

DEPARTMENT OF FOOD AND AGRICULTURE  
ANIMAL HEALTH AND FOOD SAFETY SERVICES DIVISION  
INITIAL STATEMENT OF REASONS

SUBJECT MATTER OF PROPOSED REGULATIONS

Animal Confinement

SECTIONS AFFECTED

Adopt sections 1320, 1320.1, 1320.2, 1320.3, 1320.4, 1320.5, 1320.6, 1320.7, 1320.8, 1320.9, 1320.10, 1321, 1321.1, 1321.2, 1321.3, 1321.4, 1321.5, 1321.6, 1321.7, 1321.8, 1321.9, 1321.10, 1322, 1322.1, 1322.2, 1322.3, 1322.4, 1322.5, 1322.6, 1322.7, 1322.8, 1322.9, 1322.10, 1324, 1326, 1326.1, 1326.2, 1326.3, 1326.4, 1326.5, 1326.6, 1326.7, 1326.8, 1326.9, 1326.10, 1326.11, 1326.12, 1326.13, 1326.14, 1326.15, 1326.16, 1326.17, 1326.18, 1326.19, 1326.20, 1326.21, 1326.22, 1327.1, and 1327.2 of Title 3 of the California Code of Regulations (CCR).

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL

In 2018, California voters passed Proposition 12, Farm Animal Confinement Initiative<sup>1</sup>, self-titled as the Prevention of Cruelty to Farm Animals Act, and as defined in the proposed regulatory text, the Farm Animal Cruelty statute (Act), which amended the requirements of Health and Safety Code (HSC) sections 25990 through 25993 and added section 25993.1; section 25994 remained unchanged. The purpose of the Act is to prevent animal cruelty by phasing out certain methods of farm animal confinement for covered animals raised in the State and the products harvested from those animals if sold within the State for human consumption. The Act mandates farm animal confinement standards and compliance timeframes, establishes definitions affecting the production and sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State, and directs the Department of Food and Agriculture (Department) and the Department of Public Health (DPH) to jointly promulgate regulations to implement the provisions of the HSC relating to the confinement of specified farm animals and the sale of specified products derived from them.

In this rulemaking, the Department proposes to adopt new Chapter 10 (commencing with section 1320) of Division 2 of Title 3 of the CCR to implement, interpret, and make specific the laws established by the Act. Specifically, this proposal would establish a program of registration, certification, conveyance inspection, and labeling and marking requirements for the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State which is necessary to fully effectuate the intent of the Act.

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<sup>1</sup> California Proposition 12, Farm Animal Confinement Initiative (2018)

Existing law, section 25990(a) of the HSC specifies that a farm owner or operator within the State of California shall not knowingly cause any covered animal to be confined in a cruel manner.

Existing law, section 25990(b) of the HSC specifies that a business owner or operator shall not knowingly engage in the sale within the State of any of the following: (1) Whole veal meat that the business owner or operator knows or should know is the meat of a covered animal who was confined in a cruel manner; (2) Whole pork meat that the business owner or operator knows or should know is the meat of a covered animal who was confined in a cruel manner, or is the meat of immediate offspring of a covered animal who was confined in a cruel manner; (3) Shell eggs that the business owner or operator knows or should know is the product of a covered animal who was confined in a cruel manner; (4) Liquid eggs that the business owner or operator knows or should know are the product of a covered animal who was confined in a cruel manner.

Existing law, section 25991(a) of the HSC defines “breeding pig” as meaning any female pig of the porcine species kept for the purpose of commercial breeding who is six (6) months or older or pregnant.

Existing law, section 25991(b) of the HSC defines a “business owner or operator” to mean any person who owns or controls the operations of a business.

Existing law, section 25991(c) of the HSC defines a “cage-free housing system” for egg-laying hens including types of qualifying platforms and flooring systems and describes different acceptable hen housing systems that must include the minimum requirements for enrichments such as scratch areas, perches, nest boxes, and dust bathing areas as well as the ability of an employee to fully stand and provide care while working in the hens’ usable floorspace.

Existing law, section 25991(d) of the HSC defines a “calf raised for veal” to mean any calf of the bovine species kept for the purpose of producing the food product described as veal.

Existing law, section 25991(e) of the HSC defines acts that mean an animal was “confined in a cruel manner” including, but not limited to, confining a calf raised for veal with less than 43 square feet of usable floorspace per calf after December 31, 2019; confining a breeding pig with less than 24 square feet of usable floorspace per pig after December 31, 2021; confining an egg-laying hen with less than 144 square inches of usable floorspace per hen after December 31, 2019; and confining an egg-laying hen with less than the amount of usable floorspace per hen required by the 2017 edition of the United Egg Producers Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing<sup>2</sup> or in an enclosure other than a cage-free system after December 31, 2021.

Existing law, section 25991(f) of the HSC defines a “covered animal” as meaning any calf raised for veal, breeding pig, or egg-laying hen who is kept on a farm.

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<sup>2</sup> United Egg Producers Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing, 2017 Edition

Existing law, section 25991(g) of the HSC defines an “egg-laying hen” as meaning any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production.

Existing law, section 25991(h) of the HSC defines “enclosure” as meaning a structure used to confine a covered animal or animals.

Existing law, section 25991(i) of the HSC defines “farm” as meaning the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber; and does not include live animal markets, establishments at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.)<sup>3</sup>, or official plants at which mandatory inspection is maintained under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.)<sup>4</sup>.

Existing law, section 25991(j) of the HSC defines “farm owner or operator” as meaning any person who owns or controls the operations of a farm.

Existing law, section 25991(k) of the HSC defines “fully extending the animal’s limbs” as meaning fully extending all limbs without touching the side of an enclosure, or another animal.

Existing law, section 25991(l) of the HSC defines “liquid eggs” as meaning eggs of an egg-laying hen broken from the shells, intended for human food, with the yolks and whites in their natural proportions, or with the yolks and whites separated, mixed, or mixed and strained. Liquid eggs do not include combination food products, including pancake mixes, cake mixes, cookies, pizzas, cookie dough, ice cream, or similar processed or prepared food products, that are comprised of more than liquid eggs, sugar, salt, water, seasoning, coloring, flavoring, preservatives, stabilizers, and similar food additives.

Existing law, section 25991(m) of the HSC defines a “person” as meaning any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

Existing law, section 25991(n) of the HSC defines “pork meat” as meaning meat, as defined in 3 CCR 900<sup>5</sup> as of August 2017, of a pig of the porcine species, intended for use as human food.

Existing law, section 25991(o) of the HSC defines “sale” as meaning a commercial sale by a business that sells any item covered by this chapter, but does not include any sale undertaken at an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), or any sale undertaken at an official plant at which mandatory inspection is maintained under the federal Egg Products Inspection Act (21 U.S.C.

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<sup>3</sup> Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.)

<sup>4</sup> Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.)

<sup>5</sup> 3 CCR section 900

Sec. 1031 et seq.). For purposes of this section, a sale shall be deemed to occur at the location where the buyer takes physical possession of an item covered by HSC section 25990.

Existing law, section 25991(p) of the HSC defines “shell egg” as meaning a whole egg of an egg-laying hen in its shell form, intended for use as human food.

Existing law, section 25991(q) of the HSC defines “turning around freely” as meaning turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure or another animal.

Existing law, section 25991(r) of the HSC defines “uncooked” as meaning requiring cooking prior to human consumption.

Existing law, section 25991(s) of the HSC defines “usable floorspace” as meaning the total square footage of floorspace provided to each covered animal, as calculated by dividing the total square footage of floorspace provided to the animals in an enclosure by the number of animals in that enclosure. In the case of egg-laying hens, usable floorspace shall include both ground space and elevated level flat platforms upon which hens can roost but shall not include perches or ramps.

Existing law, section 25991(t) of the HSC defines “veal meat” as meaning meat, as defined in 3 CCR 900 as of August 2017, of a calf raised for veal intended for use as human food.

Existing law, section 25991(u) of the HSC defines “whole pork meat” as meaning any uncooked cut of pork, including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin, or cutlet, that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives. Whole pork meat does not include combination food products, including soups, sandwiches, pizzas, hotdogs, or similar processed or prepared food products, that are comprised of more than pork meat, seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives.

Existing law, section 25991(v) of the HSC defines “whole veal meat” as meaning any uncooked cut of veal, including chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin, or cutlet, that is comprised entirely of veal meat, except for seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives. Whole veal meat does not include combination food products, including soups, sandwiches, pizzas, hotdogs, or similar processed or prepared food products, that are comprised of more than veal meat, seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives.

Existing law, section 25992 of the HSC specifies the exceptions to the provisions of Chapter 13.8 of Division 20 of the HSC, including during medical research; during examination, testing, individual treatment, or operation for veterinary purposes; during transportation; during rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions; during slaughter; for a breeding pig during the five (5) day period prior to her farrowing date and while

she is nursing piglets; and during temporary periods of no more than six (6) hours in an 24-hour period and no more than 24 hours total in any 30-day period.

Existing law, section 25993(a) of the HSC specifies that the Department and DPH shall jointly promulgate rules and regulations for the implementation of these provisions by September 1, 2019.

Existing law, sections 25993(b) and (c) specify that a violation of any of the provisions of Chapter 13.8 of Division 20 of the HSC is a misdemeanor and punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a period not to exceed 180 days or by both, and that provisions of the chapter supersede any conflicting regulations, including those in Chapter 6 (commencing with section 40601) of Subdivision 6 of Division 2 of Title 22 of the CCR.

Existing law, section 25993.1 of the HSC specifies that it shall be a defense to any action to enforce section 25990(b) that a business owner or operator relied in good faith upon a written certification by a supplier that the whole veal meat, whole pork meat, shell eggs, or liquid eggs at issue was not derived from a covered animal confined in a cruel manner, or from the immediate offspring of a breeding pig who was confined in a cruel manner.

Existing law, section 25994 of the HSC specifies that the provisions of the chapter are in addition to, and not in lieu of, any other laws protecting animal welfare, including the California Penal Code, and shall not be construed to limit any state law or regulations protecting the welfare of animals, nor prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations.

Existing regulations in 3 CCR section 1350<sup>6</sup> (Shell Egg Food Safety) specify the minimum cage size requirements for egg producers and egg handlers, as defined by Food and Agricultural Code (FAC) section 27510<sup>7</sup>, for marketing unpasteurized shell eggs in California. The Egg Safety and Quality Management (ESQM) program ensures eggs have been properly handled, labeled, transported, and refrigerated by inspecting eggs at production, packing, distribution, and retail facilities; and are wholesome and safe to eat. However, ESQM program regulations do not exist to implement the scope of animal confinement provisions mandated by the Act for egg-laying hens. The intent of the ESQM program's section 1350 regulations is to prevent the occurrence of *Salmonella enterica* serotype Enteritidis (SE) contamination of shell eggs at production and to prevent SE contaminated shell eggs from being marketed to California consumers.

Regulations do not exist for the confinement of veal calves and breeding pigs, or the covered products of whole veal meat and whole pork meat as mandated by the Act.

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<sup>6</sup> 3 CCR section 1350

<sup>7</sup> Food and Agricultural Code section 27510

Therefore, the Department is proposing to adopt new Chapter 10 (commencing with section 1320), of Division 2, of Title 3 of the CCR to specify the requirements for persons housing egg-laying hens, veal calves, and breeding pigs, and/or selling specified whole veal meat, whole pork meat, shell eggs, and liquid eggs in the State in accordance with sections 25990, 25991, and 25993 of the HSC.

#### PROBLEM(S) INTENDED TO ADDRESS

Health and Safety Code section 25993 requires the Department and DPH to jointly promulgate regulations to implement the provisions of the Act relating to the confinement of egg-laying hens, veal calves, and breeding pigs, and/or selling specified whole veal meat, whole pork meat, shell eggs, and liquid eggs in the State. Existing regulations in 3 CCR section 1350 (Shell Egg Food Safety) specify the egg-laying hen confinement standards for egg producers and egg handlers as defined by FAC section 27510 for marketing (only) unpasteurized shell eggs in California; these regulations conform with the mandates of the Act for egg-laying hen confinement only until January 1, 2022. No regulations exist to implement the full scope of animal confinement provisions mandated by the Act, which include egg-laying hens, veal calves, and breeding pigs, and the covered products of raw and pasteurized shell eggs and liquid eggs, whole veal meat, and whole pork meat. The intent of this proposal is to comply with HSC section 25993 by establishing regulations that implement, interpret, or make specific HSC sections 25990, 25991, 25992, 25993.1, and 25994 as applicable to housing egg-laying hens, veal calves, and breeding pigs, and/or selling specified whole veal meat, whole pork meat, shell eggs, and liquid eggs in the State. The proposed regulations will assure California consumers that covered animals raised in the State are not confined in a cruel manner and covered products consumers purchase, regardless of origin, are compliant with the Act.

#### STATEMENT OF FACTUAL BASIS AND RATIONALE

This proposal establishes regulations, jointly promulgated by the Department and DPH, to implement the provisions of the Act which codified farm animal confinement standards, definitions, and compliance timeframes affecting the housing of egg-laying hens, veal calves, and breeding pigs and the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat to prevent covered products from covered animals raised in a cruel manner inside or outside of the State from being sold to California consumers.

In December 2018, representatives from DPH and the Department met to initiate implementation of the Act jointly as required, and mutually agreed that the Department would take the lead on regulation development, implementation, and oversight due to the extensive livestock and egg farm expertise of the Department's Animal Health and Food Safety Services Division (AHFSS). The Department's AHFSS Division is responsible for the safety and security of meat, poultry, egg and dairy products, along with other foods of animal origin, often coordinating efforts with various local and federal government agencies and stakeholders to provide services to protect the public and animal health. Additional involvement between the Department and DPH included joint participation in a stakeholder workshop held February 22,

2019<sup>8</sup> where the Department described requirements of the Proposition 12 initiative, along with early concepts of a potential regulatory framework for implementation and oversight. The Department solicited comments and information from stakeholders through the Proposition 12 website April 9, 2019-June 3, 2019 to help guide the development of a regulatory structure for effective implementation of the Act. These comments were reviewed and posted on the Proposition 12 website ([www.cdfa.ca.gov/ahfss/Prop12.html](http://www.cdfa.ca.gov/ahfss/Prop12.html)) for viewing by stakeholders. After consideration of initial comments and information from stakeholders, the Department drafted a regulatory framework and shared drafts of regulation text with DPH in October and December of 2019. Two draft versions of proposed regulations were posted on the Department's Proposition 12 website on December 23, 2019 and July 22, 2020 for additional informal feedback from stakeholders. The Department revised the proposed regulations based on the informal feedback received, which included comments related to potential impacts on stakeholders' business operations and the need for greater clarity in some sections of the proposed rules. The revised draft text was again shared with DPH for input in March, April, and October of 2020, as well as the Standardized Regulatory Impact Assessment of Proposed Regulations to Implement Proposition 12 (SRIA)<sup>9</sup>. On November 13, 2020, DPH in a memo to the Office of Administrative Law finalized their agreement and authorization to proceed with this proposal as presented<sup>10</sup>.

Pursuant to the Act, the Department's proposed regulations describe a program to implement prohibitions on the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat derived from cruelly confined animals for Californians to have confidence that the covered products they purchase come only from producers which meet specified animal housing standards, as described. One aspect of this proposed program is the written certification which is described in section 25993.1 of the HSC as a best defense to any action by a supplier of the shell eggs, liquid eggs, whole veal meat, and whole pork meat to a buyer that the covered product was not derived from a covered animal confined in a cruel manner as defined in section 25991 of HSC. This written certification is to ensure covered products are compliant with the Act as there are potentially multiple sales and exchanges through the supply chain from farm to a California consumer's fork. Written certification by a third-party certifier to an operation is the best option to ensure an unbiased evaluation of compliance and to ensure integrity of the written certification as meaning the animals or product from those animals it represents were not confined in a cruel manner.

After much consideration of stakeholder comments and consultation with administrators and inspectors of comparable existing regulatory programs [the Department's ESQM program and State Organic Program (SOP)<sup>11</sup>], the Department in formulating this proposal determined that any effective regulatory framework must include regulating sales of specified products in

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<sup>8</sup> CDFA Workshop to Discuss CA Proposition 12: Farm Animal Confinement Initiative (2018), February 22, 2019, Sacramento, CA

<sup>9</sup> DA Sumner et al. Standardized Regulatory Impact Assessment of Proposed Regulations to Impact Proposition 12.

<sup>10</sup> California Department of Public Health memo dated November 13, 2020

<sup>11</sup> California Department of Food and Agriculture State Organic Program

California irrespective of the product's origin, and equally implementing the proposed rules upon in-state and out-of-state farms and businesses that sell covered products within or into the State. To further support the regulatory framework presented in this proposal, the Department offers the following statistics taken from the SRIA:

In 2019, Californian's consumed:

- 7.9 million pounds of veal with 0% of those veal calves raised in California.
- 1,205 million pounds of whole pork meat with only 1.6% of the meat coming from breeding pigs or immediate offspring of breeding pigs raised in California.
- 656 million dozen shell eggs with 55% of the shell eggs coming from egg-laying hens raised in California.
- 314 million dozen liquid eggs with only 1.5% of the liquid eggs coming from egg-laying hens raised in California.

Given these data, it is clear to the Department that farms housing animals covered under the Act's confinement standards are located both inside and outside of California and that a large proportion of whole veal meat, whole pork meat, and liquid eggs originate from outside of the State's borders and enter through the Department's Border Protection Stations (agricultural inspection stations). Due to the large number of producer operations located outside of the boundaries of the State and written certification being a defense to any action that covered products were derived from covered animals not confined in a cruel manner as described in section 25993.1 of the HSC, the Department formulated this proposal. This animal care program is structured to implement third-party certification, registration, labeling, and inspection of farms raising covered animals that will produce and distributors that will sell covered products destined for use in California. Similar to the United States Department of Agriculture (USDA) National Organic Program (NOP) (7 CFR Part 205)<sup>12</sup>, the certification of producers and distributors will rely heavily on third-party certifiers.

