

**DEPARTMENT OF FOOD AND AGRICULTURE
MEAT, POULTRY AND EGG SAFETY BRANCH
INITIAL STATEMENT OF REASONS**

SUBJECT MATTER OF PROPOSED REGULATIONS

Transporters of Inedible Kitchen Grease

SECTION(S) AFFECTED

Sections 1180.1, 1180.3.2, 1180.20, and 1180.24

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL

This proposal is necessary to clarify the requirements for transporters of inedible kitchen grease pursuant to sections 19310 and 19316.5 of the Food and Agricultural Code. Inedible kitchen grease is defined in Food and Agricultural Code section 19216 as meaning any fat or used cooking greases and oils obtained from any source. This proposal will establish a new manifest tracking system and procedure; designate the authorized facilities that may receive interceptor grease; set forth reporting time frames, establish records retention requirements and make technical changes as specified.

Existing law, Food and Agricultural Code section 19305 authorizes the Department of Food and Agriculture (Department) to inspect and investigate shipments and transactions of renderers, collection centers and transporters of inedible kitchen grease.

Food and Agricultural Code sections 19310 through 19317 sets forth the requirements for transporters of inedible kitchen grease that transport grease from restaurants and any food preparation, processing or handling establishment or facility.

Existing regulations specify the licensing and registration requirements for transporters of inedible kitchen grease; however, no regulations exist to establish a tracking system in accordance with Food and Agricultural Code section 19316.5. This proposal amends those requirements and establishes a new manifest tracking system under Articles 37, 37.1, and 42 of Subchapter 2, Chapter 4, Division 2 of Title 3 of the California Code of Regulations, and makes other technical changes as specified.

Based on an initial evaluation, the Department does not believe the proposed regulations are inconsistent or incompatible with existing state or federal regulations

PROBLEMS INTENDED TO ADDRESS

The proposal is intended to reduce the amount of inedible kitchen grease (IKG) and wastewater that is illegally dumped in sewers and streams in California, and to prevent sewer blockages and pollution of waterways. There is also increased, widespread theft of IKG causing legitimate transporters, rendering companies and restaurants in California to lose millions of dollars in revenue due to IKG theft. Renderers report that theft of used cooking oil, or restaurant grease, directly from foodservice facilities (i.e., prior to pickup by the renderer) is an increasing problem.

Interceptor and trap grease is fats, oils and grease that goes down drains in restaurants and kitchens and is prevented from going into the sewer system by a grease trap or interceptor. Examples include food scraps in the dishwasher, residue on the floors, fats, oils, grease, grit

and other kitchen waste. Interceptor grease differs from used cooking oil, which is deposited in barrels behind the restaurant and can be recycled into products, such as bio-diesel. This oil has significant monetary value. Stolen restaurant grease can be sold either to competing renderers or to biofuel manufacturers, presumably on a cash basis and without the need for verification of its source. While many thefts involve small volumes collected by individual operators, there is also the possibility that larger, more organized groups or entities account for a significant volume of stolen grease.

The incidents of grease theft have been increasing steadily over at least the past five years. Based on the number of thefts reported during the first half of 2010, the total number of theft incidents for the entire year likely exceeded 5,400; up 8.1 percent from the previous year and more than double the number reported in 2005.

On March 29, 2011, the Department held a pre-notice public meeting to discuss the transport and disposal of inedible kitchen grease held at the Department of Food and Agriculture, in Sacramento, California. The meeting notice was sent to all interested persons and was also published in the California Regulatory Notice Register, March 25, 2011 (Register 2011, No. 12-Z).

Recently, in an attempt to reduce the incidence of illegal removal and transport of IKG, the Department partnered with a local law enforcement agency to stop vehicles transporting IKG, making sure they're in compliance with state law. The partnership detected several violators. The Department is currently negotiating contracts with additional law enforcement agencies for targeted enforcement activities. Also, the Legislature has recognized the theft of inedible kitchen grease is a growing concern for the industry. Assembly Member Huber introduced AB 2378 (February 24, 2012) to increase penalty provisions for persons engaging in unlawful activities relating to the transport of inedible kitchen grease.

