

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

308



FROM: Executive Office

SUBMITTAL DATE:
August 29, 2006

SUBJECT: Response to 2005-2006 Grand Jury Report: Riverside County Agricultural Commissioner Weights and Measures Division


RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding the Riverside County Agricultural Commissioner Weights and Measures Division.
- 2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On July 11, 2006, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding the Riverside County Agricultural Commissioner Weights and Measures Division.

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

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GARY CHRISTMAS
Deputy County Executive Officer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget: Budget Adjustment: For Fiscal Year:
	Current F.Y. Net County Cost:	\$	
	Annual Net County Cost:	\$	

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE.

County Executive Office Signature 

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Wilson and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone and Wilson

Nays: None

Absent: Ashley

Date: August 29, 2006

xc: E.O., Agric. Comm., Grand Jury, Presiding Judge, Co. Clk. & Recorder Deputy

Nancy Romero
Clerk of the Board



Prev. Agn. Ref.: 3.11 - 7/11/06

District:

Agenda Number:

3.9

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Departmental Concurrence

**RIVERSIDE COUNTY AGRICULTURAL COMMISSIONER
WEIGHTS AND MEASURES DIVISION
Response to Findings and Recommendations**

FINDINGS:

Number 1:

A Business Registration and Licensing Program, a major component of the National Pollutant Discharge Elimination System (NPDES*), was approved by the Riverside County Board of Supervisors on March 21, 2006. A business registration/license database will provide the essential inventory information needed by Riverside County to meet NPDES requirements. This database will also identify current unlicensed businesses.

Response:

Respondent agrees with the finding.

Number 2:

In fiscal year 2004-2005, the Weights and Measures Division completed a total of 1,202 scanner inspections of licensed businesses within the County. Forty-five percent of these inspections reflected pricing errors.

Response:

Respondent agrees with finding.

Number 3:

The Business and Profession Code Section 12015.3(a) gives the Weights and Measures Division inspectors the authority to impose civil penalties, which can be up to \$1,000 for each violation.

Response:

Respondent agrees with finding.

Number 4:

Assembly Bill 889, Section 6, 13350(e) states, "The board of supervisors, by ordinance, may charge a re-inspection fee for reinspections of a retail establishment that fails a standard inspection..." A Weights and Measures Scanner Inspection Program Report dated July 15, 2005, revealed that businesses are most often issued a Notice of Proposed Action rather than a fee.

Response:

Respondent agrees with the finding.

Number 5:

Weights and Measures Division inspectors are frequently faced with business owners who do not recognize their authority.

Response:

Respondent disagrees partially with the finding.

The many well-established retail outlet locations throughout Riverside County have been regulated over the years and are generally well aware of the authority of the Weights and Measures Division inspectors. However, Weights and Measures Division inspectors often must spend additional "up front" time educating the many smaller businesses, and the many newer businesses that are often found to be unaware of Weights & Measures regulatory requirements.

Number 6:

The existence, functions and benefits of the Weights and Measures Division are not well known to the public. Its information pamphlet is not well distributed.

Response:

Respondent agrees with the finding.

RECOMMENDATIONS:

Number 1:

The Weights and Measures Division utilize the database being developed for the Business Registration and Licensing Program. This database will identify all businesses in Riverside County

Response:

The recommendation requires further analysis.

The Riverside County Business and Registration and Licensing Programs has not yet been fully approved or implemented. The Agricultural Commissioner's Office has been asked to participate in the program, once the program is put into effect. The level of participation is unknown at this point; however, discussion has occurred on sharing and accessing databases, which will assist in identifying otherwise unregistered businesses that utilize commercial weighing and measuring devices.

Number 2:

All retail establishments that fail an inspection be assessed a civil penalty and a reinspection fee.

Response:

The recommendation will not be implemented because it is not warranted and is not reasonable.

1) Regarding assessing a civil penalty action (i.e. a monetary penalty up to \$1,000 per violation subject to an extensive Administrative Hearing process), this recommendation is not reasonable and would not allow for any regulatory discretion for legitimate exceptions to issuing civil penalty actions. This recommendation would require assessing civil penalties for all minor and procedural non-compliances found at all established business within Riverside County, and for the many new businesses that are striving to become established, it would require issuance of a civil penalty for any non-compliance found as a result of our crucial, initial inspection. In addition, this recommendation would represent a departure from enforcement guidelines practiced by other California counties and would result in uniformity issues for the many businesses that operate throughout the state.

Within the current enforcement profile, during the very first inspection of a new business, unless there are flagrant or excessive non-compliances found, a civil penalty is not imposed. Instead, any non-compliance issues are fully documented and an official "Violation Notice" is issued to the business which becomes part of their compliance history. More importantly; however, this first inspection provides the inspectors an outreach/education opportunity intended to establish an initial positive relationship by providing the business community with all of the relevant

information (copies of the program ordinances, laws and regulations, inspection procedures, etc.). During this initial inspection, the business is encouraged to ask questions in order to gain a good understanding of how to maintain compliance, and of how to avoid civil penalty actions levied against their business during subsequent inspections.

2) Regarding imposing a separate reinspection fee, in addition to any civil penalty, and in addition to the applicable Annual Device Registration fee, this recommendation is not warranted at this time. Business and Professions Code Division 5 Chapter 13.5 Section 13350(c) states, "The Sealer may reinspect any retail facility that has a compliance rate of less than 98%". By law, a reinspection fee can only be imposed on those retail establishments that have a compliance rate of less than 98%. It is not unusual for a business to have a compliance rate of less than 100% (all), but more than 98%.

Because noncompliant businesses are already subject to administrative civil penalty actions (fines) for repeat violations, there is already a progressive financial incentive to maintain compliance. While this recommendation is not warranted at this time, as Riverside County continues to grow, this option may be needed in the future in order to maintain sufficient program funding.

Number 3:

The Board of Supervisors adopts an ordinance allowing the Weights and Measures Division to enforce reinspection fees as permitted by AB889.

Response:

The recommendation will not be implemented because it is not warranted at this time as it is contingent on Recommendation 2 above.

Number 4:

All inspectors be issued standardized identification.

Response:

The recommendation has been implemented.

All Weights and Measures Inspectors and Agricultural and Standards Investigators are provided and carry a standardized employee identification badge, issued by the County of Riverside Human Resources Department, which includes the inspector's name, title, department affiliation, personal color photograph, and employee identification number. In addition, all employees carry and provide official Riverside County business cards.

Number 5:

The Agricultural Commissioner takes action to increase consumer awareness about the Weights and Measures Division. This should include, but not be limited, to distributing information to:

- Senior Centers
- Public Schools/P.T.A.
- Public Libraries
- Local cable public information ads
- Public radio

Response:

The recommendation has been implemented.

The Weights and Measures Division is now distributing consumer information pamphlets to Senior Centers, Public Schools, Public Libraries, the Riverside County Office on Aging and to the various Chambers of Commerce offices within Riverside County.

This is in addition to the ongoing consumer outreach and education accomplished via local newspaper and televised news reports of high profile Weights & Measures related issues: consumer information and public complaint forms are posted on the departmental website; pamphlets are distributed at each of the five district offices, and at various public functions such as at fairs and expositions; and, consumer protection outreach presentations are given to various local service organizations, such as the Rotary Club, and Kiwanis.

The department will continue to evaluate the consumer protection, outreach, and education component of the Weights & Measures program in order to continue to improve consumer awareness and consumer protection.
