (Department) proposes to amend California Code of Regulations (CCR) Title 4, § 4002.9. Hydrogen Gas-Measuring Devices (3.39).

PUBLIC HEARING

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

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 'Hydrogen Device Rulemaking' in the subject line of any letter, fax, or email regarding this rulemaking. The written comment period begins on May 31, 2019, and closes at 5:00 p.m. on July 16, 2019. The Department will only consider comments received at the office of the Division of Measurement Standards by 5:00 p.m. on July 16, 2019.

AUTHORITY/REFERENCE

The Legislature has charged the Department in California Business and Professions Code (BPC) Division 5, § 12100 with the responsibility of supervising weights and measures activities within California. The secretary of the Department is granted authority in BPC § 12027 to adopt such regulations as is reasonably necessary to carry out the provisions of Division 5. 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 for commercial purposes in California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC Division 5, Chapter 2, § 12107 requires the Department to adopt the latest specifications, tolerances, and other technical requirements published in the National Institute of Standards and Technology (NIST) Handbook 44, "*Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices*" (NIST Handbook 44), except as specifically modified, amended, or rejected by regulation adopted by the Department. The

Department does so by adopting regulation in Title 4 CCR §§ 4000, 4001, and the appropriate subsection of 4002.

In 2014, the Department adopted Section 3.39. of NIST Handbook 44, with modifications, in Title 4 CCR §§ 4000, 4001, and 4002.9 making those requirements enforceable in California. During that rulemaking the Department adopted four California-specific hydrogen gas-measuring device accuracy classes: (2.0), (3.0), (5.0) and (10.0). The Department has since determined that no hydrogen gas-measuring device in commercial use meets accuracy classes (2.0) or (3.0), nor has the Department approved for use a device having those accuracy classes. In 2016, the Department submitted test data which served as the basis for the National Conference on Weights and Measures (NCWM) to adopt accuracy class (7.0), a compromise between device functionality, manufacturing cost, and the technologically feasible measurement of hydrogen sold as retail motor vehicle fuel. Currently, there are devices having accuracy classes (5.0) and (10.0) approved for commercial purposes in the state.

With this rulemaking, the Department proposes to keep accuracy classes (5.0) and (10.0), remove accuracy classes (2.0) and (3.0), and adopt the national standard accuracy class (7.0) adopted by NCWM in 2016. Other non-substantive changes having no regulatory effect are also proposed to improve the grammar, formatting, and sentence structure of the regulation. The specific purpose and necessity of each of the amendments is discussed in the Initial Statement of Reasons of this rulemaking file.

Anticipated Benefits of the Proposed Regulation

The proposed regulation will facilitate the development of more hydrogen fueling stations and in turn, promote increased production and sales of hydrogen gas-measuring devices in the state. With this proposed regulation, hydrogen gas-measuring device manufacturers doing business in California may design, produce, and sell hydrogen gas-measuring devices with the uniform national standard accuracy class (7.0) alongside accuracy class (5.0) devices to streamline design, production, and marketing costs. National standardization of specifications and requirements will also promote increased consumer confidence during their hydrogen fueling experience. The Department believes this will lead to a greater number of consumers that choose to purchase hydrogen fuel cell vehicles and so increase demand for devices dispensing hydrogen as retail motor vehicle fuel. By adopting accuracy class (7.0) the Department will be able to regulate, enforce, and respond to consumers' complaints against a hydrogen device having that accuracy class.

Consistency and Compatibility with Existing State and Federal Laws and Regulations

The Department has initially determined this proposal is consistent and compatible with existing California and federal laws and regulations. The Department is the only state agency with the authority to regulate hydrogen devices used for commercial purposes that dispense hydrogen as motor vehicle fuel.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department makes the following initial determinations:

- 1) Mandate on local agencies and school districts: None
- 2) Cost to any local agency or school district requiring reimbursement pursuant to Government Code §§ 17500 et seq.: None
- 3) Fiscal impact on public agencies including costs/savings to state agencies: None
- 4) Any other non-discretionary costs/savings imposed upon local agencies: None
- 5) Costs/savings in federal funding to the state: None
- 6) Significant effect on housing costs: None

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.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Removing two outdated accuracy classes and adopting the uniform national standard accuracy class will not incur additional financial costs or savings to a business to reasonably comply with this proposed regulation. Businesses that manufacture hydrogen gas-measuring devices do not need to change business procedures or acquire additional equipment to comply.

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

Anticipated Benefits of the Proposed Regulation

This proposed regulation supports the Governor's goals to increase the number of zero-emission vehicles (ZEV) operating on state highways, reduces dependence on petroleum-sourced fuels, and decreases California's carbon footprint. The proposed regulation both supports the growth of the ZEV market and facilitates the development of a hydrogen fueling infrastructure having nationally standardized hydrogen fueling devices; two paramount factors positively influencing California's long-term transportation mitigation strategy.

The California Air Resources Board's Greenhouse Gas Emission Inventory website reports that the transportation sector is the biggest contributor (41%) to California's greenhouse gas emissions. Vehicle emissions are a primary source of atmospheric particulate matter, air toxins, and smog-forming chemicals in California's air. Conversely, hydrogen fuel cell vehicles emit only water vapor. Cleaner air in the state potentially reduces medical risks associated with vehicular emissions.

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

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Moreover, the Department is not aware of any small businesses involved in the hydrogen gas-measuring device manufacturing industry. Since businesses in the state only manufacture and install hydrogen gas-measuring devices having accuracy class (5.0) and (10.0), removing accuracy classes (2.0) and (3.0) and adding accuracy class (7.0) to regulation does not impose additional economic impacts.

CONSIDERATION OF ALTERNATIVES

Government Code § 11346.5 (a)(13) requires that the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period or public hearing, if one is scheduled.

CONTACT PERSONS

Primary Contact:

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AVAILABILITY OF THE RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process by request to the contact(s) above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text (the "express terms") of the regulation, the Initial Statement of Reasons, and all the supporting documents and information relied upon in the development of this proposed regulation.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After receiving and considering all timely and relevant comments, the Department may adopt the proposed regulation substantially as described in this notice. If 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 'Hydrogen Device Rulemaking' in the subject line of any letter, fax, or email regarding this rulemaking. The Department will accept written comments on the modified text of the 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.