The Department believes to address the issue of IKG removal, transport and disposal, there is necessity for this regulation which will serve to ensure the Department fulfills its mission to deter theft of IKG and related fraud; raise awareness of many key law enforcement officials about the program; provide information about the program to those doing legal and illegal business with kitchen grease as part of the effort to gain compliance; create an environment which enables legal renderers of kitchen grease to maintain or increase their volume of grease business; protect the environment, increase knowledge of the rendering industry and increase rapport with key industry personnel.

STATEMENT OF FACTUAL BASIS AND RATIONALE

The Department of Food and Agriculture (Department), Meat, Poultry and Egg Safety Branch licenses renderers and collection centers and registers transporters of inedible kitchen grease (IKG). The Branch licenses and inspects the following facilities that are exempt from mandatory inspection by the United States Department of Agriculture (USDA):

- Retail meat processors who prepare meat or poultry products by curing, smoking, drying, or rendering for retail sales only.
- Custom livestock slaughter plants that slaughter cattle, sheep, swine, and goats raised or purchased live by owners. The meat is to be used by the owner, the owner's family, nonpaying guests or employees. It cannot be sold. Custom livestock slaughterhouses also slaughter fallow deer, the products of which can be sold.

- Poultry plants that slaughter species not subject to USDA inspection, such as rabbit, quail, partridge, and other domesticated fowl.
- Retail poultry plants that sell live poultry and slaughter them for customers.
- Non-retail poultry plants that slaughter or process less than 20,000 turkeys, chickens, ducks, geese, ostrich, emu, squab, and guineas a year.
- Collection centers for temporary storage of animal carcasses, packinghouse waste, and/or inedible kitchen grease before transport to a licensed rendering plant.
- Dead animal haulers who transport carcasses of dead livestock and horses.
- Renderers of animal tissue and/or inedible kitchen grease into inedible industrial fats, oils, biofuels and other products.
- Pet food processors that prepare fresh or frozen raw meat products for pet food.
- Pet food slaughterers that slaughter livestock, poultry, and equines for pet food.
- Importers of fresh or frozen raw meat, horsemeat, poultry or by-products for pet food.
- The Branch also administers the Shell Egg Safety and Quality Management Program. Persons engaged in the business of marketing eggs in California are required to be registered with the Department. The program has the statutory authority to conduct inspections and monitor egg quality at production, wholesale, and retail levels. They provide supervision and training to the counties to ensure consistency and uniform application of standards throughout the state. The program serves to provide California consumers with eggs that are wholesome, properly labeled, refrigerated, and of established quality, while maintaining fair and equitable marketing standards in the California egg industry. They facilitate the orderly marketing of shell eggs in a uniform manner, and prevent the marketing of deceptive or mislabeled containers of eggs.

The rendering industry is an extremely important part of agriculture in California. Inedible kitchen grease is one of many raw waste products recycled by renderers into valuable commodities that are exported to other states and countries. "Rendering" means the recycling, processing, and conversion of animal and fish byproducts and carcasses from the meat, poultry, and seafood industries, as well as used kitchen grease into fats, oils and proteins that are used primarily as feed in the animal, poultry, and pet food industries and for biofuels. "Collection center" means a receiving area for the temporary storage of animal carcasses, packinghouse waste or other products, including inedible kitchen grease, before transportation to a licensed rendering plant. "Transporter" means any person who transports inedible kitchen grease.

Transporters of inedible kitchen grease generally contract with restaurants, or other facilities where food is prepared, processed and handled. When wastewater from food service facilities contains grease, the hot water and soap used in washing dishes and equipment emulsifies or breaks up the grease, allowing it to flow freely through the sewer. As the wastewater cools, the grease congeals (forms clumps) causing backups and overflows of raw sewage. Grease removal devices like interceptors and grease traps are designed to prevent grease-related problems in the sanitary sewer. Grease from grease traps and interceptors have been successfully transported to rendering plants in California for several years. Renderers that receive grease waste routinely sample and test incoming loads of grease for contaminants such

as pesticides and chlorinated hydrocarbons. The rendering process destroys certain pathogenic microorganisms as required by section 1180.34 of Title 3 of the California Code of Regulations.