The USDA NOP is a voluntary federal regulatory program that develops and enforces uniform national standards for organically produced agricultural products in order to market as organic in the United States (U.S.). Operating as a public-private partnership, the USDA NOP accredits third-party organizations to certify that farms meet the national organic standards. The USDA and accredited certifiers work together to ensure this voluntary marketing program for producers protects consumer confidence in the integrity of the USDA Organic Seal. The Department's SOP oversees and enforces the USDA organic regulations within California and requires registration of organic "handlers" (our equivalent of a distributor), businesses selling certified organic products in the State, with the Department.

Given use of third-party certifiers is successfully proven to meet the requirements of the large-scale USDA NOP, the Department is similarly proposing their use to verify in accordance with the Act that eggs, veal, and pork come from animals not confined in a cruel manner. The

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<sup>12</sup> USDA National Organic Program, 7 CFR Part 205



Department estimates third-party certifiers pursuant to this proposal will potentially need to annually certify as compliant with the Act:

- Approximately 6,000 distributors selling covered product in California;
- 1,100 in-state egg and pork producer operations; and
- 12,750 out-of-state, including out-of-country, egg, pork, and veal producer operations raising animals for covered product destined to be sold in California.

It is impracticable for the Department to solely manage the oversight of this volume of entities participating in the raising and sale of covered animals and covered product in the State. In addition, the resources needed to complete a certification process solely by the Department would be great, therefore, use of third-party certifiers is the most effective and efficient means to ensure California consumers have confidence when purchasing covered products in this State. However, on an as-needed basis, the Department will serve as a certifier to provide certification services to ensure no one is inadvertently excluded from selling their covered products in California. For example, if a producer does not have access to certification services from an accredited third-party or their own local government agency, then the Department can provide certification services.

In further support of implementing use of third-party certifiers, government entities outside of California and many private companies are currently used as third-party certifiers on farms for established animal care, organic, or environmental sustainability verification programs including, but not limited to, the USDA NOP, state Departments of Agriculture, Validus, American Humane Certified, Certified Humane, and Earth Claims.

Additional factors considered by the Department in developing the proposed regulatory framework is the scope of products covered under the mandates of the Act and the extent of businesses, not-for-profits, and State institutions that would be impacted. In the Department's SRIA, two reasonable alternative frameworks to the one proposed in these regulations were described; one costing less to the State, but excluding some products in a manner the Department ultimately determined would be inconsistent with the basic purpose of the Act, and a second higher cost alternative that would increase the burden on retailers and restaurants and also highly impact export activity through California ports. The inclusion or exclusion of specific products to properly fulfill the purpose of the Act, and the resulting effects to small businesses, such as family owned retail stores and restaurants, were important considerations by the Department when developing a regulatory framework, and these regulations propose a system the Department considers both practical and necessary to effectuate the purposes of the statutes approved by the California electorate.

Based upon the above, the Department is proposing a regulatory structure modeled after the USDA NOP. Collectively, the success of the USDA NOP regulatory model and other existing well proven programs operated by the Department such as the ESQM program and SOP; the high proportion of covered products entering California from out-of-state farms and suppliers; and, the wide breadth of products and businesses to be regulated in order to effectively fulfill the purpose of the statutes, the Department has determined that nothing less than the regulatory

structure in the proposed regulations will accomplish the intended goals of the Proposition 12 initiative.

Highlights of the Department's proposed regulatory framework include:

- A registration program for establishing a regulatory inventory of businesses both in-state and out-of-state that distribute covered products into California commerce;
- An accreditation program for private third-party certifying agents that evaluate and document conformance of farms and distributors with California animal housing and confinement standards, as well as effective covered animal and covered product segregation and traceability;
- Department audits for verifying the skills, competencies, and activities of private third-party certifiers that evaluate conformance with animal cruelty and confinement provisions of the HSC at both in-state and out-of-state operations that house veal calves, breeding pigs, and egg-laying hens;
- A voluntary registration program for out-of-state government entities performing certification services of farms and distributors in compliance with the Act and these regulations.
- Risk- and complaint-based Department inspections of producers and registered distributors for system verification and to assure California consumers that products they purchase, regardless of origin, are compliant with the Act;
- Outreach and surveillance of grocery retailer locations to ensure compliance where covered products are presented for sale to consumers, including compliant suppliers;
- An investigative unit for enforcing violations of the animal cruelty provisions of the Act, including criminal case development for submission to appropriate prosecutorial authorities under the HSC and the Business and Professions Code; and
- Border surveillance by monitoring shipments and associated documentation of covered products entering California through the Department's Border Protection Stations.

This program utilizing a proven regulatory framework of registration and third-party certification will ensure that only Act-compliant shell eggs, liquid eggs, whole veal meat, and whole pork meat are sold to Californians, whether from animals housed in California or outside of the State. The proposed regulations also establish how the statutory mandates of the Act will be implemented and verified to assure California consumers that products they purchase, regardless of origin, are compliant with the Act.

To implement the provisions of the Act relating to farm animal confinement standards, the Department proposes the following regulations in accordance with HSC sections 25990, 25991, 25992, 25993, 25993.1, and 25994:

1) Adopt new Chapter 10. Animal Confinement.

The Department proposes new Chapter 10 under Division 2 of Title 3 of the CCR to specify the requirements for persons housing egg-laying hens, veal calves, and breeding pigs, and/or selling specified shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State in accordance with HSC sections 25990, 25991, 25992, 25993, 25993.1, and 25994. The proposed regulations further clarify which shell egg, liquid egg, and veal and pork meat products will be subject to the Act's animal confinement standards and describe how implementation will be accomplished. The Department proposes these regulations to implement, interpret, and make specific the meaning of key legislative terms and mandates stated in the Act based upon initial feedback and informal comments from stakeholders including requests for clarification on how their affected industries are required to comply with the law.

Proposed Chapter 10 will consist of six new articles: Article 1. Egg-laying Hens; Article 2. Veal Calves; and Article 3. Breeding Pigs to clarify the confinement standards applicable to these animals and the marketing of covered products derived from them, and to establish the registration, facility inspection, conveyance inspection, and labeling and marking requirements for persons marketing those products. The audience for the regulations described in these three Articles is largely specific to a covered animal, with each separate production species (i.e., laying hens, veal calves and breeding pigs) having unique housing systems, levels of operational integration from farm to consumer, and product distribution and supply chain characteristics. For example, a veal producer is most commonly only a veal producer and does not also raise breeding pigs. Likewise, the distribution of eggs from cage-free producers to stores and restaurants may differ substantially from the distribution of pork meat processed through a federally inspected plant. Thus, for ease of the different industries to understand, comment, and be compliant with the proposed requirements, the Department has divided the regulations into separate Articles 1 through 3 based on covered animal/product. While there are some broad similarities among the three Articles, there are important differences in definitions and requirements specific to animal/product types that will be easier for stakeholders to understand and implement as separate Articles dedicated to each animal and animal product type, than if applicable regulations for egg-laying hens, veal calves, and breeding pigs were all combined. In addition, any revisions and updates to regulations needed for only one particular covered animal or product in the future could be more easily considered by both the Department and impacted stakeholders if the requirements for the three different production species are delineated in separate articles as proposed.

Chapter 10 will also include Article 4. Exceptions which further clarifies the exceptions to confinement requirements included in the Act and Article 5. Certification and Accredited Certifiers which establishes the requirements for inspection, review, and certification of a producer or distributor by a certifying agent and the accreditation of a private third-party entity. Lastly, Article 6. Informal Hearing and Mediation which establishes processes for stakeholders to dispute adverse outcomes issued under these proposed regulations. All new articles are necessary to implement mandates of the Act and to assure California consumers that covered products they purchase, regardless of origin, are compliant with the Act.

## 2) Adopt new Article 1. and sections 1320 through 1320.10.

## Adopt Article 1. Egg-laying Hens.

Article 1 with sections 1320 through 1320.10 of this proposal interpret and implement the animal confinement laws described in the Act for egg-laying hens and their specified products sold in the State for the prevention of animal cruelty. The requirements under the existing ESQM program pursuant to Title 3 section 1350 of the CCR (Shell Egg Food Safety) are in place for food safety to prevent the occurrence of SE infections in humans. The Department's ESQM program is responsible for the safety of unpasteurized shell eggs that are produced, shipped, or sold in California. The ESQM program ensures eggs have been properly handled, labeled, transported, and refrigerated by inspecting eggs at production, packing, distribution, and retail facilities; and ensures eggs are wholesome and safe to eat. A large part of the ESQM program incorporates SE surveillance and control measures consistent with the U.S. Food and Drug Administration (FDA) Egg Safety Rule (21 CFR Part 118) to prevent the occurrence of SE contamination of shell eggs at production, and to prevent SE contaminated shell eggs from being marketed to California consumers. As a part of these efforts, the ESQM requires SE prevention measures for the production, storage, and transportation of shell eggs which include: testing for SE at specified intervals in the production cycle; a vaccination program; and specific minimum enclosure requirements for the egg-laying hens as specified in section 1350(d)(1). The requirements as proposed in this Article for egg-laying hens and the sale of the shell eggs and liquid eggs from those hens go beyond the shell egg food safety requirements of the Department's ESQM program in the following ways:

- 3 CCR section 1350 defines the covered products to include only shell eggs (excluding pasteurized shell eggs) of chickens, turkeys, ducks, geese, or any other species of fowl; HSC section 25991 defines a covered product to include shell eggs (including pasteurized shell eggs) and liquid eggs from chickens, turkeys, ducks, geese, or guineafowl.
- 3 CCR section 1350 provides for a minimum of 144 square inches of usable floorspace per hen; HSC section 25991 provides for a minimum of 144 square inches of usable floorspace per hen only through December 31, 2021.
- HSC section 25991 mandates cage-free for all egg-laying hens beginning January 1, 2022, meaning:
  - In multi-tiered aviaries and partially slatted systems, a minimum of 1.0 sq. ft. of usable floorspace per hen must be allocated.
  - In a single-level all-litter floor system where hens have limited access to vertical space, the usable floorspace allocation per hen shall be increased to a minimum of 1.5 sq. ft. per hen.
- HSC section 25991 also requires producers to provide enrichments that allow hens to exhibit natural behaviors including scratch areas, perches, nest boxes, and dust bathing areas.
- HSC section 25991 requires hen housing system to allow employees to provide care while standing within the hens' usable floorspace.

Therefore, the Department is proposing new Article 1 relating to egg-laying hens and the requirements for the production and distribution of shell eggs and liquid eggs sold in the State in accordance with sections 25990 and 25991 of the HSC.

Adopt Section 1320. Definitions.

Section 1320 establishes definitions of terms used in this Article and clarifies that the meaning of definitions for terms worded in the singular form also applies to the plural form and vice versa as context requires or the case may demand. Although the Act includes the meaning of some terms, it is necessary to additionally include a list of terms as defined in these proposed regulations.

Section 1320(a) specifies “Act” means the Farm Animal Cruelty statute, as amended pursuant to the HSC, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1320(b) specifies “audit trail” means records relating to the identification, source, and traceability of a load or shipment of shell eggs or liquid eggs that are marketed in California. The purpose is to provide egg producers, egg distributors, end-users, enforcement officers, and certifying agents with a description of the type of information that may be considered a record and that would need to be maintained as verification that the shell eggs and liquid eggs were derived from egg-laying hens not confined in a cruel manner. Such records may be in hard copy or electronic format. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1320(c) specifies “certified operation” has the same meaning as defined in section 1326(e) of the Chapter. Section 1326 establishes definition of terms used in Article 5, which proposes the requirements for certification and accredited certifiers and therefore the appropriate location for the complete definition of the term. Justification for this definition can be found in the corresponding location of this document. This definition is necessary to clarify the term as used in these regulations.

Section 1320(d) specifies “certifying agent” has the same meaning as defined in section 1326(f) of the Chapter. Section 1326 establishes the definition of terms used in Article 5, which proposes the requirements for certification and accreditation of certifiers and therefore the appropriate location for the complete definition of the term. Justification for this definition can be found in the corresponding location of this document. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1320(e) specifies “commercial sale” means any type of sale, exposure or possession for sale, exchange, barter, trade, transfer possession, or other distribution in California commerce including, but not limited to, transactions by a retailer with a consumer and sales made through an internet platform. This subsection also specifies what a commercial sale does not include,

such as shell eggs or liquid eggs produced outside of the State that are only transported through the State, without any processing or repackaging, to locations outside the State or country as stated in subsection (e)(1) which is consistent with HSC section 25990. Under this exception, no sale of a covered product would occur within California, and products would be allowed to pass through the State exclusively for purposes of export or trans-shipment to other destinations. This exemption of commercial sale is necessary because the ballot initiative provided California consumers an opportunity to determine how animals producing covered products purchased in the State are raised and not to covered products trans-shipping through the State. Including these shipments under a commercial sale will have negative impacts on transportation systems, ports, trade, and consumers outside of California that are beyond the intent of the Act.

A commercial sale would also not include any sale that takes place on the premises of an establishment that holds an establishment number (prefix "G") granted by the USDA-FSIS under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.), as stated in subsection (e)(2). This section is necessary to incorporate the exemption provided by the Act using specific plant designations understood by distributors. With respect to subsection (e)(2), any sale of shell eggs or liquid eggs subsequent those sales where possession is taken at the USDA-FSIS plant is considered a sale pursuant to the Act. The Act exempts a commercial sale where possession is taken at the exempted location due to federal inspection authority at said location. The exemption applies to the location not the product, so further resale would not be exempted, meeting the intent of the Act to provide California consumers products from covered animals that are not raised in a cruel manner as defined. For some products like liquid egg, virtually all product passes through an exempt location, yet the product is explicitly included in the language of the Act, further supporting subsection (e)(2) clarifying that the exemption applies to the location, not the product.

Subsection (e)(3) exempts any donations to a religious, charitable, scientific, education, or other nonprofit organization that is exempt from federal taxes under section 501(c)(3) of the U.S. Internal Revenue Code<sup>13</sup>. These requirements are necessary to explain the meaning of the term "commercial sale" and to indicate the specific transactions or transfers of possession that are subject to the provisions of HSC sections 25990 and 25991 and as used throughout the Article.

Subsection (e)(4) clarifies exemption to the definition of commercial sale as specified in subsections (e)(1) through (4) applies only to the specific transaction, not to the covered product, therefore, the exemptions listed do not apply to any subsequent sale of shell eggs or liquid eggs. The purpose for this subsection is to clarify to stakeholders that the exemption of shell eggs or liquid eggs which move through a federally inspected plant in the definition of commercial sale only applies to that specific transaction where physical possession is taken at the federally inspected facility as defined in HSC section 25991(o). The Department included e(4) in this definition because feedback from stakeholders including many questions about this

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<sup>13</sup> Internal Revenue Code (26 U.S.C. section 501(c)(3))

exemption of commercial sale and potential impact of shell eggs or liquid eggs purchased in the State for further food processing.

Section 1320(f) specifies “consumer” means any person who purchases shell eggs or liquid eggs, as defined in HSC section 25991(p) and (l), respectively, and this Article, for the sole purpose of his or her own family use or consumption, or that purchases or consumes shell eggs or liquid eggs at a restaurant, food facility, or other similar business that serves shell eggs or liquid eggs to customers or patrons. This definition is necessary to explain who is considered a consumer in the context of these regulations and the meaning of the term and as used throughout the Article.

Section 1320(g) specifies “container” means, as described, devices which could be used to facilitate the handling, distribution, transportation, or commercial sale of shell eggs or liquid eggs. Such containers would be subject to inspection by the Department, enforcement officer, or a third-party certifying agent to ensure compliance with HSC sections 25990 and 25991 and the requirements of these regulations. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1320(h) specifies “cottage food operation” means an establishment as defined in HSC section 113758<sup>14</sup>. It is necessary for the Department to include this referenced definition because cottage food operations would be affected by the provisions of this proposal as an end-user needing to procure compliant shell eggs and liquid eggs for their business.

Section 1320(i) specifies “Department” means the California Department of Food and Agriculture, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1320(j) specifies “Document of title” means, as described, a document that in the regular course of business is treated as evidence that the person in possession of it is entitled to receive, hold, and dispose of the document and shell eggs or liquid eggs it covers. This definition is necessary to clearly identify specific forms of documentation the Department considers a “document of title” which are often presented in the form of a bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of shell or liquid eggs.

Section 1320(k) specifies “egg distributor” means a person or facility engaged in the business of commercial sales or distribution of shell eggs or liquid eggs to an end-user as defined in 1320(o) of this Article in the State. The definition is necessary to explain the meaning of the term as used throughout the Article, that an egg distributor could also be an egg producer, such as farmers selling shell eggs directly to a consumer in a farmer’s market, and is not a person or facility that only sells to another distributor or only handles shell eggs or liquid eggs as an end-user, such as a retailer that receives eggs to sell from that one location directly to a consumer. Given the complexities of the food production and distribution system, this definition is

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<sup>14</sup> Health and Safety Code section 113758

necessary to minimize the number of entities that must register and be certified while maximizing assurance that product sold to consumers in California are from animals not raised in a cruel manner as defined. Identifying an egg distributor as the final distribution location before products are shipped or sold to a myriad of retail or other end-user locations will minimize the regulatory burden for stakeholders. Including the term “facility” is important to make it clear that if a single business entity operates a distribution center where covered product is then moved to many individual retail locations, end-users, owned by the same business entity, the distribution center is considered an egg distributor and will need to comply with the requirements of this proposal.

Section 1320(l) specifies “egg-laying hen” has the same meaning as stated in section 25991(g) of the HSC. The definition further clarifies that, for purposes of the subsection and Article, a female hen kept for egg production means a sexually mature female bird confined for the purpose of laying eggs where the eggs are destined for human consumption. This clarification of the definition of an egg-laying hen is consistent with the definition of “Shell Egg” in section 25991(p) of HSC. The clarification is needed to distinguish immature hens which are smaller than mature hens and require different care such as brooders and incubators and egg-laying hens kept for the purpose of producing fertile eggs as a breeding operation from egg-laying hens kept for the purpose of producing eggs for human consumption. The definition is necessary to explain that the requirements of this proposal do not apply to immature chicks, pullets that are not laying eggs, or breeding hens if their eggs are never used for human consumption because these poultry may require different housing to maximize animal care than that described in the Act.