To deter theft of IKG and to prevent illegal dumping of waste into sewers or streams, the Department believes that establishing a new manifest tracking system will ensure that grease waste is legally removed from food facilities who contract with rendering or transport companies and to track the proper and legal disposal of grease waste in accordance with Food and Agricultural Code section 19316.5. The proposal is outlined below.

AMEND SECTION 1180.1. LICENSING AND REGISTRATION REQUIREMENTS.

Amend subsection (d)(11): The Department is adding its new manifest form, *MPES Form 79-120 (Est. 03/12) Manifest-Inedible Kitchen Grease Transport*, to the list of forms incorporated by reference, and making corresponding numbering changes to subsections (d)(12), (13), and (14). The form will be provided to businesses upon request and the Department will charge a fee for the cost of printing, handling and shipping, however, businesses are not required to use the form. If businesses choose to use their own form or an electronic version, it must contain the same information as the Department's form.

Add subsections (m)(1), (2), and (3): These subsections are added for clarity purposes to specify an exemption from registration or licensure for facilities or operations not considered to be engaged in the business of rendering under the Food and Agricultural Code. The California Integrated Waste Management Board was abolished by statutes in 2009 (SB 63, Stats. 2009, Ch. 21) and transferred its programs, responsibilities and resources to the Department of Resources Recycling and Recovery under the California Environmental Protection Agency. The California Department of Water Resources operates under the Natural Resources Agency. These departments and agencies have laws relating to the processing or recycling of water, oil, grease, and other materials. This subsection is intended to avoid conflict with the Integrated Waste Management Act and the California Water Code, which requires certain licenses and permits for the transport and disposal of waste products and are not required to be licensed or registered with the Department providing they meet the criteria as specified.

AMEND SECTION 1180.3.2. METHOD FOR COLLECTION.

Amend subsection (c)(3) to make a technical amendment for clarity purposes for persons licensed with the Department to engage in the business of rendering, they shall provide the name and address of the transporter of inedible kitchen grease along with the required enforcement fees, as specified. The registration number of the transporter is not needed and is stricken from this subsection.

AMEND SECTION 1180.20. TRANSPORTERS OF INEDIBLE KITCHEN GREASE.

Amend subsection (b)(1) to make a technical correction for consistency with existing regulations for transporters of inedible kitchen grease. Both the "personal use" and "commercial use" application forms should be referenced in this subsection for transporters of inedible kitchen grease depending on how they intend to use grease transported. AB 1846 (Stats. 2008, Ch. 321) created two separate registration fees for transporters. The Department has in place existing forms for this purpose and separate statutory fees for a transporter of inedible kitchen grease, for commercial or personal (noncommercial) use, as specified in Food and Agricultural Code section 19315.

REPEAL SECTION 1180.24. RECORDS: TRANSPORTERS OF INEDIBLE KITCHEN GREASE.

The Department is repealing this section because it contains outdated information. It is revised in this proposal and adopted under new section 1180.24.

ADOPT SECTION 1180.24. REQUIREMENTS TO DOCUMENT AND TRACK THE REMOVAL, TRANSPORT, AND DISPOSAL OF INEDIBLE KITCHEN GREASE.

The Department is establishing a new procedure and form to track the removal, transport and disposal of grease waste, and to track the volume and quantity of the waste removed from food facilities. Compliance with this new tracking requirement will be handled administratively through its existing Rendering Enforcement Program. The Department will inform new applicants for registration at the time they apply and receive their registration. Existing registrants will be informed of these new provisions within 30 days of the approval of this proposal by the Office of Administrative Law.