Section 1320(m) specifies “egg producer” means a person engaged in the business of producing eggs from domesticated chickens, turkeys, ducks, geese, or guineafowl, and clarifies that the definition does not include official plants that hold an establishment number (prefix “G”) granted by the USDA, Food Safety Inspection Service (FSIS) under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) which is consistent with the exclusion of these facilities from the definition of a “farm” in section 25991(i) and “sale” in HSC section 25991(o). These facilities are exempt because they are inspected by the USDA-FSIS tasked to inspect egg products sold in interstate commerce, and to reinspect imported products to ensure that they meet U.S. food safety standards. The definition specifies that official plants inspected under the federal Egg Products Inspection Act and excluded from the definition of an egg producer, are those that hold an establishment number of prefix “G” granted by the USDA-FSIS, which identifies the plant as breaking, handling, or processing egg products<sup>15</sup>. Inclusion of this definition is necessary to explain the meaning of the term as used in this Article.

Section 1320(n) specifies “enclosure” means any cage, crate, pen, or other structure used to confine an egg-laying hen. This definition is necessary to further clarify and interpret the definition of an enclosure as stated in HSC section 25991(h) so a person understands what

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<sup>15</sup> USDA, FSIS Meat, Poultry and Egg Product Inspection Directory, Legend for Establishment Numbers



structures would be considered an enclosure subject to the confinement standards and requirements of this proposal.

Sections 1320(o), (o)(1), (o)(2), (o)(3), and (o)(4) specify the meaning of “end-user”. In subsection (o)(1) an end-user can mean a consumer; subsection (o)(2) states an end-user includes a retailer that only receives shell eggs and liquid eggs for commercial sale directly to a consumer; subsection (o)(3) states an end-user can mean a food processing facility or cottage food operation that only receives shell eggs or liquid eggs for use as an ingredient for manufacturing a combination food product not meeting the definition of a shell egg or liquid egg; and subsection (o)(4) describes that an end-user can mean a restaurant or food facility or other similar business only cooking and serving shell eggs or liquid eggs to customers, patrons, or guests for consumption. The definition of an end-user as described is necessary to clearly identify the persons or businesses that receive products only for purposes of manufacturing foods not covered under the Act, food service in restaurants serving patrons, or direct sales to consumers for only personal consumption. The regulatory burden of this proposal to ensure shell eggs and liquid eggs sold in the State are compliant with the Act is at the level of an egg distributor as defined in 1320(k) to be someone selling to an end-user. Understanding the definition of an end-user is integral into understanding who is an egg distributor. End-users must purchase and sell compliant shell eggs and liquid eggs, but they are not required to register with the Department like an egg distributor.

Sections 1320(p), (p)(1), and (p)(2) specify the meaning of “enforcement officer”. Subsection (p)(1) describes enforcement officer to mean any person employed by or under supervision by the Department and in subsection (p)(2) to mean any person employed by or under supervision by the DPH. It is necessary the Department define this term to inform the public of representatives that would exercise authority to conduct inspections of conveyances and shipping documents at the Department’s Border Protection Stations, or tag, seize, deny entry, or divert shipments of covered products that are in violation of sections 25990 through 25992 of the HSC or the requirements of this proposal.

Section 1320(q) specifies “flavoring”, for purposes of section 25991(l) of the HSC, means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and Part 184 of 21 CFR<sup>16</sup>. Addition of milk and butter for flavoring purposes is also included because the Department understands this to be common practice in liquid egg preparation of products sold to an end-user. The definition is necessary to explain the meaning of the term as used in the Article and for consistency with federal regulations describing safe and approved flavoring substances in food.

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<sup>16</sup> 21 CFR Part 172 sections 172.510 and 172.515(b); Part 182 sections 182.10, 182.20, 182.40, and 182.50; and Part 184

Section 1320(r) specifies “food facility” means a facility as defined in section 113789 of the HSC<sup>17</sup>. The Department believes consistency with the California Retail Food Code under Part 7, Division 104 (Environmental Health) of the HSC is necessary for clarity purposes among the regulated industry and to explain the meaning of the term as used throughout the Article.

Section 1320(s) specifies “food processing facility” means a facility as defined in section 109947 of the HSC<sup>18</sup>. The Department believes consistency with the Sherman Food, Drug and Cosmetic Law under Part 5, Division 104 (Environmental Health) of the HSC is necessary for consistency and clarity purposes among the regulated industry and to explain the meaning of the term as used throughout the Article.

Section 1320(t) specifies “in its shell form”, for purposes of section 25991(p) of the HSC, means any egg that was from an egg-laying hen as it is still in the shell raw, pasteurized, or hard-cooked and out of the shell as a peeled hard-cooked egg. The definition includes when hard-cooked eggs are co-packaged with other foods. For example, packages of ready-to-eat food items purchased from a grocery store or food facility could include various foods such as fruit, vegetables, salad greens, together with a hard-boiled egg that is sliced, chopped, or whole. It is necessary to explain by having this definition that hard-cooking, slicing, chopping, or packaging an egg alongside other foods, does not mean the egg-laying hen producing the eggs may be housed in a manner that does not comply with the animal cruelty provisions and confinement standards of HSC sections 25590 through 25992 and the requirements of this proposal. The definition as specified, provides clarity to what types of eggs are covered under these regulations and is necessary to fulfill the purpose of the Act approved by California voters.

Section 1320(u) specifies “liquid eggs” has the same meaning as defined in HSC section 25991(l). The subsection further clarifies liquid eggs includes, but is not limited to, liquid eggs co-packaged with other food products, such as, compartmentalized packaging with cheese, vegetables, or meat in omelet or egg scramble products to be prepared and cooked at home by consumers, as well as common and standardized food products made of liquid eggs irrespective of whether the liquid eggs are frozen or dried, or cooked as egg patties or egg pucks. As such, the proposal adopts the standardized definitions of liquid, dried, and frozen eggs under 21 CFR, Part 160<sup>19</sup>, as specified in subsections (t)(1) through (t)(3), any separate component of those products as stated in subsections (t)(4) through (t)(9), and any mixture of those products as described in subsections (t)(10) and (t)(11). In addition, the definition of liquid eggs in this proposal includes products that are marketed, labeled, and sold as liquid eggs pursuant to section 101.3 of 21 CFR<sup>20</sup> as stated in (t)(12). The definitions provided are necessary to clearly describe the types of liquid eggs that would be regulated under this proposal as they are definitions already used and understood by producers, processors, handlers, and users of liquid eggs. It is necessary in order to fulfill the purpose of the statute to clarify that freezing, drying, cooking as a patty or puck, or packaging liquid eggs alongside other

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<sup>17</sup> Health and Safety Code section 113789

<sup>18</sup> Health and Safety Code section 109947

<sup>19</sup> 21 CFR Part 160

<sup>20</sup> 21 CFR Part 101 section 101.3

foods, does not mean the egg-laying hen producing the eggs may be housed in a manner that does not comply with the animal cruelty provisions and confinement standards of HSC sections 25590 through 25992 and the requirements of this proposal.

Section 1320(v) specifies “pasteurized” means a process applied to eggs in the shell or liquid eggs that has been approved by the FDA, USDA, DPH, or Department. The Department believes it is necessary to define the term “pasteurized” to include the process applied to either eggs in the shell or liquid eggs in a manner consistent with the definition for “pasteurize” pursuant to 21 U.S.C. 343 section 403 (Food, Drug and Cosmetics Act) or 9 CFR section 590.5, and “pasteurized in-shell eggs” pursuant to HSC section 109992 and FAC section 27519.6<sup>21</sup>. Additionally, the Department did not want to limit the definition to just one specific process of pasteurization, and this definition is necessary to also allow for new or emerging pasteurization processes to be developed subject to regulatory approval.

Section 1320(w) specifies “person” has the same meaning as stated in section 25991(m) of the HSC. The term “person” is used extensively in the proposed regulations and the Department believes it is necessary to include this definition as stated in HSC section 25991(m) for ease of reference by the public and the regulated industry and to provide greater clarity for understanding the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Section 1320(x) specifies “principle display panel” means that part of a label most likely displayed, presented, shown, or examined customarily in retail sales. This definition is necessary to explain the meaning of the term as used in the Article because consumers would normally look at the display panel on a product for a description of its contents and these regulations require labeling of shell egg containers to demonstrate compliance with the Act.

Section 1320(y) specifies “retailer” means a facility location that conducts commercial sales of shell eggs or liquid eggs to a consumer without any further distribution to another end-user and who would need to be aware of the requirements of these regulations. The definition is tied to a specific business location where sales of shell eggs or liquid eggs to a consumer occur due to the complexities of the supply chain of covered product and vertical integration of many businesses selling covered product while there are also small, independently owned businesses selling shell eggs and liquid eggs to consumers in the State. Inclusion of this definition is necessary to explain the meaning of the term as used in this Article.

Section 1320(z) specifies “seasoning”, for purposes of section 25991(l) of the HSC, includes the seasonings listed in 21 CFR section 182.10 and Part 184. This definition is necessary to explain liquid eggs includes added seasonings. A specific list of the most commonly added seasonings is included in the definition, as well as references to federal regulations that include lists of seasonings and substances affirmed by FDA as generally recognized as safe and used

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<sup>21</sup> 21 U.S.C. 343 section 403, 9 CFR section 590.5, Health and Safety Code section 109992, and Food and Agricultural Code section 27519.6

by the regulated industry. The Department also believes it is necessary that the definition is consistent with federal regulations that describe safe and approved seasoning substances in food.

Section 1320(aa) specifies “shell egg” has the same meaning as stated in HSC section 25991(p). The definition, as specified, is necessary to explain shell eggs are products covered under these regulations. The term “shell egg” is used extensively in the proposed regulations and it is necessary to include this definition as stated in HSC section 25991(p) for ease of reference by the public and the regulated industry, and to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to Government Code (GC) section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

#### Adopt Section 1320.1. Egg-laying Hen Confinement.

Section 1320.1 establishes the enclosure requirements and associated timeframes for compliance pursuant to the Act and HSC sections 25990 and 25991. The Department is charged with implementing provisions of the Act to ensure California consumers have confidence that shell eggs and liquid eggs purchased in the State are derived from egg-laying hens, no matter the origin, that are raised in the manner as prescribed by the Act. This section is necessary to implement those provisions.

Section 1320.1(a) states that no egg producer or egg distributor shall knowingly sell or contract to sell shell eggs or liquid eggs in the State if they are from a hen confined in an enclosure that fails to meet the standards as detailed in the subsections below. This subsection is necessary to introduce the concepts of the subsections that follow for persons required to comply with the confinement standards for egg-laying hens when shell eggs and liquid eggs are marketed in California.

Section 1320.1(a)(1) specifies that prior to January 1, 2022, the enclosure shall provide a minimum of 144 square inches of usable floorspace per hen which is consistent with HSC section 25991(e)(4) that states the deadline for compliance as “after December 31, 2019.” The 144 square inches of usable floorspace per hen is also consistent with the ESQM’s shell egg food safety requirements in existing 3 CCR section 1350. This subsection is necessary to describe in the regulations the minimum enclosure requirements for egg-laying hens as mandated by the Act.

Section 1320.1(a)(2) is necessary to specify that commencing January 1, 2022, an enclosure shall be a cage-free housing system in compliance with the requirements as specified and discussed in subsections (a)(2)(A) through (a)(2)(D) below. The Department is using the

compliance date of “commencing January 1, 2022”, which is consistent with the requirement of HSC section 25991(e)(5) which states a compliance date of “after December 31, 2021” because it is clearer for purposes of general usage and understanding by the regulated industry and public.

Section 1320.1(a)(2)(A) specifies that the enclosure shall be an indoor or outdoor controlled environment within which hens are free to roam unrestricted. This subsection is necessary to ensure that producers are aware of the requirements to house hens in a cage-free environment. The hens must be kept in a controlled area to ensure the health and safety of the hens where they can be routinely inspected to prevent disease or prevent other types of hazards. This subsection is consistent with the requirements of HSC section 25991(c).

Section 1320.1(a)(2)(B) specifies that the enclosure shall provide enrichments to allow hens to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas. This subsection is consistent with HSC section 25991(c) and necessary to provide a clear and comprehensive listing within the regulation text of the minimum elements required for a cage-free system.

Section 1320.1(a)(2)(C) specifies the requirement that employees can provide care while standing within the egg-laying hens’ usable floorspace. This subsection is consistent with HSC section 25991(c) and necessary to ensure that employees at farms and facilities can move around in a standing posture within the space to provide care for the egg-laying hens and conduct related business operations. It is also included to provide a clear and comprehensive listing within the regulation text of the minimum elements required for a cage-free system.

Section 1320.1(a)(2)(D) is necessary to specify that the enclosure shall provide the minimum amount of usable floorspace per hen as required by the United Egg Producers Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing 2017 Edition which is expressly stated in HSC section 25991(e)(5). As the Guidelines are updated, access to the 2017 edition referenced by HSC section 25991(e)(5) may be challenging for egg producers and other stakeholders to find and access specific minimum confinement space requirements. Therefore, the Department proposes to state in subsections (i) through (iv) as described below the requirements from the 2017 Edition of the United Egg Producers guidelines which are necessary for clarity purposes and to ensure producers are aware of and have access to the usable floorspace requirements for housing hens in a cage-free system that allows for natural behaviors as follows:

- Subsection (i) specifies that multitiered aviaries in which hens have access to multiple elevated platforms shall provide a minimum of one (1) square foot of usable floorspace per hen. This is needed to ensure the hens have space for natural behaviors and is consistent with HSC section 25991(c)(1);
- Subsection (ii) specifies that partially slatted systems in which hens have access to elevated flat platforms shall provide a minimum of one (1) square foot of usable floorspace per hen. This will ensure hens have space for natural behaviors and is consistent with HSC section 25991(c)(2);

- Subsection (iii) specifies that single-level floor systems bedded with litter in which hens have limited or no access to elevated flat platforms shall provide a minimum of one and one-half (1.5) square feet of usable floorspace per hen. This will ensure hens have space for natural behaviors and is consistent with HSC section 25991(c)(3); and
- Subsection (iv) specifies the requirements for systems other than what is described in this proposal to house hens in a cage-free environment. They shall provide for a minimum of one (1) square foot of usable floorspace per hen in systems that provide hens with access to vertical space and shall provide a minimum of one and one-half (1.5) square feet of usable floorspace per hen in systems that do not provide hens access to vertical space. This subsection is necessary to provide for and clarify the requirements for any “future system” as stated in HSC section 25991(c)(4).

Section 1320.1(a)(3) specifies the definition of “usable floorspace” for clarity and consistency with HSC section 25991(s) as it pertains to egg-laying hens pursuant to the section. Restating this definition is necessary to ensure producers are aware of the requirements to house their egg-laying hens in compliance with these regulations without having to refer to HSC or the definitions section in this Article.

Section 1320.1(a)(4) specifies that the exceptions to confinement standards as described in HSC section 25992 and Article 4 apply to the requirements of the section. This subsection is necessary to ensure the public and regulated industry are aware that exceptions to the listed egg-laying hen confinement requirements are applicable under the circumstances specified in the Act and this proposal.

Section 1320.1(b) authorizes the Department to require that egg producers must, commencing January 1, 2023, hold a certification as a certified operation pursuant to Article 5 of this proposal. The purpose of the certification is to provide documentation of conformance to the confinement standards for egg-laying hens as mandated by HSC sections 25990 through 25992 and required in this proposal. Verification by inspection, by an unconnected third-party, on the premises where egg-laying hens are housed is necessary to properly ensure that shell eggs and liquid eggs entering California commerce are originating from farms in compliance with the confinement standards and animal cruelty provisions of the Act. Verification and certification are accepted core standards that maintain the integrity of other programs such as the USDA NOP and the Department’s ESQM program. As described in greater detail in Article 5 of this proposal, on-farm certification can be conducted by the Department, a third-party agent accredited by the Department, or an out-of-state government entity and would document an egg producer’s conformance with the requirements of HSC sections 25990 through 25992 and this proposal for purposes of selling shell eggs or liquid eggs from their hens within or into the State. This subsection in conjunction with egg distributor registration and certification is necessary to provide uniform verification that products sold in commerce in California originated from hens housed in compliance with the Act. Recognizing that initial certification may take time, the section includes a one-year delay until January 1, 2023 to acquire this certification.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### Adopt Section 1320.2. Egg Distributor Registration.

Proposed section 1320.2 gives the Department authority to establish the requirements for the registration of persons or businesses distributing shell eggs and liquid eggs sold within and into this State, which is a necessary component of creating an effective program to ensure California consumers have confidence that the egg-laying hens used for production of the shell eggs and liquid eggs, regardless of origin, were housed in accordance with the Act. The Department has been mandated to implement the Act to ensure only compliant shell eggs and liquid eggs are sold into and within California. This section provides authority to regulate sales of these covered products through registration of egg distributor entities. Registration of persons or businesses is a practical means to identify covered product sales and implement a mechanism for preventing the sales of noncompliant shell eggs or liquid eggs into and within the State. Therefore, pursuant to this proposed section, the Department is requiring any person or business engaged in the commercial sale of shell eggs or liquid eggs as an egg distributor defined in 1320(k) must have a valid registration with the Department.

Section 1320.2(a) gives the Department authority to require that persons conducting business in the State as an egg distributor, or an out-of-state egg distributor that conducts commercial sales of shell eggs or liquid eggs into California for purposes of human food, must register with the Department. An egg distributor, as defined in section 1320(k) of the Article, is the person or entity selling shell eggs or liquid eggs to an end-user (i.e., to a consumer, retailer, food processor, or restaurant) in the State. The Department proposes to register egg distributors to allow for verification that sales of shell eggs or liquid eggs are only from sources certified as compliant with the egg-laying hen confinement requirements of HSC sections 25991 and 25992 and section 1320.1 of this proposal. The registration requirement is necessary as it will allow the Department to establish an inventory of entities conducting sales of shell eggs and liquid eggs to end-users in the State and ensure through accompanying certification requirements that handling, distribution, and recordkeeping are conducted in an auditable manner to demonstrate the sourcing and sales of only products that are in full compliance with the law.

Section 1320.2(b) is needed to specify that any person who is required to register as an egg distributor is to submit an application for registration as provided by the Department which will request necessary information about the applicant that the Department will use to document registrants. Specifically, subsection (b)(1) requires the applicant provide business contact and location information, including the location of the distribution facility, and website and email addresses, which is standard business information necessary to identify a business and business contact or person to a location and/or to enable interaction with the person or business contact either in person, by mail or email. This subsection additionally requests a federal tax identification number which is necessary to allow the Department to distinguish individual business entities for accurate recordkeeping. A federal taxpayer identification is a unique

business identification number used as the Department requires a registration for each physical location of distribution and a business with unique federal taxpayer identification might have multiple distribution locations located within and outside of California requiring registration. Subsection (b)(2) requests the applicant to indicate the type(s) of covered products distributed in the State, which is necessary for the applicant to provide to the Department to document the covered product the person or entity is considering for distribution and that which the Department will need to know when determining compliance with the Act and the regulations.

Section 1320.2(c) specifies that the registration shall not be transferable to any person and shall be applicable only to the location for which it is originally issued. This subsection is necessary for tracking purposes to ensure the Department is made aware of the person registered as an egg distributor to conduct commercial sales of shell eggs or liquid eggs within or into the State and the physical location from which the distribution activity is occurring.

Section 1320.2(d) specifies that a registration is required for each facility location where any of the business practices of distribution requiring a registration will be conducted. This authority is necessary to provide the Department with information for the physical location of each facility distributing covered products to allow for tracking the distribution of shell eggs and liquid eggs to an end-user and to identify each location where an inspection, audit, or complaint follow-up investigation may be necessary to ensure only compliant products are sold in the State. Authority requiring a registration for each facility location will additionally provide the Department with information to address noncompliance violations at a single distribution facility of a company and direct consequences to that specific facility instead of all distribution locations under the same ownership engaging in commercial sale of covered product within or into the State.

Section 1320.2(e) specifies that an egg distributor shall not engage in the commercial sale of shell eggs or liquid eggs within or into the State unless they hold a valid registration from the Department for each facility location. This subsection authorizes the Department to regulate the commercial sale of shell eggs or liquid eggs for each facility location of an egg distributor through registration which is a practical means to identify covered product distribution and prevent the distribution of noncompliant covered product. This subsection is necessary to ensure that all persons conducting distribution activities in the State and the facilities where distribution is occurring are properly registered after review of a submitted application to the Department. Comprehensive registration of egg distributors is integral to implementing an effective animal care program the Department has been tasked to develop to ensure egg-laying hens kept for shell eggs and liquid eggs sold to consumers within the State, were not kept in a cruel manner, regardless of their origin.

Section 1320.2(f) specifies that any change in ownership, business name, business location, business closure, or change in contact information of a registered facility must be reported to the Department within 30 business days of such change to the Department. Thirty days is adequate time for a registered egg distributor to report changes in their operations and for the Department to adequately record the changes. This proposed subsection is necessary as it will



help to ensure the Department has the most up-to-date and accurate information of persons engaged in commercial sales of shell eggs and liquid eggs within and into the State as egg distributors.

Section 1320.2(g) specifies that all information on the application completed for registration and renewals for registration shall be truthful and not misleading. If an applicant or registrant is found to have provided false information, on an application for registration, the application cannot be accurately evaluated based on this false information. If after a registration is granted, it is found that a registrant provided false information on an application for registration, then registration was granted based on inaccurate information and may not have been granted otherwise. If an applicant is found to have provided false information, pursuant to this section, the Department may then deny, suspend, or revoke a registration. This subsection is necessary to inform the applicant that reporting and providing truthful information is a requirement because the Department will rely on this information when verifying compliance of shell eggs and liquid eggs sold through registered egg distributors to consumers and that those products meet the requirements of the Act.

Section 1320.2(h) specifies the duration the registration is in effect, which is 12 months from the date it is issued. This subsection gives the Department authority to collect, update, and validate information on an annual basis from egg distributors which is necessary for the Department to have in order to maintain an up-to-date list of egg distributors selling shell eggs or liquid eggs within and into the State. The Department will rely on information provided on the application when conducting investigations, audits, and complaint follow-up to verify a distributor's compliance with the Act and these regulations to ensure only compliant covered products are available for Californians to purchase or consume.

Section 1320.2(i) states what criteria the Department will use in determining approval of an application for renewal which is necessary to inform prospective distributors how the Department will determine eligibility. Renewal eligibility will be based on compliance with the applicable requirements for engaging in the business of distributing shell eggs and liquid eggs in the State in accordance with HSC sections 25990 and 25991 and these regulations during the 12 months preceding the application for renewal.

Section 1320.2(j) states what documentation is needed for the Department to review and approve the initial registration or application for renewal. An application for initial registration or for renewal shall be accompanied by documentation of a valid certification in accordance with Article 5 of the Chapter for each location where registration or renewal is being sought. A registration or renewal shall not be issued to any facility location for which a valid certification, as required by this section, has not been submitted to the Department. The purpose of this subsection is to give the Department authority to grant registration only to those holding a valid registration pursuant to Article 5 because written certification ensures that persons operating as egg distributors have been verified as sourcing shell eggs and liquid eggs from farms that are certified operations in compliance with California's egg-laying hen confinement standards and are observing proper product segregation and recordkeeping as required by this proposal.

Section 1320.2(k) specifies that notwithstanding the requirements of subsection (j) of this section, a registration may be granted prior to January 1, 2023, to an applicant that self-certifies that a facility complies with all applicable requirements of sections 1320.4 and 1320.5 of this Article and sources shell eggs and liquid eggs from producers that are in compliance with section 1320.1 of this Article. This period of self-certification is important and necessary to allow adequate time for registrants to obtain third-party certification verifying the facility is in compliance with the requirements of this proposal, and appropriately coincides with the compliance deadline for use of only cage-free housing systems pursuant to HSC section 25991(e)(5). On and after January 1, 2023, the holding of a valid certification pursuant to Article 5 of this proposal would be required for issuance of a registration by the Department.

Section 1320.2(l) provides an exemption from the egg distributor registration requirements of this proposal to official plants that hold an establishment number (prefix “G”) granted by the USDA-FSIS under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.), which is necessary to be consistent with the exclusion of these facilities from the definition of a “farm” in section 25991(i) and “sale” in section 25991(o) of the HSC. For clarity, the subsection uses the designation commonly understood by egg processors to specify that exempted establishments are those that hold a USDA-FSIS granted establishment number of prefix “G” which identifies the plant as handling or processing egg products. These facilities are under the inspection authority of the USDA-FSIS tasked to inspect egg products sold in interstate commerce, and to reinspect imported products to ensure that they meet U.S. food safety standards. However, because “liquid egg” is explicitly included in HSC section 25990(b)(4), during processing virtually all liquid egg is originally inspected at a facility under federal authority, and the exemptions described in the Act refer the location under federal inspection authority, this section clarifying that only locations under federal inspection as defined are exempted from registration as a distributor is necessary. Sales of liquid eggs subsequent to those where possession is taken at the USDA-FSIS inspected plant are included under the Act’s definition of sale. Buyers not under USDA-FSIS inspection as described and intending to distribute liquid eggs must have a valid distributor registration pursuant to this section. This subsection is necessary to explain the applicable exception from the distributor registration process and requirements for official plants as specified in the section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

### Adopt Section 1320.3. Inspection and Audit of Registered Egg Distributor Facilities.

Proposed section 1320.3 establishes the inspection and auditing activities conducted by the Department or certifying agents of registered egg distributors. Registration issued by the Department is a requirement of this proposal for a distributor to engage in commercial sales of shell eggs and liquid eggs to an end-user in the State. This section gives the Department and

other certifying agents authority to inspect and audit egg distributors for compliance with the Act and these regulations as a condition of registration which is necessary to assure consumers that products purchased in California, regardless of origin, are in compliance with provisions of the Act.

Section 1320.3(a) specifies that every person who is required to be registered pursuant to section 1320.2 of this Article shall comply with this section. This subsection gives the Department the authority to require distributors to comply with the requirements of the section in order to receive and maintain registration and is necessary to ensure registrants are aware that the Department and/or certifying agents shall conduct routine inspections and audits of distributor facilities to verify compliance with the Act and regulations. Verification is critical for consistent implementation and integrity of covered product compliance.

Section 1320.3(b) gives the Department authority to require distributors, as a condition of their registration, to allow the Department and/or a certifying agent entrance and access to the premises and business records which is a standard component of an inspection and/or audit. Registration issued by the Department is a requirement of this proposal for a distributor to lawfully engage in commercial sales of shell eggs and liquid eggs to an end-user in the State. Review of business records and an inspection of a premises will assist the Department and/or certifying agents determine and verify if a registrant is compliant with the Act and these regulations. The inspections and audits required by this subsection as a condition of registration will take place as described in sections 1326.2 and 1326.5 of this proposal. Verification is critical for consistent implementation and integrity of covered product compliance. Based on experience in other programs like the Department's ESQM and the USDA NOP, market stability depends on consistent implementation of requirements.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### Adopt Section 1320.4. Shell Egg and Liquid Egg Shipping Document and Labeling Requirements.

Proposed section 1320.4 gives the Department authority to require specific approved markings on shell egg containers and documents accompanying the transport of shell eggs and liquid eggs with language that communicates and identifies the covered products in transit are moving into or within California in compliance with the Act and these regulations. Such document and label markings will facilitate product traceability to covered animals raised in compliance with the Act and assist distributors and buyers in efforts to ensure products offered for sale in California come from egg-laying hens housed in compliant enclosures.

Section 1320.4(a) is necessary to identify the section as specific to the required shipping document markings when shell eggs and liquid eggs are transported into the State, transported within the State, or when transported through the State solely for sale in another state or

country. Marking of shipping documents is necessary for the products to be easily identified during transport, properly segregated as applicable, and readily inspected by the Department or other enforcement officers, and/or certifying agents. Together, these requirements will ensure that shipments of shell eggs and liquid eggs are clearly identified and documented as compliant with the requirements of this proposal as they are moved into or within the State and sold to an end-user or transported for purposes of trans-shipment or export for non-California use.

Section 1320.4(a)(1) specifies that prior to January 1, 2022, all shipping invoices, documents of title, bills of lading, and shipping manifests of all shipments of shell eggs and liquid eggs entering the State or transported within the State for commercial sale shall include the statements “California 144 Compliant” or “CA 144”. This requirement is necessary to document that the egg-laying hens used to produce the shell eggs and liquid eggs contained in the shipments and as identified on these documents meet the confinement standards as stated in section 1320.1(a)(2). The statement “CA SEFS Compliant” may also be used prior to January 1, 2022 provided the eggs were produced by hens housed with at least 144 square inches of floorspace per hen in compliance with 3 CCR section 1350 under the oversight of the Department’s ESQM program and consistent with the confinement requirements as stated in section 1320.1(a)(3). This subsection also requires that the statement shall be clearly legible and plainly printed or stamped on the shipment paperwork which is necessary to ensure the products can be easily identified during transport, properly segregated as applicable, and readily inspected by the Department or other enforcement officers, and/or certifying agents.

Section 1320.4(a)(2) specifies that, commencing January 1, 2022, all shipping invoices, documents of title, bills of lading, and shipping manifests for all shipments of shell eggs and liquid eggs entering the State or transported within the State for commercial sale in California shall include the statement “CA Cage Free” or “Cage Free CA”. This subsection is to identify the cage-free requirements as described in HSC section 25991(e)(5) and section 1320.1(a)(3) of this proposal which specifies that commencing January 1, 2022, egg-laying hens must be housed in cage-free systems. Because “Cage Free” is a common term used outside of California as well as within the State, “CA” is included in the compliance identifier to make it clear that the product meets the California standard for “Cage Free” and avoid confusion with other potential standards and claims that the product was not intended for the California market. As shell eggs and liquid eggs move through the commercial marketplace, easily identifiable documentation indicating the product is compliant with the Act and these regulations will facilitate their lawful distribution. Without the proposed statements, buyers, inspectors, enforcement officers, certifying agents, and/or the Department have no practical way to determine if product is compliant without reviewing certification and/or registration status for each distributor moving product through the system. Therefore, the labeling requirements of this section authorizes the Department to require specific markings on shipping documents, bills of lading, etc. and is necessary to ensure shipments of shell eggs and liquid eggs entering and moving within the State are easily identifiable as compliant with the Act and requirements stated in this proposal.

Section 1320.4(a)(3) is necessary to clarify the requirements for shipments of shell eggs and liquid eggs that are not intended for sale in the State but are transported through the State to other states or countries. The shipments must be labeled with the statement “Not for California Consumption” or “Not for California Sale” on shipping manifests, documents of title, shipping invoices, and bills of lading. This subsection is necessary to communicate and clearly identify the products that are shipping through the State and therefore not included in the definition of “commercial sale” in 1320(e), and ensure they remain segregated from eggs that are subject to the requirements of specified statutes or regulations that apply to sales of shell eggs and liquid eggs to be used for human food purposes within California.

Section 1320.4(a)(4) allows the Department to require specific markings on shipping documents and bills of lading for shipments of noncompliant covered product moving directly from a USDA-FSIS inspected plant to another USDA-FSIS inspected plant to ensure this type of movement of noncompliant product is easily and uniformly identified by the Department or an enforcement officer. Proper identification of this noncompliant product will ease the movement and transport into and within the State to ensure perishable products arrive on time to scheduled destinations. The subsection is necessary to clarify the identification requirements for shipments of shell eggs or liquid eggs that are not from egg-laying hens housed according to the standards described in HSC section 25991 and these regulations and that originate from a USDA-FSIS inspected plant for transportation to a final destination in California that is another USDA-FSIS inspected plant under the Egg Products Inspection Act. Shipments of shell eggs and liquid eggs from sources that are not in compliance with the Act’s confinement standards used at a federal plant with a prefix of “G” in California to make a non-covered product, only to manufacture products not covered under the Act are required to have specific statements clearly marked on the shipping invoices, documents of title, bills of lading, and shipping manifests. This labeling requirement is necessary because of the exemption from the definitions of “farm” and “sale” for USDA-FSIS inspected plants described in HSC sections 25991(i) and 25991(o), respectively, and to provide clear identification of products not conforming to the Act’s confinement requirements when a sale occurs between two exempt plants. It is important to note the exemption as stated in the law applies to the sale when physical possession is taken at a USDA-FSIS inspected plant, not to the liquid egg itself. Therefore, this subsection requires the shipping documents as specified to clearly identify applicable covered products as not conforming to the Act’s confinement requirements.

Section 1320.4(b) gives the Department the authority to require shell egg container labeling for ease of inspection purposes for compliance and specifies that labeling on all containers of shell eggs commencing July 1, 2022 destined for commercial sale in the State, shall contain the statement “CA Cage Free” or “Cage Free CA”. Because “Cage Free” is a common term used outside of California as well as within the State, “CA” is included in the identifier to make it clear that the product meets the CA standard for “Cage Free” and avoid confusion with other potential standards and claims that the product was not intended for the California market. The statement must be clearly legible, and without any designs or other images obscuring the statement that is stamped or marked on the containers in font no smaller than ¼” height. This font size requirement is necessary to clarify the specific requirements of the font and because it is

consistent with the font size of markings required in the ESQM program. This required container statement is necessary to communicate to shippers and end-users including, but not limited to, retailers and consumers that the shell eggs were produced in compliance with this proposal and with HSC section 25991(e)(5) which states that after December 31, 2021, shell eggs are to be from hens housed in cage-free systems. The Department chose the deadline of July 1, 2022 for the shell egg carton labeling to allow industry to comply with this requirement as cartons are pre-ordered and made months in advance.

Section 1320.4(c) gives the Department the authority to implement standards outlined in the Act and these regulations and the ability to act if examples of false advertising or misrepresentation of shell eggs and liquid eggs as compliant is found. Misrepresentation of covered products as a compliant product could result in noncompliant shell eggs and liquid eggs entering California commerce and consumers purchasing or consuming these noncompliant products under the guise of being compliant with the Act. This subsection is necessary to ensure that egg producers and egg distributors are aware that no shell eggs and liquid eggs for commercial sale in the State may be falsely labeled, advertised, or misrepresented as compliant with the requirements of HSC section 25991, including the false labeling of containers or shipping documents with the compliance statements specified in this proposal.

Section 1320.4(d) clarifies that commencing January 1, 2022, no person shall be deceptive in the labeling of their shell eggs and liquid eggs stating that they were produced in a “cage-free” environment unless the eggs were produced in accordance with section 1320.1 of this proposal. This subsection authorizes the Department to define “cage-free” as used in sales and marketing of shell eggs and liquid eggs as meaning egg-laying hens raised according to section 1320.1 of the Article. Deceptive marketing of shell eggs and liquid eggs could result in noncompliant shell eggs and liquid eggs entering California commerce. This subsection is necessary to ensure that egg producers and egg distributors are aware that all shipments documents, bills of lading, and container labeling bearing the statement or mark of “cage-free” must be truthful and not misleading and accurately identify products that are in compliance with this proposal and with the cage-free requirement under HSC section 25991.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

#### Adopt Section 1320.5. Egg Distributor Recordkeeping.

Proposed section 1320.5 establishes the requirements pertaining to recordkeeping by egg distributors. This section gives the Department authority to require that egg distributors follow certain recordkeeping guidelines in order to receive and maintain valid registration as an egg distributor with the Department and lawfully engage in the commercial sale of shell eggs and liquid eggs to an end-user. Recordkeeping is a vital component to an effective, efficient system that the Department is tasked to implement to assure the egg-laying hens producing shell eggs

and liquid eggs sold into and within California meet the specifications of the Act in an effort to prevent animal cruelty.

Section 1320.5(a) gives the Department authority to require compliance with this section which is necessary for an egg distributor to sell shell eggs and liquid eggs within or into the State.