The purpose of this new procedure and manifest is to deter the improper transportation and disposal of grease that is generated from grease interceptors, principally located at food preparation facilities, and to deter theft of used cooking oil from containers located in or near restaurants and other food preparation facilities. Interceptor waste is all material (e.g., liquid, water, and solids) removed from a grease interceptor or trap. Companies that clean out grease interceptors sometimes do not clean them thoroughly, sometimes put grease back into the sewer, and sometimes improperly and illegally dispose of grease, causing health safety concerns or environmental damage. Therefore, the Department believes there is a need to establish a uniform system for documenting the collection and management of interceptor grease through a manifest system. It is intended to provide restaurants and other facilities some assurance that the grease hauler has properly cleaned the traps and will dispose of the grease properly.

Used cooking oil from fryers, deposited in containers located in or near restaurants and other food preparation facilities, is a valuable commodity that is increasingly being stolen. The proposed manifest will also assist Department investigators and law enforcement personnel in combating theft of inedible kitchen grease. It will create a “cradle” (restaurant, food preparation facility) to “grave” (renderer) system for tracking acquisition, transport and disposal of inedible kitchen grease, allowing Department and law enforcement audits of records to uncover evidence of illegal activity. This deterrent effect should save legitimate industry millions of dollars currently lost to theft of inedible kitchen grease.

Subsections (a)(b)(1), (2), (3) and (4) provides the statutory authority for the implementation of a tracking procedure and manifest for use by transporters of inedible kitchen grease. The subsections also provide needed definitions for terms used in proposed regulation section 1180.24.

Subsections (c)(1) through (5) describe the records that must be kept by transporters using inedible kitchen grease for personal, noncommercial use. These subsections are needed in compliance with Food and Agricultural Code sections 19303, 19313.1 and 19315. Noncommercial transporters are not required to complete the manifest, however, they are required to keep records for at least two years. The records must contain the date and time of receipt of inedible kitchen grease, the name and address where the inedible kitchen grease was obtained, the amount (lbs. or gallons) of inedible kitchen grease picked up, the name of driver transporting the inedible kitchen grease, and the name and address where the inedible kitchen grease is delivered. This information is needed for the Department to determine compliance with

sections 19303, 19312, 19313.1, and 19315 of the Food and Agricultural Code, and any related laws and regulations.

Subsections (d)(1) through (10) specify the requirements for transporters of inedible kitchen grease for commercial use in accordance with Food and Agricultural Code sections 19303, 19313.1 and 19315. The requirements for commercial use are more detailed, because they are entering into an agreement with a generator (restaurant/food facility) to remove grease waste, then are transporting the materials to facilities authorized to receive the waste. Section 19315 of the Food and Agricultural Code establishes separate fees for commercial and noncommercial use of grease waste and limits the amount, in gallons, of grease waste that may be transported.

Subsections (d)(1) through (10) are intended to track the removal of grease waste (used cooking oil; interceptor/trap grease). Used cooking oil is any type of oil used in restaurants or any type of food facility for cooking, such as vegetable oil or olive oil and is an important waste-management concern. It is a valuable raw material for processing into animal food or fuel and is normally placed in a container for removal by an inedible kitchen grease transporter. However, some of it is inadvertently disposed of down a kitchen sink or a floor drain, ending up in a grease interceptor or trap. Interceptor waste is all material (e.g., liquid, water, and solids) removed from a grease interceptor or trap. Companies that clean out grease interceptors sometimes do not clean them thoroughly, sometimes put grease back into the sewer, and sometimes improperly and illegally dispose of grease, causing health safety concerns or environmental damage.

Therefore, subsections (d)(1) through (10) will establish a uniform system for the collection and management of the interceptor grease through a manifest system in accordance with section 19316.5 of the Food and Agricultural Code. This system is intended to provide restaurants and other facilities some assurance that the transporter has properly cleaned the grease traps and will transport and dispose of the grease properly. These requirements will also enable the Department to determine compliance with sections 19303, 19312, 19313.1, and 19315 of the Food and Agricultural Code, and any related laws and regulations.