Section 1320.5(b) authorizes the Department to require egg distributors to demonstrate an audit trail through records, as defined in 1320(b), and detailed in section 1326.2 of Article 5 in order for the Department to validate that shell eggs and liquid eggs sold by a distributor are compliant. Because of the variability in processing and distribution systems, the recordkeeping requirement allows each distributor to determine how best to ensure only compliant shell eggs and liquid eggs enter the California market as demonstrated through a document audit trail. This audit trail composed of documentation is essential for the Department or certifying agent to be able to review because the supply chain of shell eggs and liquid eggs can be complicated if products exchange hands multiple times before being sold to an end-user in California. The subsection is necessary to clarify the purpose of keeping records for the distributor to better understand the type of information needed to support the registration pursuant to this Article and to certify operations pursuant to section 1326.2 of Article 5.

Section 1320.5(c) specifies that the records maintained by an egg distributor shall document, in a traceable manner, that shell eggs and liquid eggs being sold or distributed by the egg distributor are originating from certified egg producers that house egg-laying hens in compliance with section 1320.1 of this Article. The purpose of this subsection is to authorize the Department to require the records of egg distributors to include documented evidence through an audit trail that shell eggs and liquid eggs a distributor is selling originate from producers who have a valid certification as described in Article 5 of this Chapter to demonstrate compliance with the Act and these regulations. This subsection is necessary to ensure the Department and certifying agents have sufficient records for auditing purposes to verify compliance with statutes and these regulations, including the traceback of shipments to supplying farms in compliance with California's egg-laying hen confinement standards specified in the Act.

Section 1320.5(d) gives the Department authority to require egg distributors to document where physical possession of covered product takes place for each sales transaction. This subsection specifies that the recordkeeping requirement for registered distributors include documentation of where physical possession of shell eggs and liquid eggs takes place with each sales transaction. This is required due to the definition of sale in HSC section 25991(o) where it defines a sale as occurring where the buyer takes physical possession. The location where physical possession takes place will be unique to each sales contract for transaction of covered product depending on negotiated terms for freight or other means of transport.

Section 1320.5(e) specifies that records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or certifying agent as required by section 1320.3 of this Article. The purpose of the subsection is to give the Department authority to establish parameters by which egg distributors are to maintain specified

records. A two-year minimum requirement is necessary to maintain a “paper trail” for traceback of product to demonstrate compliance with statutes and these regulations related to commercial sale of shell eggs and liquid eggs in the State and is consistent with recordkeeping timeframes as specified in the federal Egg Products Inspection Act and the Department’s SOP.

Section 1320.5(f) provides an exemption to facilities inspected under the federal Egg Products Inspection Act by the USDA-FSIS pursuant to 21 U.S.C. Sec. 1031 et seq. from the recordkeeping requirements of this section. It is necessary to include this subsection to ensure the affected industry is aware that these federally inspected establishments are not required to register with the Department as egg distributors and are similarly exempt from mandatory maintenance of records for inspection as specified in this section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and Federal code sections used to authorize the requirements of the section.

#### Adopt Section 1320.6. Inspection of Conveyances.

Proposed section 1320.6 establishes the requirements allowing the Department, enforcement officers, or certified agents to inspect conveyances moving shell eggs and liquid eggs within and into California which is necessary to help ensure covered products are transported in accordance with the regulations and Act.

Section 1320.6(a) specifies that when an egg distributor submits an application for registration, they are agreeing, as a condition of registration, to allow the Department or other enforcement officer, and/or a certifying agent, to inspect their vehicles and other conveyances under the registrant’s operation or control for compliance with statutes and these regulations. This subsection is necessary to help ensure registrants are aware that all vehicles and conveyances may be subject to inspection relating to commercial sale of shell eggs or liquid eggs in the State for purposes of verifying compliance. Such direct inspections of shipments entering the State are necessary to fulfill the purpose of the statutes and a critical part of the Department’s proposed program framework from farm to end-user to ensure that shell eggs and liquid eggs are compliant with the requirements of the Act approved by California voters.

Section 1320.6(b) authorizes the Department to require that every person shall stop at the request of an enforcement officer at any of the Department’s Border Protection Stations for inspection purposes of vehicles and commodities to ensure they are pest free and meet all regulatory requirements. The purpose, as it relates to this proposal, is the authority to inspect shipments of shell eggs and liquid eggs moving within or into the State to ensure they are accompanied by the required documents for transport according to these regulations. Such direct inspections of shipments entering the State through the Department’s Border Protection Stations are necessary to fulfill the purpose of the statutes and a critical part of the Department’s overall program framework extending from farms to end-users to ensure that shell



eggs and liquid eggs are compliant with the requirements of the Act approved by California voters.

Section 1320.6(c) authorizes that the Department or other enforcement officer in California, may deny entry into the State or order diversion from in-state destinations any vehicle or other conveyance transporting shell eggs and liquid eggs that do not comply with the requirements of HSC sections 25990 through 25992 and the provisions of these regulations. This subsection is necessary as it provides clarity that violations that may result in denial of entry or diversion would include, but are not be limited to, the labeling and marking requirements as specified in section 1320.4 of this proposal. The denial of entry or diversion as described is necessary for effective oversight of shipping document marking requirements and overall compliance of covered products entering California commerce, consistent with the purpose of the statutes approved by California voters.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### Adopt Section 1320.7. Tagging and Seizure of Shell Eggs or Liquid Eggs.

Proposed section 1320.7 gives the Department or another enforcement officer the authority to affix tags or notices to shipments of shell eggs and liquid eggs and authority for seizure or holding of shell eggs and liquid eggs when found, or suspected to be, in violation of the Act and these regulations. Requirements of this section are necessary to ensure the affected industry is aware of the manner in which the Department will implement methods to prevent covered product that does not meet the requirements of the regulations and the Act from being sold into or within the State.

Section 1320.7(a) gives authority to the Department or other enforcement officer to affix a warning tag or notice to shipping documents, as specified, or to lots or loads of shell eggs and liquid eggs that may be found in violation of HSC sections 25990 through 25992 and the provisions of these regulations. The Department or other enforcement officer may give notice of such violation to the egg producer, egg distributor, owner, or other person in possession of the shell eggs and liquid eggs. This subsection is necessary as an essential tool for preventing noncompliant shell eggs and liquid eggs from being distributed to end-users in the State. Further, it is necessary to use the word “may” in this subsection to provide discretion for rare, but possible circumstances out of the control of the Department or other enforcement officer such as extreme weather events, natural disasters, acts of God, global pandemics, or other similar circumstances when making a determination to affix a warning tag or provide notice of a violation, as stated. The Department’s ESQM program uses similar tagging and seizure procedures for ensuring the safety of shell eggs sold to California consumers, therefore the Department is proposing comparable procedures as a tool for ensuring commercial sales of shell eggs and liquid eggs are in compliance with the provisions of animal confinement standards specified in HSC sections 25990 through 25992 and these regulations.

Section 1320.7(b) states that no one shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department or other enforcement officer. The purpose of the subsection is to give the Department or an enforcement officer clear authority over the fate of tagged or seized product to ensure noncompliant shell eggs and liquid eggs are not sold into or within California in accordance with the Act and these regulations. The restriction on removing tags or notices as described in this subsection is necessary for effective oversight and implementation of these regulations and to ensure regulatory identification of noncompliant products is properly maintained during diversion or seizure activities.

Section 1320.7(c) gives the Department or other enforcement officer authority to seize and hold any containers, sub-containers, lots, or loads of shell eggs, or liquid eggs in California that are suspected to be in violation of HSC sections 25990 through 25992 or the provisions of these regulations at their discretion based on evidence gathered or at the time of inspection. Shipments may be tagged, and a hold notice issued as specified until a resolution is made according to procedures outlined in these regulations. It is necessary to use the word “may” in this subsection to provide discretion for rare, but possible circumstances out of the control of the Department or other enforcement officer such as extreme weather events, natural disasters, acts of God, global pandemics, or other similar circumstances when making a determination to seize and hold any shell and liquid egg lots or loads, or containers or sub-containers, as stated. This subsection is necessary because it gives authority for a mechanism to prevent noncompliant shell eggs and liquid eggs from being distributed to end-users in the State.

Section 1320.7(d) states that if a shipment of shell eggs or liquid eggs is tagged with a hold notice issued by the Department or other enforcement officer, that the shipment must be held and not further transported by the person in control of the shipment unless directed by the Department. The Department is mandated to implement the Act to ensure only compliant covered products are sold into and within California; this subsection gives the Department sole authority to direct movement of the tagged or seized covered product to a location to prevent the noncompliant or suspect noncompliant covered product from entering or to continue moving through the supply chain. If the noncompliant product is about to enter or is already in the supply chain, the Department has an obligation to prevent its progression by issuing a hold on the product at the specified location. This subsection is necessary to make a person aware of the actions that are not allowed when shell eggs and liquid eggs are tagged to help ensure noncompliant shell eggs and liquid eggs do not enter the human food supply in the State.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

Adopt Section 1320.8. Written Certification.

Proposed section 1320.8 establishes the written certifications required for selling shell eggs and liquid eggs in California needed to demonstrate that the animals producing the covered product were raised in accordance with the Act which the Department has been charged to implement. This section gives the Department authority to require written certification of operations engaged in commercial sales of shell eggs and liquid eggs in California commerce as detailed in Article 5 to demonstrate compliance with the Act in a verifiable and auditable manner across the industry.

Section 1320.8(a) describes what would be acceptable to the Department as written certification from a supplier that shell eggs or liquid eggs were derived from egg-laying hens that were not confined in a cruel manner for purposes of HSC section 25993.1. The Department is requiring that any such certification from a supplier to a business owner be based upon records that constitute an audit trail as defined in section 1320(b), and traceable to a farm of origin that raises egg-laying hens according to standards outlined in section 1320.1 of this Article. The Department requires the authority of this subsection's requirements as they are critical to ensuring that written attestations of compliance with the Act from suppliers that buyers may be relying on in good faith are valid and can be substantiated as accurate and truthful.

Section 1320.8(b) specifies the recordkeeping procedures for a retailer or food processing facility who is also an end-user and takes possession of shell eggs and liquid eggs that were transported by a common carrier, private carrier, or other means of conveyance directly from facilities inspected by the USDA-FSIS under the federal Egg Products Inspection Act pursuant to 21 U.S.C. Sec. 1031 et seq. This section is needed because in these sales transactions there is not a registered distributor, as described in this proposal, as sales are direct to retailer and food processing facility end-users. Further sales of covered product to other end-users that meet the definition of a commercial sale would need to be from hens confined in a manner consistent with the Act and these regulations. Therefore, the Department requires documentation and demonstration of compliance with the Act and these regulations as the burden of the retailer and food processing facility purchasing directly from a USDA-FSIS inspected facility.

Section 1320.8(b)(1) gives the Department authority to require the retailer or food processing facility end-user purchasing shell eggs or liquid eggs directly from a USDA-FSIS plant maintain records documenting written certifications that meet the requirements in (a) of this section, of shell eggs or liquid eggs received during the preceding 12-month period. This is a necessary time period in which to maintain records for instances where the Department or another enforcement agency would need to inspect the records for compliance with statutes and regulations.

Section 1320.8(b)(2) gives the Department authority to require the retailer or food processing facility end-user purchasing shell eggs and liquid eggs directly from a USDA-FSIS plant to maintain records of where physical possession of each sale of covered product took place. This information is included in the recordkeeping requirements due to the definition of sale in HSC section 295991(o) which does not include sales of shell eggs and liquid eggs where physical possession is taken at a USDA-FSIS plant. All subsequent sales of shell eggs and liquid eggs

from the retailer to a consumer would fall under the definition of sale and therefore the covered product would need to be compliant with confinement standards of the Act. If the food processing facility claims a sale, as the buyer, of covered product is exempt from the definition of sale and the confinement requirements of the Act, then this must be documented.

Section 1320.8(b)(3) gives the Department authority to require the retailer or food processing facility end-users make the records available on-site for inspection by the Department and other state or local health agencies upon request. Electronic records are considered on-site if they are accessible from an on-site location. This requirement is necessary to ensure compliance with statutes and regulations.

Section 1320.8(c) states that the recordkeeping requirements of subsection (b) will not apply to end-users that are facilities inspected under the federal Egg Products Inspection Act by the USDA-FSIS pursuant to 21 U.S.C. Sec. 1031 et seq. This clarification was added because of the exemptions for these establishments from the definitions of “farm” and “sale” in HSC sections 25991(i) and 25991(o), respectively. This subsection is necessary because movement of shell eggs or liquid eggs from a facility that holds a USDA-FSIS granted establishment number with a prefix of “G” to another facility that holds a USDA-FSIS granted establishment number with a prefix of “G” that is an end-user as defined in this Article, would not be considered a commercial sale according to the Act and these regulations and therefore would not need to comply with written certification recordkeeping requirements of this section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

#### Adopt Section 1320.9. Denial, Suspension, or Revocation of Egg Distributor Registration.

Proposed section 1320.9 gives the Department authority to take actions against registered distributors for violations of the Act and this Chapter which is necessary to ensure the affected industry is aware of the actions the Department may take in response to noncompliance and their right to appeal the Department’s decision. The Department has been mandated to implement the Act to ensure only compliant covered products are sold into and within California. While registration with certification provides a means to identify compliant product distribution, the ability to deny, suspend, or revoke registration similarly provides a practical mechanism for excluding noncompliant sales. The impact of an egg distributor having their registration with the Department denied, suspended, or revoked is an inability to engage in commercial sale of shell eggs and liquid eggs in California. As outlined in this Article, only an egg distributor with a valid registration issued by the Department may engage in commercial sales of shell eggs and liquid eggs.

Section 1320.9(a) informs applicants and registrants of the reasons the Department may deny, suspend, or revoke a registration in accordance with these regulations. This subsection is

necessary to provide the regulated industry and the public explicit understanding of the consequences of noncompliance regarding registration and establish consistent and transparent registration actions by the Department. The authority to deny, suspend, or revoke registration provides a mechanism to prevent the commercial sale of shell eggs and liquid eggs within California that are not in compliance with the Act and this Chapter. The reasons for possible denial, suspension, or revocation of a registration are stated in subsections (a)(1) through (a)(5).

- Subsection (a)(1) specifies violations that resulted, or could have resulted, in the commercial sale of shell eggs or liquid eggs that were from egg-laying hens confined in a manner in violation of these regulations could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor who is selling noncompliant covered products in the State would need to halt these sales to prevent further noncompliant product from entering the California marketplace. Violations that could have resulted in the commercial sale of covered product are also included because to fully implement the Act, the Department needs to prevent the sale of noncompliant covered products to California consumers. If the noncompliant product is in the supply chain destined for a California sale, the Department has an obligation to prevent that sale from occurring by denying, suspending, or revoking registration and not wait until the product is purchased by a consumer. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or with California.
- Subsection (a)(2) specifies repetitive failure to comply with the requirements of these regulations and/or the statutes pertaining to shell eggs, liquid eggs, or egg-laying hens in accordance with HSC sections 25990 through 25992 could be reason for the denial, suspension, or revocation of a registration by the Department. This reason is needed because if a distributor, applicant, or registrant, has demonstrated a pattern of noncompliance and failure to make necessary corrections to comply with the Act and this Chapter, then their ability to sell shell eggs and liquid eggs will either not be granted or will be removed by the Department to ensure consumers that the eggs they purchase are compliant. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or within California.
- Subsection (a)(3) specifies refusal to grant access or interference with inspections and audits as described in sections 1320.3 or 1320.6 of this Article could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor will need to comply with inspections and audits to verify compliance with the Act and this Chapter and to allow the Department to follow up on accusations or complaints of noncompliance. The Department must have the authority to verify compliance to ensure only compliant shell eggs and liquid eggs are sold within and into California.
- Subsection (a)(4) specifies misrepresenting shell eggs or liquid eggs as being produced in compliance with these regulations could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor who is found to have misrepresented covered product as compliant with the Act and this Chapter could result in noncompliant shell eggs or liquid eggs entering California commerce and then consumers purchasing or consuming noncompliant shell eggs and liquid eggs under the guise of these covered products being compliant with the Act. Distributors engaging in this type of activity need to have registration denied, suspended, or revoked so they can no

longer engage in commercial sale of shell eggs or liquid eggs within or into California. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or within California.

- Subsection (a)(5) specifies providing false information on an application for registration or renewal could be reason for the denial, suspension, or revocation of a registration by the Department. If an applicant or registrant is found to have provided false information, on an application for registration, it is necessary that the Department be able to deny the registration as the application cannot be accurately evaluated based on false information. If after a registration is granted, an applicant or registrant is found to have provided false information on an application for registration, it is necessary that the Department be able to suspend or revoke the registration because it would have been granted based on the false information provided on the application and may not have been granted otherwise. This subsection is necessary to ensure only shell eggs and liquid eggs from egg-laying hens raised according to the Act are available for commercial sale within or into California.

Section 1320.9(b) states that appeal and formal hearing procedures are available for persons wanting to appeal the decision of the Department to deny, suspend, or revoke a distributor registration. This subsection is necessary to allow applicants or registrants that have received a denial, suspension, or revocation of a registration to appeal the Department's decision to deny, suspend, or revoke their registration pursuant to the formal hearing proceedings as authorized in Title 2 of the Government Code, as specified.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### Adopt Section 1320.10. Registration with the California Department of Public Health.

Proposed section 1320.10 establishes the requirements for compliance with the requirements pursuant to the DPH for the purposes of processed food registration, in addition to these regulations.

Section 1320.10(a) describes the requirement that any person operating a food processing establishment in California must adhere to the requirements for registration with the DPH pursuant to section 110460 of the HSC<sup>22</sup> in addition to registration requirements outlined in 1320.2 of this proposal. Subsection (b) provides that evidence of the registration with DPH must be provided to the Department or its designee upon request. The processed food registration is an existing requirement of DPH for food safety regulatory purposes and these subsections are necessary to make clear for the industry that registrants under this proposed Article are not exempt from DPH requirements for food processors and that the Department may ask for evidence of the registration with DPH if applicable.

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<sup>22</sup> Health and Safety Code section 110460

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

### 3) Adopt new Article 2 and sections 1321 through 1321.10.

#### Adopt Article 2. Veal Calves.

The Department is proposing new Article 2 relating to calves raised for veal and the requirements for the production and handling of whole veal meat in accordance with sections 25990 and 25991 of the HSC.

#### Adopt Section 1321. Definitions.

Section 1321 establishes definition of terms used in this Article and clarifies that the meaning of definitions for terms worded in the singular form also applies to the plural form and vice versa as context requires or the case may demand. Although the Act includes the meaning of some terms, it is necessary to additionally include a list of terms as defined in these proposed regulations.

Section 1321(a) specifies “Act” means the Farm Animal Cruelty statute, as amended pursuant to the HSC, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1321(b) specifies “audit trail” means records relating to the identification, source, and traceability of a load or shipment of whole veal meat that is marketed in California. The purpose is to provide veal producers, veal distributors, end-users, enforcement officers, and certifying agents with a description of the type of information that may be considered a record and that would need to be maintained as verification that the whole veal meat was derived from calves not confined in a cruel manner. Such records may be in hard copy or electronic format. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1321(c) specifies “certified operation” has the same meaning as defined in section 1326(e) of the Chapter. Section 1326 establishes definition of terms used in Article 5, which proposes the requirements for certification and accredited certifiers and therefore the appropriate location for the complete definition of the term. Justification for this definition can be found in the corresponding location of this document. This definition is necessary to clarify the term as used in these regulations.

Section 1321(d) specifies “certifying agent” has the same meaning as defined in section 1326(f) of the Chapter. Section 1326 establishes the definition of terms used in Article 5, which proposes the requirements for certification and accredited certifiers and therefore the appropriate location for the complete definition of the term. Justification for this definition can be

found in the corresponding location of this document. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1321(e) specifies “commercial sale” means any type of sale, possession or exposure for sale, exchange, barter, trade, transfer possession, or other distribution in California commerce including , but not limited to, transactions by a retailer with a consumer and sales made through an internet platform. This subsection also specifies what a commercial sale does not include, such as, whole veal meat produced outside of the State that is only transported through the State, without any processing or repackaging, to locations outside the State or country as stated in subsection (e)(1) which is consistent with HSC section 25990. Under this exception, no sale of a covered product would occur within California and products would be allowed to pass through the State exclusively for purposes of export or trans-shipment to other destinations. This exemption of commercial sale is necessary because the ballot initiative provided California consumers an opportunity to determine how animals producing covered products purchased in the State are raised and not to covered products trans-shipping through the State. Including these shipments under a commercial sale will have negative impacts on transportation systems, ports, trade and consumers outside of California that are beyond the intent of the Act.

A commercial sale would also not include any sale that takes place on the premises of an establishment that holds an establishment number (prefix “M”) granted by the USDA-FSIS under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), as stated in subsection (e)(2). This section is necessary to incorporate the exemption provided by the Act using specific plant designations understood by distributors. With respect to subsection (e)(2), any sale subsequent those sales where possession is taken at the USDA-FSIS plant is considered a sale pursuant to the Act. The Act exempts a commercial sale where possession is taken at the exempted location due to federal inspection authority at said location. The exemption applies to the location not the product, so further resale would not be exempted, meeting the intent of the Act to provide California consumers products from covered animals that are not raised in a cruel manner as defined. For some products like whole veal meat, virtually all product passes through an exempt location, yet the product is explicitly included in the language of the Act, further supporting subsection (e)(2) clarifying that the exemption applies to the location, not the product.

Subsection (e)(3) additionally exempts any donations to a religious, charitable, scientific, education, or other nonprofit organization that is exempt from federal taxes under section 501(c)(3) of the U.S. Internal Revenue Code. These requirements are necessary to explain the meaning of the term and to indicate the specific transactions or transfers of possession are subject to the provisions of HSC sections 25990 and 25991 and as used throughout the Article.

Subsection (e)(4) clarifies exemption to the definition of commercial sale as specified in subsections (e)(1) through (4) applies only to the specific transaction, not to the covered product, therefore, the exemptions listed do not apply to any subsequent sale of whole veal meat. The purpose for this subsection is to clarify to stakeholders that the exemption of whole veal meat which moves through a federally inspected plant in the definition of commercial sale



only applies to that specific transaction where physical possession is taken at the federally inspected facility as defined in HSC section 25991(o). The Department included e(4) in this definition because feedback from stakeholders including many questions about this exemption of commercial sale and potential impact of whole veal meat purchased in the State.

Section 1321(f) specifies “consumer” means any person who purchases whole uncooked veal meat, as defined in HSC section 25991(v) and this Article, for the sole purpose of his or her own family use or consumption, or that purchases or consumes veal at a restaurant, food facility, or other similar business that serves cooked veal to customers or patrons. This definition is necessary to explain who is considered a consumer in the context of these regulations and the meaning of the term as used throughout the Article.

Section 1321(g) specifies “container” means the stated devices which could be used to facilitate the handling, distribution, transportation, or commercial sale of whole veal meat. Such containers would be subject to inspection by the Department or a third-party certifying agent to ensure compliance with HSC sections 25990 and 25991 and the requirements of these regulations. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1321(h) specifies “cottage food operation” means an establishment as defined in HSC section 113758. It is necessary for the Department to include this referenced definition because cottage food operations would be affected by the provisions of this proposal as an end-user needing to procure compliant whole veal meat for their business.

Section 1321(i) specifies “curing agents”, for purposes of section 25991(v) of the HSC, means any substance listed and described in section 424.21(c) of Title 9 of the CFR<sup>23</sup>. The Department finds this definition is necessary to explain the meaning of the term as used throughout the Article and for consistency with federal regulations that describe curing agents as understood and commonly used by the industry.

Section 1321(j) specifies “cut”, for purposes of section 25991(v) of the HSC, means any uncooked primal, wholesale, sub-primal, or retail cut, including, but not limited to, the definition as identified and described in the USDA’s Institutional Meat Purchase Specifications: Fresh Veal Series 300 (November 2014 Edition<sup>24</sup>) and the 2014 Uniform Retail Meat Identity Standards<sup>25</sup> developed by the Industry-Wide Cooperative Meat Identification Standards Committee, but shall exclude any ground or otherwise comminuted veal meat products. The Department finds it necessary to defer to the USDA’s guidelines for consistency and clarity purposes and to describe cuts of whole veal meat subject to the requirements of the Act and these regulations using specifications understood and currently utilized by the regulated

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<sup>23</sup> 9 CFR Part 424 section 424.21(c)

<sup>24</sup> USDA, Institutional Meat Purchase Specifications: Fresh Veal Series 300 (November 2014)

<sup>25</sup> 2014 Uniform Retail Meat Identity Standards

industry. The Department considers exclusion of ground and comminuted products from the term “cut” to be consistent with the context of the statute describing whole veal meat.

Section 1321(k) specifies “Department” means the California Department of Food and Agriculture, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1321(l) specifies “Document of title” means, as described, a document that in the regular course of business is treated as evidence that the person in possession of it is entitled to receive, hold, and dispose of the document and whole veal meat it covers. This definition is necessary to clearly identify specific forms of documentation the Department considers a “document of title” which are often presented in the form of a bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of whole veal meat.

Section 1321(m) specifies “enclosure” means any cage, crate, pen, or other structure used to confine a calf. This definition is necessary to further clarify and interpret the definition of an enclosure as stated in HSC section 25991(h) so a person understands what structures would be considered an enclosure subject to the confinement requirements of this proposal.

Sections 1321(n), (n)(1), (n)(2), (n)(3), and (n)(4) specify the meaning of “end-user”. In subsection (n)(1) an end-user can mean a consumer; subsection (n)(2) states an end-user includes a retailer that only receives whole veal meat for commercial sale directly to a consumer; subsection (o)(3) states an end-user can mean a food processing facility or cottage food operation that only receives whole veal meat for use as an ingredient for manufacturing a combination food product not meeting the definition of whole veal meat; and subsection (n)(4) describes that an end-user can mean a restaurant or food facility or other similar business only cooking and serving veal to customers, patrons, or guests for consumption. The definition of an end-user as described is necessary to clearly identify the persons or businesses that receive whole veal meat only for purposes of manufacturing foods not covered under the Act, food service in restaurants serving patrons, or direct sales to consumers for only personal consumption. The regulatory burden of this proposal to ensure whole veal meat sold in the State is compliant with the Act is at the level of a veal distributor as defined in 1321(z) to be someone selling to an end-user. Understanding the definition of an end-user is integral into understanding who is a veal distributor. End-users must purchase and sell compliant whole veal meat, but they are not required to register with the Department like a veal distributor. Sections 1321(o), (o)(1) and (o)(2) specify the meaning of “enforcement officer”. Subsection (o)(1) describes enforcement officer to mean any person employed by or under the supervision by the Department and in subsection (o)(2) to mean any person or under supervision by employed by the DPH. It is necessary the Department define this term to inform the public of representatives that would exercise authority to conduct inspections of conveyances and shipping documents at Department’s Border Protection Stations, or tag, seize, deny entry, or divert shipments of covered products that are in violation of sections 25990 through 25992 of the HSC or the requirements of this proposal.

Section 1321(p) specifies “flavoring”, for purposes of section 25991(v) of the HSC, means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and Part 184 of 21 CFR. The Department believes that this definition is necessary to explain the meaning of the term as used in the Article and for consistency with federal regulations describing safe and approved flavoring substances in food.

Section 1321(q) specifies “food facility” means a facility as defined in section 113789 of the HSC. The Department believes consistency with the California Retail Food Code under Part 7, Division 104 (Environmental Health) of the HSC is necessary for clarity purposes among the regulated industry and to explain the meaning of the term as used throughout the Article.

Section 1321(r) specifies “food processing facility” means a facility as defined in section 109947 of the HSC. The Department believes consistency with the Sherman Food, Drug and Cosmetic Law under Part 5, Division 104 (Environmental Health) of the HSC is necessary for consistency and clarity purposes among the regulated industry and to explain the meaning of the term as used throughout the Article.

Section 1321(s) specifies “kept for the purpose of producing”, for purposes of section 25991(d) of the HSC, means keeping a calf of the bovine species that is, or is intended to be, slaughtered at more than 21 days of age or more than 150 pounds in liveweight for the production of food described, advertised, represented, identified or labeled as veal. This definition is necessary to further clarify and explain which specific calves would apply to the confinement requirements of HSC section 25991.

Section 1321(t) specifies “person” has the same meaning as stated in section 25991(m) of the HSC. The term “person” is used extensively in the proposed regulations and the Department believes it is necessary to include this definition as stated in HSC for ease of reference by the public and the regulated industry and to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Section 1321(u) specifies “ready-to-eat” has the same meaning as stated in sections 317.2(l) and 381.125(b) of 9 CFR<sup>26</sup>. It is necessary to reference these sections in this definition for consistency and clarity with federal regulations that include required instructions on the covered product label that directs the consumer to cook the product or otherwise treat for food safety purposes prior to consumption and this can include frozen veal meat products. This term is in common use and recognizable by the regulated industry to describe products that do not require cooking for food safety purposes before consumption.

Section 1321(v) specifies “requiring cooking”, for the purposes of section 25991(r) of the HSC, means the covered product cannot be consumed in the condition sold to an end-user which is

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<sup>26</sup> 9 CFR Part 317 section 317.2(l) and Part 381 section 381.125(b)

necessary for food safety reasons and to further explain the meaning of the term as used in this Article.

Section 1321(w) specifies “retailer” means a facility location that conducts commercial sales of whole veal meat to a consumer without any further distribution to another end-user and would need to be aware of the requirements of these regulations. The definition is tied to a specific business location where sales of whole veal meat to a consumer occur due to the complexities of the supply chain of covered product and vertical integration of many businesses selling covered product while there are also small, independently owned businesses selling whole veal meat to consumers in the State. Inclusion of this definition is necessary to explain the meaning of the term as used in this Article.

Section 1321(x) specifies “seasoning”, for purposes of section 25991(v) of the HSC, includes the seasonings listed in 21 CFR section 182.10 and Part 184. This definition is necessary to explain whole veal meat includes added seasonings. A specific list of the most commonly added seasonings is included in the definition as well as references to federal regulations that include lists of seasonings and substances affirmed by the FDA as generally recognized as safe and used by the regulated industry. It is necessary that the definition is consistent with existing federal regulations that describe safe and approved seasoning substances in food.

Section 1321(y) specifies “uncooked”, for purposes of HSC section 25991(r), means requiring cooking prior to human consumption. The definition, as specified, provides clarity on the products covered under these regulations. The term “uncooked” is used in several key definitions in this Article and it is necessary to repeat this definition as stated in HSC section 25991(r) for ease of reference by the public and the regulated industry, and to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Section 1321(z) specifies “veal distributor” means a person or facility engaged in the business of commercial sales or distribution of whole veal meat to an end-user as defined in 1321(n) of this Article in the State. The definition is necessary to clarify that a veal distributor could also be a veal producer and is not a person or facility that only sells to another distributor or handles whole veal meat as an end-user, such as a retailer that receives whole veal meat to sell at that one location directly to a consumer. Given the complexities of the food production and distribution system, this definition is necessary to minimize the number of entities that must register and be certified while maximizing assurance that product sold to consumers in California are from animals not raised in a cruel manner as defined. Identifying a veal distributor as the final distribution location before products are shipped or sold to a myriad of retail or other end-user locations will minimize the regulatory burden for stakeholders. Including the term “facility” is important to make it clear that if a single business entity operates a distribution center where covered product is then moved to many individual retail locations, end-users, owned by the same business entity, the distribution center is considered a veal distributor and will need to comply with the requirements of this proposal.

Sections 1321(aa), (aa)(1), and (aa)(2) specify “veal producer” means a person raising calves for the purpose of marketing the meat from those calves as veal and is necessary to explain and identify who will need to comply with this proposal. Subsection (aa)(1) states the animal confinement standards outlined in this proposal would not apply to a producer holding a valid milk permit and housing calves exclusively for standard dairy practices where the calves are not raised to enter the food supply marketed as veal. This subsection is necessary to make it clear that because female dairy calves on farms are often kept to replace older or unproductive adult dairy cattle, the definition would not apply. Subsection (aa)(2) states the definition of veal producer does not include facilities that hold an establishment number (prefix “M”) granted by the USDA-FSIS under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) which is consistent with the exclusion of these facilities from the definition of a “farm” in section 25991(i) of the HSC. These facilities are exempt because they are inspected by the USDA-FSIS tasked to inspect meat products sold in interstate commerce, and to reinspect imported products to ensure that they meet U.S. food safety standards. The definition specifies that establishments excluded from the definition of a veal producer are those that hold a USDA-FSIS granted establishment number of prefix “M” which identifies the plant as slaughtering veal calves or processing meat products. Inclusion of this definition is necessary to explain the meaning of the term as used in this Article.

Section 1321(bb) specifies “whole veal meat” has the same meaning as defined in section 25991(v) of the HSC. The term “whole veal meat” is used extensively in these regulations and it is necessary to repeat this definition as stated in the HSC for ease of reference by the public and industry and to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

#### Adopt Section 1321.1. Veal Calf Confinement.

Section 1321.1 establishes the enclosure requirements and associated timeframes for compliance pursuant to the Act and HSC sections 25990 and 25991. The Department is charged with implementing provisions of the Act to ensure California consumers have confidence that whole veal meat purchased in the State comes from calves, no matter the origin, kept in the manner as prescribed by the Act. This section is necessary to implement those provisions.

Section 1321.1(a) states that no veal producer or veal distributor shall knowingly sell or contract to sell whole veal meat within the State if it is the product of a calf confined in an enclosure that fails to meet the standard as detailed in the subsections below. This subsection is necessary to introduce the concepts of the subsections that follow for persons required to comply with the

confinement standard for calves raised for the purposes of veal when the whole veal meat is marketed in California.

Section 1321.1(a)(1) states that the enclosure housing calves shall provide a minimum of 43 square feet of usable floorspace per calf. This specification is consistent with section 25991(e)(2) of the HSC which also states that after December 31, 2019, confining a calf raised for veal with less than 43 square feet of usable floorspace per calf would be considered confining an animal in a cruel manner as provided by the HSC. This subsection is necessary to describe in the regulations the minimum enclosure requirements for calves as mandated by the Act.

Section 1321.1(a)(2) provides veal producers with the calculation of what is considered usable floorspace per calf for clarity and consistency with section 25991(s) of the HSC. This subsection is necessary to ensure that veal producers are aware of the requirements to house their calves in compliance with the HSC and these regulations.

Section 1321.1(a)(3) specifies that the exceptions to confinement standards as described in HSC section 25992 and Article 4 apply to the requirements of the section. This subsection is necessary to ensure the public and regulated industry are aware that exceptions to the listed veal calf confinement requirements are applicable under the circumstances specified in the Act and this proposal.

Section 1321.1(b) authorizes the Department that veal producers must, commencing January 1, 2023, hold a certification as a certified operation pursuant to Article 5 of this proposal. The purpose of the certification is to provide documentation of conformance to the confinement standards for veal calves mandated by HSC sections 25990 through 25992 and required in this proposal. Verification by inspection, by an unconnected third-party, on the premises where calves are housed is necessary to properly ensure that whole veal meat entering California commerce is originating from farms in compliance with the confinement standards and animal cruelty provisions of the Act. Verification and certification are accepted core standards that maintain the integrity of other programs such as the USDA NOP and the Department's ESQM program. As described in greater detail in Article 5 of this proposal, on-farm certification can be conducted by the Department, a third-party agent accredited by the Department, or an out-of-state government body and would document a veal producer's conformance with the requirements of HSC sections 25990 through 25992 and this proposal for purposes of selling whole veal meat from their calves within or into the State. This subsection in conjunction with veal distributor registration and certification is necessary to provide uniform verification that products sold in commerce in California originated from calves housed in compliance with the Act. Recognizing that initial certification may take time, the section includes a one-year delay until January 1, 2023 to acquire this certification.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

## Adopt Section 1321.2. Veal Distributor Registration.

Proposed section 1321.2 gives the Department authority to establish the requirements for the registration of persons or businesses distributing whole veal meat within and into this State, which is a necessary component to creating an effective program to ensure California consumers have confidence that calves raised for whole veal meat were raised in accordance with the Act. The Department has been mandated to implement the Act to ensure only compliant whole veal meat is sold into and within California. This section provides authority to regulate sales of this covered product through registration of veal distributor entities. Registration of persons or businesses is a practical means to identify covered product sales and implement a mechanism for preventing the sales of noncompliant whole veal meat into and within the State. Therefore, pursuant to this proposed section, the Department is requiring any person or business engaged in the commercial sale of whole veal meat as a veal distributor defined in 1321(z) must have a valid registration with the Department.