The transporter completes the manifest form when the material is removed from a generator. Upon delivery of the grease waste to an authorized facility, the facility shall complete another portion of the manifest indicating the quantity of grease waste received. This will ensure that the volume of grease waste removed from generators comprising a load is approximately the same amount delivered to a receiving facility. To ensure the volume of grease waste is reported accurately, the facility will have a time-dated printout from a scale or volume meter, or a weighmaster certificate for the load of IKG, which shall be issued by a weighmaster licensed by the Department.

This tracking system is intended to ensure grease waste is properly removed from interceptors and grease traps and properly disposed to prevent grease-related problems in sanitary sewer systems.

Subsections 1180.24(e) and (f) describe the Department's manifest, MPES Form 79-120 (Est. 3/12). The Department's manifest is not required to be used, transporters may generate a form for their use, or in an electronic format, but it must contain the same information as the Department's form. If the transporter or their employer chooses to use the Departmental form, the Department will provide cost information upon request for the printing, handling and shipping. Each manifest is to contain a unique number for each load. This is necessary for accurate tracking purposes for all grease waste picked up from each generator throughout the day (or week), and that the grease waste is properly tracked through to delivery to a facility

authorized to receive the grease waste. Subsection (f) allows commercial transporters to use an electronic format for the manifest, in accordance with the California Uniform Electronic Transactions Act, California Civil Code, Title 2.5, Part 2, Division 3 (commencing with section 1633.1). This Act generally sets forth the requirements for electronic communication between parties who agree to send and receive documents electronically. It also specifies that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

Subsections 1180.24(g)(1) and (2) pertain to commercial use vehicles. It specifies the instructions for completing the manifest form whether the transporter uses the Department's form or one of their own forms, at the time the grease is picked up from a generator. A generator is defined in subsection (b)(2) as any location where inedible kitchen grease is collected from a grease container, grease interceptor, or grease trap, including, but not limited to, any food preparation, processing, or handling establishment or facility. The transporter must provide the portion of the manifest documenting the grease that was removed, the type picked up, and the date and time the grease was removed to the generator within 45 calendar days after removal of the grease waste. The Department believes this gives each transporter adequate time to mail or deliver the manifest receipt to the generator to verify the grease was picked up and the volume that was removed at the time of pick up; however, the transporter may leave the receipt with the generator at the time the grease waste was removed. Subsection(g)(2)(A) and (B) provides instruction on the distribution of the remaining portions of the manifest form for clarity purposes.

Subsection (h) specifies that the transporter and the receiving facility shall keep and maintain copies of all manifests for two years, in accordance with Food and Agricultural Code section 19313.1, and shall make such copies available, upon demand, to representatives of the Department and law enforcement agencies. This section is necessary should any problems arise with the disposal of grease waste, on a case by case basis, where the Department or law enforcement agencies need to investigate records of transactions of grease waste removal, transport and receipt and to determine compliance with sections 19303, 19312, and 19315 of the Food and Agricultural Code, and any related laws and regulations.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT

The following studies, reports, documents, and information were relied upon in formulating this proposal:

1. "Notice of an upcoming Interested Persons Meeting" held on March 29, 2011, in Sacramento, California, related to transporters of inedible kitchen grease, published in the *California Regulatory Notice Register*, March 25, 2011 (Register 2011, No. 12-Z).
2. "Inedible Kitchen Grease Workshop" agenda, California Department of Food and Agriculture, March 29, 2011.
3. "What's gooey, smelly and very, very valuable?" *Capitol Weekly*, August 25, 2011, [www.capitolweekly.net].
4. "CDFA Teams with law enforcement to stop thefts of inedible kitchen grease" *San Diego Newscape*, October 27, 2011 [www.sandiegonewscap.com].
5. "Grease Theft Battle Continues in the Golden State" *Render Magazine*, April 2012 [rendermagazine.com].
6. Proposed new form, MPES Form 79-120 (Est. 03/12) Manifest-Inedible Kitchen Grease Transport
7. Informational diagram showing interceptor and grease traps
8. "Collecting Recycled Cooking Oils or Greases for Biofuels" *National Renderers Association*, October 2008 [informational document].