Section 1321.2(a) gives the Department to require that persons conducting business in the State as a veal distributor, or an out-of-state veal distributor that conducts commercial sales of whole veal meat into California for purposes of human food, must register with the Department. A veal distributor, as defined by section 1321(z) of this proposal, is the person or entity selling whole veal meat to an end-user (i.e., to a consumer, retailer, food processor, or restaurant) in the State. The Department proposes to register veal distributors to allow for verification that sales of whole veal meat are only from sources certified as compliant with the calf confinement requirements of HSC sections 25991 and 25992 and section 1321.1 of this proposal. The registration requirement is necessary as it will allow the Department to establish an inventory of entities conducting sales of whole veal meat to end-users in the State and ensure through accompanying certification requirements that handling, distribution, and recordkeeping are conducted in an auditable manner to demonstrate the sourcing and sales of only products that are in full compliance with the law.

Section 1321.2(b) is needed to specify that any person who is required to register as a veal distributor is to submit an application for registration as provided by the Department which will request necessary information about the applicant that the Department will use to document registrants. Specifically, subsection (b)(1) requires the applicant provide business contact and location information, including the location of the distribution facility, and website and email addresses, which is standard business information necessary to identify a business and business contact or person to a location and/or to enable interaction with the person or business contact either in person, by mail or email. This subsection additionally requests a federal tax identification number which is necessary to allow the Department to distinguish individual business entities for accurate recordkeeping. A federal taxpayer identification is a unique business identification number used as the Department requires a registration for each physical location of distribution and a business with unique federal taxpayer identification might have multiple distribution locations located within and outside of California requiring registration. Subsection (b)(2) requests the applicant to indicate the type(s) of covered products distributed

in the State, which is necessary for the applicant to provide to the Department to document the covered product the person or entity is considering for distribution and that which the Department will need to know when determining compliance with the Act and the regulations.

Section 1321.2(c) specifies that the registration shall not be transferable to any person and shall be applicable only to the location for which it is originally issued. This subsection is necessary for tracking purposes to ensure the Department is made aware of the person who is registered as a veal distributor to conduct commercial sales of whole veal meat within or into the State and the physical location from which the distribution activity is occurring.

Section 1321.2(d) specifies that a registration is required for each facility location where any of the business practices requiring a registration will be conducted. This authority is necessary to provide the Department with information for the physical location of each facility distributing covered products to allow for tracking the distribution of whole veal meat to an end-user and to identify each location where an inspection, audit, or complaint follow-up investigation may be necessary to ensure only compliant products are sold in the State. Authority requiring a registration for each facility location will additionally provide the Department with information to address noncompliance violations at a single distribution facility of a company and direct consequences to that specific facility instead of all distribution locations under the same ownership engaging in commercial sale of covered product within or into the State.

Section 1321.2(e) specifies that a veal distributor shall not engage in the commercial sale of whole veal meat within or into the State unless they hold a valid registration from the Department for each facility location. This subsection authorizes the Department to regulate the commercial sale of whole veal meat for each facility location of a veal distributor through registration which is a practical means to identify covered product distribution and prevent the distribution of noncompliant covered product. This subsection is necessary to ensure that all persons conducting distribution activities in the State and the facilities where distribution is occurring are properly registered after review of a submitted application to the Department. Comprehensive registration of veal distributors is integral to implementing an effective animal care program that the Department has been tasked to develop to ensure calves raised for whole veal meat and sold to consumers within the State were not kept in a cruel manner, regardless of their origin.

Section 1321.2(f) specifies that any change in ownership, business name, business location, business closure, or change in contact information of a registered facility must be reported to the Department within 30 business days of such change. Thirty days is adequate time for a registered veal distributor to report changes in their operations and for the Department to adequately record the changes. This proposed subsection is necessary as it will help to ensure the Department has the most up-to-date and accurate information of persons engaged in commercial sales of whole veal meat within and into the State as veal distributors.

Section 1321.2(g) specifies that all information on the application completed for registration and renewals for registration shall be truthful and not misleading. If an applicant or registrant is



found to have provided false information, on an application for registration, the application cannot be accurately evaluated based on this false information. If after a registration is granted, it is found that a registrant provided false information on an application for registration, then registration was granted based on inaccurate information and may not have been granted otherwise. If an applicant is found to have provided false information, pursuant to this section, the Department may then deny, suspend, or revoke a registration. This subsection is necessary to inform the applicant that reporting and providing truthful information is a requirement because the Department will rely on this information when verifying compliance of whole veal meat sold through registered veal distributors to consumers and that those products are compliant with requirements of the Act.

Section 1321.2(h) specifies the duration the registration is in effect, which is 12 months from the date it is issued. This subsection gives the Department authority to collect, update, and validate information on an annual basis from veal distributors which is necessary for the Department to have in order to maintain an up-to-date list of veal distributors selling whole veal meat within and into the State. The Department will rely on information provided on the application when conducting investigations, audits, and complaint follow-up to verify a distributor's compliance with the Act and these regulations to ensure only compliant covered products are available for Californians to purchase or consume.

Section 1321.2(i) states what criteria the Department will use in determining approval of an application for renewal which is necessary to inform prospective distributors how the Department will determine eligibility. Renewal eligibility will be based on compliance with the applicable requirements for engaging in the business of distributing whole veal meat in the State in accordance with HSC sections 25990 and 25991 and these regulations during the 12 months preceding the application for renewal.

Section 1321.2(j) states what documentation is needed for the Department to review and approve the initial registration or application for renewal. An application for initial registration or for renewal shall be accompanied by documentation of a valid certification in accordance with Article 5 of the Chapter for each location where registration or renewal is being sought. A registration or renewal shall not be issued to any facility location for which a valid certification, as required by this section, has not been submitted to the Department. The purpose of this subsection is to give the Department authority to grant registration only to those holding a valid registration pursuant to Article 5 because written certification ensures that persons operating as veal distributors have been verified as sourcing whole veal meat from farms that are certified operations in compliance with California's veal calf confinement standards and are observing proper product segregation and recordkeeping as required by this proposal.

Section 1321.2(k) specifies that notwithstanding the requirements of subsection (j) of this section, a registration may be granted prior to January 1, 2023, to an applicant that self-certifies that a facility complies with all applicable requirements of sections 1321.4 and 1321.5 of the Article and sources whole veal meat from producers that are in compliance with section 1321.1 of the Article. This period of self-certification is important and necessary to allow adequate time

for registrants to obtain third-party certification verifying the facility is in compliance with the requirements of this proposal. On and after January 1, 2023, the holding of a valid certification pursuant to Article 5 of this proposal would be required for issuance of a registration by the Department.

Section 1321.2(l) provides an exemption from the veal distributor registration requirements of this proposal to facilities that hold an establishment number (prefix “M”) granted by the USDA-FSIS under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) which is necessary to be consistent with the exclusion of these establishments from the definition of a “farm” in section 25991(i) and “sale” in section 25991(o) of the HSC. For clarity, the subsection uses the designation commonly understood by veal processors to specify that exempted establishments are those that hold a USDA-FSIS granted establishment number of prefix “M” which identifies the plant as handling or processing whole veal meat. These facilities are under the inspection authority of the USDA-FSIS tasked to oversee animal slaughter and processing of meat sold in interstate commerce, and to reinspect imported products to ensure that they meet U.S. food safety standards. However, because “whole veal meat” is explicitly included in HSC section 25990(b)(1), during processing virtually all whole veal meat is originally inspected at a facility under federal authority, and the exemptions described in the Act refer the location under federal inspection authority, this section clarifying that only locations under federal inspection as defined are exempted from registration as a distributor is necessary. Sales of whole veal meat within California subsequent to those where possession is taken at the USDA-FSIS inspected plant are included under the Act’s definition of sale. Buyers not under USDA-FSIS inspection as described and intending to distribute whole veal meat must have a valid distributor registration pursuant to this section. This subsection is necessary to explain the applicable exception from the distributor registration process and requirements for official plants as specified in the section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

### Adopt Section 1321.3. Inspection and Audit of Registered Veal Distributor Facilities.

Proposed section 1321.3 establishes the inspection and auditing activities conducted by the Department or certifying agents of registered veal distributors. Registration issued by the Department is a requirement of this proposal for a distributor to engage in commercial sales of whole veal meat to an end-user in the State. This section gives the Department and other certifying agents authority to inspect and audit veal distributors for compliance with the Act and these regulations as a condition of registration which is necessary to assure consumers whole veal meat purchased in California, regardless of origin, is in compliance with the provisions of the Act.

Section 1321.3(a) specifies that every person who is required to be registered pursuant to section 1321.2 of the Article shall comply with this section. This subsection gives the Department the authority to require distributors to comply with the requirements of the section in order to receive and maintain registration and is necessary to ensure registrants are aware that the Department and/or certifying agents shall conduct routine inspections and audits of distributor facilities to verify compliance with the Act and regulations. Verification is critical for consistent implementation and integrity of covered product compliance.

Section 1321.3(b) gives the Department authority to require distributors, as a condition of their registration, to allow the Department and a certifying agent entrance and access to the premises and business records which is a standard component of an inspection and audit. Registration issued by the Department is a requirement of this proposal for a distributor to lawfully engage in commercial sales of whole veal meat to an end-user in the State. Review of business records and an inspection of a premises will assist the Department and certifying agents determine and verify if a registrant is compliant with the Act and these regulations. The inspections and audits required by this subsection as a condition of registration will take place as described in sections 1326.2 and 1326.5 of this proposal. Verification is critical for consistent implementation and integrity of covered product compliance. Based on experience in other programs like the Department's ESQM program and the USDA NOP, market stability depends on consistent implementation of requirements.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### Adopt Section 1321.4. Whole Veal Meat Shipping Document Requirements.

Proposed section 1321.4 gives the Department authority to require specific shipping documents accompanying the transport of whole veal meat with language that communicates and identifies the covered products in transit are moving into or within California in compliance with the Act and these regulations. Such shipping document marking will facilitate product traceability to covered animals raised in compliance with the Act and assist distributors and buyers in efforts to ensure products offered for sale in California come from veal calves raised in compliant enclosures.

Section 1321.4(a) is necessary to identify the section as specific to the required shipping document markings when whole veal meat is transported into the State, transported within the State, or when transported through the State solely for sale in another state or country. Marking of shipping documents is necessary for the products to be easily identified during transport, properly segregated as applicable, and readily inspected by the Department or other enforcement officers, and certifying agents. This requirement will ensure that shipments of whole veal meat are clearly identified and documented as compliant with the requirements of this proposal as they are moved into or within the State and sold to an end-user or transported for purposes of trans-shipment or export for non-California use.

Section 1321.4(a)(1) states the requirements for shipping invoices, shipping manifests, documents of title, and bills of lading shall include the appropriate statements “California 43+ Compliant” or it may be abbreviated “CA 43+”. As whole veal meat moves through the commercial marketplace, easily identifiable documentation indicating the product is compliant with the Act and these regulations will facilitate lawful distribution. Without the proposed statements, buyers, inspectors, enforcement officers, certifying agents, and the Department have no practical way to determine if product is compliant without reviewing certification and registration status for each distributor moving product through the system. Therefore, the requirements of this section authorize the Department to require specific markings on shipping documents, bills of lading, etc. and is necessary to document that the veal calves used to produce the whole veal meat contained in the shipments and as identified on these documents meet the confinement standards as stated in section 1321.1 of this Article. This subsection also requires that the statement shall be clearly legible and plainly printed or stamped on the shipment paperwork which is necessary to ensure the products can be easily identified during transport, properly segregated as applicable, and readily inspected by the Department or other enforcement officers, and certifying agents.

Section 1321.4(a)(2) is necessary to clarify the requirements for shipments of whole veal meat that are not intended for sale in the State but are transported through the State to other states or countries. The shipments of whole veal meat must be labeled with the statement “Not for California Consumption” or “Not for California Sale” on shipping manifests, shipping invoices, documents of title, and bills of lading. This subsection is necessary to communicate and clearly identify that the covered products are shipping through the State and therefore not included in the definition of “commercial sale” in 1321(e), and ensure they remain segregated from whole veal meat that is subject to the requirements of specified statutes or regulations that apply to sales of whole veal meat to be used for human food purposes within California.

Section 1321.4(a)(3) allows the Department to require specific markings on shipping documents and bills of lading for shipments of noncompliant covered product moving directly from a USDA-FSIS inspected plant to another USDA-FSIS inspected plant to ensure this type of movement of noncompliant product is easily and uniformly identified by the Department or an enforcement officer. Proper identification of this noncompliant product will ease the movement and transport into and within the State to ensure perishable products arrive on time to scheduled destinations. This subsection is necessary to clarify the identification requirements for shipments of whole veal meat produced from calves not housed according to the standards described in HSC section 25991 and these regulations and that originate from a USDA-FSIS inspected facility for transportation to a final destination in California that is another USDA-FSIS inspected facility under the Federal Meat Inspection Act. Shipments of whole veal meat from sources that are not in compliance with the Act that are to be used at a federal plant with a prefix of “M” in California only to manufacture products not covered under the Act, are required to have specific statements clearly marked on the shipping invoices, documents of title, bills of lading, and shipping manifests. This labeling requirement is necessary because of the exemption from the definitions of “farm” and “sale” for USDA-FSIS inspected plants described in HSC sections

25991(i) and 25991(o), respectively, and to provide clear identification of products not conforming to the Act's confinement requirements when shipped between two exempt facilities. It is important to note that any subsequent sale of whole veal meat from USDA-FSIS plants must be compliant with the requirements of the Act because the exemption as stated in the law attaches to the sale where physical possession was taken at a USDA-FSIS inspected plant, not to the whole veal meat coming from the plant. Therefore, this subsection requires the shipping documents as specified to clearly identify the product as not conforming to the Act's confinement requirements.

Section 1321.4(b) gives the Department the authority to implement standards outlined in the Act and these regulations and the ability to act if examples of false advertising or misrepresentation of covered products as compliant is found. Misrepresentation of whole veal meat as compliant could result in noncompliant whole veal meat entering California commerce and consumers purchasing or consuming noncompliant veal under the guise of being compliant with the Act. This subsection is necessary to ensure veal producers and distributors are aware that no person shall be deceptive in the labeling of their whole veal meat stating that it was produced in a "California compliant" environment unless the calves were raised in accordance with section 1321.1 of this Article. In addition, this subsection is necessary to ensure that veal producers and veal distributors are aware that all shipping documents and bills of lading bearing the statement of "California 43+ Compliant" or "CA 43+" must be truthful and not misleading and accurately identify products that are in compliance with this proposal and HSC section 25991.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

#### Adopt Section 1321.5. Veal Distributor Recordkeeping.

Proposed section 1321.5 establishes the requirements pertaining to recordkeeping by veal distributors. This section gives the Department authority to require that veal distributors follow certain recordkeeping guidelines in order to receive and maintain valid registration as a veal distributor with the Department and lawfully engage in the commercial sale of whole veal meat to an end-user. Recordkeeping is a vital component to an effective, efficient system that the Department is tasked to implement to assure the animals producing whole veal meat sold into and within California meet the specifications of the Act in an effort to prevent animal cruelty.

Section 1321.5(a) gives the Department authority to require compliance with this section which is necessary for a veal distributor to sell whole veal meat within or into the State.

Section 1321.5(b) authorizes the Department to require veal distributors to demonstrate an audit trail through records, as defined in 1321(b), and detailed in section 1326.2 of Article 5 in order for the Department to validate that whole veal meat sold by a distributor is compliant. Because of the variability in processing and distribution systems, the recordkeeping requirement allows

each distributor to determine how best to ensure only compliant whole veal meat enters the California market as demonstrated through a document audit trail. This audit trail composed of documentation is essential for the Department or certifying agent to be able to review because the supply chain of whole veal meat can be complicated if products exchange hands multiple times before being sold to an end-user in California. The subsection is necessary to clarify the purpose of keeping records for the distributor to better understand the type of information needed to support the registration pursuant to this Article and to certify operations pursuant to section 1326.2 of Article 5.

Section 1321.5(c) specifies that the records maintained by a veal distributor shall document, in a traceable manner, that whole veal meat being sold or distributed by the veal distributor is originating from certified veal producers that house calves in compliance with section 1321.1 of this Article. The purpose of this subsection is to authorize the Department to require the records of veal distributors to include documented evidence through an audit trail that whole veal meat a distributor is selling originates from producers who have a valid certification as described in Article 5 of this Chapter to demonstrate compliance with the Act and these regulations. This subsection is necessary to ensure the Department and certifying agents have sufficient records for auditing purposes to verify compliance with statutes and these regulations, including the traceback of shipments to supplying farms in compliance with California's calf confinement standards specified in the Act.

Section 1321.5(d) gives the Department authority to require veal distributors to document where physical possession of covered product takes place for each sales transaction. This subsection specifies that the recordkeeping requirement for registered distributors include documentation of where physical possession of whole veal meat takes place with each sales transaction. This is required due to the definition of sale in HSC section 25991(o) where it defines a sale occurring where the buyer takes physical possession. The location where physical possession takes place will be unique to each sales contract for transaction of covered product depending on negotiated terms for freight or other means of transport.