9. "Survey Says: A Snapshot of Rendering" *Render Magazine*, April 2011, Tech Topics [informational document].
10. Informational document showing fats, oils, and grease removed from a food service establishment, *City of Roseville*, California [www.roseville.ca.us].
11. Economic Impact Assessment

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment. However, the rendering industry may prescribe certain standards, technologies, or equipment.

CONSIDERATION OF REASONABLE ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department of Food and Agriculture would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation. This proposal is intended to enhance consumer protection and prevent grease theft by instituting a tracking system to record the removal, transport and disposal of inedible kitchen grease. This tracking system is intended to prevent blockages in sewer systems that could adversely affect human health and the environment and to deter theft of inedible kitchen grease.

REASONABLE ALTERNATIVES THE DEPARTMENT HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has not identified any alternatives than the proposed regulation that would lessen any adverse impact on small businesses.

BENEFITS

This proposal is intended to enhance consumer protection by instituting a tracking system to record the proper and legal removal, transport and disposal of inedible kitchen grease. Inedible kitchen grease, if not properly disposed or recycled can cause blockages in public sewer systems or streams that could adversely affect human health, worker safety, and the environment.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

No facts, evidence, documents, testimony, or other evidence of any significant adverse economic impact on business have been identified. The anticipated compliance requirements are as follows:

- There are approximately 393 registered transporters of inedible kitchen grease.
- Paperwork requirement: The Department is establishing a new form, MPES Form 79-120 (Est. 03/12) Manifest-Inedible Kitchen Grease Transport. The transporter of inedible kitchen grease may generate a form for their use, or an electronic version, as long as all the required information is included. The form requires verification of the content of the load when it is delivered to the receiver of the grease waste. This can be a weight or volume determined at the receiving facility or a weighmaster certificate from a scale.

- Record keeping requirement: Persons engaged in the rendering industry, including businesses that are registered to transport inedible kitchen grease are required to keep certain records as specified in existing statutes and regulations. This proposal requires the MPES Form 79-120 (Est. 03/12) or the transporter generated form to be kept for at least two years. The Department believes this requirement does not adversely affect businesses or small businesses engaged in transporting inedible kitchen grease in California because the two-year requirement is consistent with Food and Agricultural Code section 19303. This requirement is not anticipated to incur increased costs to businesses as record keeping is a standard business practice for persons engaged in the grease waste and/or rendering industry in California. The maintenance of records will assist the Department in ensuring the legal, safe, sanitary disposal of grease waste in California.
- Reporting requirement: None. However, State investigators and law enforcement officials may review completed manifests and records in the course of investigations or periodic audits. Food and Agricultural Code sections 19303 and 19313.1 provide authority for IKG transporters, collection centers, and renderer record keeping requirements.

Estimated costs for a business to comply with specified provisions of this proposal		
If the IKG transporter uses the Department's manifest form	\$.50/form (printing/handling/shipping) 21-stop route requires 7 forms per day 35 forms per week @ \$.50	\$17.50
If the IKG transporter mails receipts to the generator (e.g., restaurant/food facility)	U.S. First Class postage rate @ \$0.45 21 receipts x 5 days per week = 105 receipts	\$47.25
Office clerical support to file the receipts	\$15.00 @ 2 hours per week	\$30.00
	Total estimated cost per week:	\$94.75
<p>Note: Transporters may not incur costs each week depending upon their business practices. Transporters may use their own form or an electronic form providing it contains the same information as the Department's form as specified in this proposal. The transporter may leave the receipt with the generator at the time of removal of the grease waste or mail the receipt to the generator.</p>		

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Department of Food and Agriculture (Department) has prepared an economic impact assessment that is included in this filing. The Department has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation does not require the use of the Department's form to track the transport of grease waste. Transporters may use their own forms, or an electronic version providing it includes the same information as the Department's form. The intent of the form and procedures specified in this proposal is to track the transport of inedible kitchen grease and ensure proper and legal disposal of grease waste to avoid hazards to human health and the environment.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

This proposal does not duplicate or conflict with federal regulations.