Section 1321.5(e) specifies that records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or certifying agent as required by section 1321.3 of the Article. The purpose of the subsection is to give the Department authority to establish parameters by which veal distributors are to maintain specified records. A two-year minimum requirement is necessary to maintain a paper trail for traceback of covered product to demonstrate compliance with statutes and these regulations related to commercial sale of whole veal meat in the State and is consistent with recordkeeping timeframes specified in the Federal Meat Inspection Act and the Department's SOP.

Section 1321.5(f) provides an exemption to facilities inspected under the Federal Meat Inspection Act by the USDA-FSIS pursuant to 21 U.S.C. Sec. 601 et seq. from the veal distributor recordkeeping requirements of this section. It is necessary to include this subsection to ensure the affected industry is aware that these federally inspected establishments are not

required to register with the Department as veal distributors and are similarly exempt from mandatory maintenance of records for inspection as specified in this section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

#### Adopt Section 1321.6. Inspection of Conveyances.

Proposed section 1321.6 establishes the requirements allowing the Department, enforcement officers, and certified agents to inspect conveyances moving covered veal meat within and into California which is necessary to help ensure covered products moving are doing so in accordance with the regulations and Act.

Section 1321.6(a) specifies that when a veal distributor submits an application for registration, they are agreeing, as a condition of registration, to allow the Department or other enforcement officer, and a certifying agent, to inspect their vehicles and other conveyances under the registrant's operation or control for compliance with statutes and these regulations. This subsection is necessary to help ensure registrants are aware that all vehicles and conveyances may be subject to inspection relating to commercial sale of whole veal meat in the State for purposes of verifying compliance. Such direct inspections of shipments entering the State is necessary to fulfill the purpose of the statutes and a critical part of the Department's proposed program framework from farm to end-user to ensure whole veal meat is compliant with the requirements of the Act approved by California voters.

Section 1321.6(b) authorizes the Department to require that every person shall stop at the request of an enforcement officer at any of the Department's Border Protection Stations for inspection purposes of vehicles and commodities to ensure they are pest free and meet all regulatory requirements. The purpose, as it relates to this proposal, is the authority to inspect shipments of whole veal meat moving within or into the State to ensure the shipment is accompanied by the required documents for transport according to these regulations. Such direct inspections of shipments entering the State through the Department's Border Protection Stations are necessary to fulfill the purpose of the statutes and are a critical part of the program's overall framework extending from farms to end-users to ensure that whole veal meat, regardless of origin, is compliant with the requirements of the Act approved by California voters.

Section 1321.6(c) authorizes that the Department or other enforcement officer in California, may deny entry into the State or order diversion from in-state destinations any vehicle or other conveyance transporting whole veal meat that do not comply with the requirements of HSC sections 25990 through 25992 and the provisions of these regulations. This subsection is necessary as it provides clarity that violations that may result in denial of entry or diversion including, but are not limited to, the marking requirements as specified in section 1321.4 of this Article. The denial of entry or diversion as described is necessary for effective oversight of

shipping document marking requirements and overall compliance of covered products entering California commerce consistent with the purpose of the statutes approved by California voters.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### Adopt Section 1321.7. Tagging and Seizure of Whole Veal Meat.

Proposed section 1321.7 gives the Department or another enforcement officer the authority to affix tags or notices to shipments of whole veal meat and authority for seizure or holding of whole veal meat when found, or suspected to be, in violation of the Act and these regulations. Requirements of this section are necessary to ensure the affected industry is aware of the manner in which the Department will implement methods to prevent covered product that does not meet the requirements of the regulations and the Act from being sold into or within the State.

Section 1321.7(a) gives authority to the Department or other enforcement officer to affix a warning tag or notice to shipping documents, as specified, or to lots or loads of whole veal meat that may be found in violation of HSC sections 25990 through 25992 and the provisions of these regulations. The Department or other enforcement officer may give notice of such violation to the producer, distributor, owner, or other person in possession of the whole veal meat. Further, it is necessary to use the word “may” in this subsection to provide discretion for rare, but possible circumstances out of the control of the Department or other enforcement officer such as extreme weather events, natural disasters, acts of God, global pandemics, or other similar circumstances when making a determination to affix a warning tag or provide notice of a violation, as stated. This subsection is necessary as an essential enforcement tool for preventing noncompliant whole veal meat from being distributed to end-users in the State and so persons are aware they are to be in compliance with the provisions of animal confinement standards specified in HSC sections 25990 through 25992 and these regulations.

Section 1321.7(b) states that no one shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department or other enforcement officer. The purpose of the subsection is to give the Department or an enforcement officer clear authority over the fate of tagged or seized product to ensure noncompliant whole veal meat is not sold into or within California in accordance with the Act and these regulations. The restriction on removing tags or notices as described in this section is necessary for effective oversight and implementation of these regulations and to ensure regulatory identification of noncompliant products is properly maintained during diversion or seizure activities.

Section 1321.7(c) gives the Department or other enforcement officer authority to seize and hold any containers, sub-containers, lots, or loads of whole veal meat in California that are in violation of HSC sections 25990 through 25992 or the provisions of these regulations at their discretion based on evidence gathered or at the time of inspection. Shipments may be tagged,



and a hold notice issued as specified until a resolution is made according to procedures outlined in these regulations. It is necessary to use the word “may” in this subsection to provide discretion for rare, but possible circumstances out of the control of the Department or other enforcement officer such as extreme weather events, natural disasters, acts of God, global pandemics, or other similar circumstances when making a determination to seize and hold any whole veal meat lots or loads, or containers or sub-containers, as stated. This subsection is necessary because it gives authority for a mechanism to prevent noncompliant whole veal meat from being distributed to end-users in the State.

Section 1321.7(d) states that if a shipment of whole veal meat is tagged with a hold notice issued by the Department or other enforcement officer, that the shipment must be held and not further transported by the person in control of the shipment unless directed by the Department. The Department is mandated to implement the Act to ensure only compliant covered products are sold into and within California; this subsection gives the Department sole authority to direct movement of the tagged or seized covered product to a location to prevent the noncompliant or suspect noncompliant covered product from entering or to continue moving through the supply chain. If the noncompliant product is about to enter or is already in the supply chain, the Department has an obligation to prevent its progression by issuing a hold on the product at the specified location. This subsection is necessary to make a person aware of the actions that are not allowed when whole veal meat is tagged to help ensure noncompliant whole veal meat does not enter the human food supply in the State.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### Adopt Section 1321.8. Written Certification.

Proposed section 1321.8 establishes the written certifications required for selling whole veal meat in California needed to demonstrate that the animals producing the covered products were raised in accordance with the Act which the Department has been charged to implement. This section gives the Department authority to require written certification of operations engaged in commercial sales of whole veal meat in California commerce as detailed in Article 5 to demonstrate compliance with the Act in a verifiable and auditable manner across the industry.

Section 1321.8(a) describes what would be acceptable to the Department as written certification from a supplier that whole veal meat was derived from calves that were not confined in a cruel manner for purposes of HSC section 25993.1. The Department is requiring that any such certification from a supplier to a business owner be based upon records that constitute an audit trail as defined in section 1321(b), and traceable to a farm of origin that raises calves according to standards outlined in section 1321.1 of this Article. The Department requires the authority of this subsection’s requirements as they are critical to ensuring that written attestations of compliance with the Act from suppliers that buyers may be relying on in good faith are valid and can be substantiated as accurate and truthful.

Section 1321.8(b) specifies the recordkeeping procedures for an end-user who takes final possession of whole veal meat that was transported by a common carrier, private carrier, or other means of conveyance directly from a facility inspected by the USDA-FSIS under the Federal Meat Inspection Act pursuant to 21 U.S.C. Sec. 601 et seq. This subsection is needed because in these sales transactions there is not a registered distributor, as described in this proposal, as sales are direct to retailer and food processing facility end-users. Further sales of covered product to other end-users that meet the definition of a commercial sale would need to be from veal calves confined in a manner consistent with the Act and these regulations. Therefore, the Department requires documentation and demonstration of compliance with the Act and these regulations as the burden of the retailer and food processing facility purchasing directly from a USDA-FSIS inspected facility.

Section 1321.8(b)(1) gives the Department authority to require that the end-user maintain records documenting written certifications that meet the requirements of (a) of this section, of whole veal meat received during the preceding 12-month period. This is a necessary time period in which to maintain records for instances where the Department or other enforcement agency would need to inspect the records for compliance with statutes and regulations.

Section 1321.8(b)(2) gives the Department authority to require the retailer or food processing facility end-user purchasing whole veal meat directly from a USDA-FSIS plant to maintain records of where physical possession of each sale of covered product took place. This information is included in the recordkeeping requirements due to the definition of sale in HSC section 295991(o) which does not include sale of whole veal meat where physical possession is taken at a USDA-FSIS plant. All subsequent sales of whole veal meat from the retailer to a consumer would fall under the definition of sale and therefore the covered product would need to be compliant with confinement standards of the Act. If the food processing facility claims a sale, as the buyer, of covered product is exempt from the definition of sale and the confinement requirements of the Act, then this must be documented.

Section 1320.8(b)(3) gives the Department authority to require the retailer or food processing facility end-users make the records available on-site for inspection by the Department and other state or local health agencies upon request. Electronic records are considered on-site if they are accessible from an on-site location. This requirement is necessary to ensure compliance with the Act and these regulations.

Section 1321.8(c) states that the recordkeeping requirements of subsection (b) will not apply to end-users that are facilities inspected under the Federal Meat Inspection Act by the USDA-FSIS pursuant to 21 U.S.C. Sec. 601 et seq. This clarification was added because of the exemptions for these establishments from the definitions of "farm" and "sale" in HSC sections 25991(i) and 25991(o), respectively, as described above. This subsection is necessary because movement of whole veal meat from a facility that holds a USDA-FSIS granted establishment number with a prefix of "M" to another facility that holds a USDA-FSIS granted establishment number with a prefix of "M" that is an end-user as defined in this Article, would not be considered a commercial

sale according to the Act and these regulations and therefore would not need to comply with written certification recordkeeping requirements of this section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC and federal code sections used to authorize the requirements of the section.

#### Adopt Section 1321.9. Denial, Suspension, or Revocation of Veal Distributor Registration.

Proposed section 1321.9 gives the Department authority to take actions against registered distributors for violations of the Act and this Chapter which is necessary to ensure the affected industry is aware of the actions the Department may take in response to noncompliance and their right to appeal the Department's decision. The Department has been mandated to implement the Act to ensure only compliant covered products are sold into and within California. While registration with certification provides a means to identify compliant product distribution, the ability to deny, suspend, or revoke registration similarly provides a practical mechanism for excluding noncompliant sales. The impact of a veal distributor having their registration with the Department denied, suspended, or revoked is an inability to engage in commercial sale of whole veal meat in California. As outlined in this Article, only a veal distributor with a valid registration issued by the Department may engage in commercial sales of whole veal meat.

Section 1321.9(a) informs applicants and registrants of the reasons the Department may deny, suspend, or revoke a registration in accordance with these regulations. This subsection is necessary to provide the regulated industry and the public explicit understanding of the consequences of noncompliance regarding registration and establish consistent and transparent registration actions by the Department. The authority to deny, suspend, or revoke registration provides a mechanism to prevent the commercial sale of whole veal meat within California that is not in compliance with the Act and this Chapter. The reasons for possible denial, suspension, or revocation of a registration are stated in subsections (a)(1) through (a)(5).

- Subsection (a)(1) specifies violations that resulted, or could have resulted, in the commercial sale of whole veal meat that was from calves confined in a manner in violation of these regulations could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor who is selling noncompliant covered products in the State would need to halt these sales to prevent further noncompliant product from entering the California marketplace. Violations that could have resulted in the commercial sale of covered product are also included because to fully implement the Act, the Department needs to prevent the sale of noncompliant covered products to California consumers. If the noncompliant product is in the supply chain destined for a California sale, the Department has an obligation to prevent that sale from occurring by denying, suspending, or revoking registration and not wait until the product is purchased by a consumer. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or with California.

- Subsection (a)(2) specifies repetitive failure to comply with the requirements of these regulations and/or the statutes pertaining to whole veal meat or calves raised for veal in accordance with HSC sections 25990 through 25992 could be reason for the denial, suspension, or revocation of a registration by the Department. This reason is needed because if a distributor, applicant, or registrant, has demonstrated a pattern of noncompliance and failure to make necessary corrections to comply with the Act and this Chapter, then their ability to sell whole veal meat will either not be granted or will be removed by the Department to ensure consumers that the whole veal meat they purchase is compliant. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or within California.
- Subsection (a)(3) specifies refusal to grant access or interference with inspections and audits as described in sections 1321.3 or 1320.6 this Article could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor will need to comply with inspections and audits to verify compliance with the Act and this Chapter and to allow the Department to follow up on accusations or complaints of noncompliance. The Department must have the authority to verify compliance to ensure only compliant whole veal meat is sold within and into California.
- Subsection (a)(4) specifies misrepresenting whole veal meat as being produced in compliance with these regulations could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor who is found to have misrepresented covered product as compliant with the Act and this Chapter could result in noncompliant whole veal meat entering California commerce and then consumers purchasing or consuming noncompliant whole veal meat under the guise of these covered products being compliant with the Act. Distributors engaging in this type of activity need to have registration denied, suspended, or revoked so they can no longer engage in commercial sale of whole veal meat within or into California. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or within California.
- Subsection (a)(5) specifies providing false information on an application for registration or renewal could be reason for the denial, suspension, or revocation of a registration by the Department. If an applicant or registrant is found to have provided false information, on an application for registration, it is necessary that the Department be able to deny the registration as the application cannot be accurately evaluated based on false information. If after a registration is granted, an applicant or registrant is found to have provided false information on an application for registration, it is necessary that the Department be able to suspend or revoke the registration because it would have been granted based on the false information provided on the application and may not have been granted otherwise. This subsection is necessary to ensure only whole veal meat from calves raised according to the Act are available for commercial sale within or into California.

Section 1321.9(b) states that appeal and formal hearing procedures are available for persons wanting to appeal the decision of the Department to deny, suspend, or revoke a distributor registration. This subsection is necessary to allow applicants or registrants that have received a denial, suspension, or revocation of a registration to appeal the Department's decision to deny,

suspend, or revoke their registration pursuant to the formal hearing proceedings as authorized in Title 2 of the Government Code, as specified.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC code sections used to authorize the requirements of the section.

#### Adopt Section 1321.10. Registration with the California Department of Public Health.

Proposed section 1321.10 establishes the requirements for compliance with the requirements pursuant to the DPH for the purposes of processed food registration, in addition to these regulations.

Sections 1321.10(a) describes the requirement that any person operating a food processing establishment in California still must adhere to the requirements for registration with the DPH pursuant to section 110460 of the HSC in addition to registration requirements outlined in section 1321.2 of this proposal. Subsection (b) provides that evidence of the registration with DPH must be provided to the Department or its designee upon request. The processed food registration is an existing requirement of DPH for food safety regulatory purposes, and these subsections are necessary to make clear for the industry that registrants under this proposed Article are not exempt from DPH requirements for food processors and that the Department may ask for evidence of the registration with DPH if applicable.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate HSC sections used to authorize the requirements of the section.

#### 4) Adopt new Article 3 and sections 1322 through 1322.10.

##### Adopt Article 3. Breeding Pigs.

The Department is proposing new Article 3 relating to breeding pigs and the requirements for the production and handling of whole pork meat in accordance with sections 25990 and 25991 of the HSC.

##### Adopt Section 1322. Definitions.

Section 1322 establishes definition of terms used in this Article and clarifies that the meaning of definitions for terms worded in the singular form also applies to the plural form and vice versa as context requires or the case may demand. Although the Act includes the meaning of some terms, it is necessary to additionally include a list of terms as defined in these proposed regulations.

Section 1322(a) specifies “Act” means the Farm Animal Cruelty statute, as amended pursuant to the HSC, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1322(b) specifies “audit trail” means records relating to the identification, source, and traceability of a load or shipment of whole pork meat that is marketed in California. The purpose is to provide pork producers, pork distributors, end-users, enforcement officers, and certifying agents with a description of the type of information that may be considered a record and that would need to be maintained as verification that the whole pork meat was derived from a breeding pig or direct offspring of a breeding pig not confined in a cruel manner. Such records may be in hard copy or electronic format. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1322(c) specifies “breeding pig” has the same meaning as stated in HSC section 25991(a). The term “breeding pig” is used extensively in the proposed regulations and it is necessary to include this definition as stated in HSC for ease of reference by the public and the regulated industry, and to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Section 1322(d) specifies “certified operation” has the same meaning as defined in section 1326(e) of the Chapter. Section 1326 establishes definition of terms used in Article 5, which proposes the requirements for certification and accredited certifiers and therefore the appropriate location for the complete definition of the term. Justification for this definition can be found in the corresponding location of this document. This definition is necessary to clarify the term as used in these regulations.

Section 1322(e) specifies “certifying agent” has the same meaning as defined in section 1326(f) in the Chapter. Section 1326 establishes the definition of terms used in Article 5, which proposes the requirements for certification and accredited certifiers and therefore the appropriate location for the complete definition of the term. Justification for this definition can be found in the corresponding location of this document. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1322(f) specifies “commercial sale” means any type of sale, possession, or exposure for sale, exchange, barter, trade, transfer possession, or other distribution in California commerce including, but not limited to, transactions by a retailer with a consumer and sales made through an internet platform. This subsection also specifies what a commercial sale does not include, such as, whole pork meat produced outside of the State that is only transported through the State to locations outside the State or country as stated in subsection (f)(1). Under this exception, no sale or consumption of a covered product would occur within California and products would be allowed to pass through the State exclusively for purposes of export or trans-shipment to other destinations. This exemption of commercial sale is necessary because the ballot initiative provided California consumers an opportunity to determine how animals producing covered products purchased in the State are raised and not to covered products

trans-shipment through the State. Including these shipments under a commercial sale will have negative impacts on transportation systems, ports, trade, and consumers outside of California that are beyond the intent of the Act.

A commercial sale would also not include any sale that takes place on the premises of an establishment that holds an establishment number (prefix "M") granted by the USDA-FSIS under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), as stated in subsection (f)(2). This section is necessary to incorporate the exemption provided by the Act using specific plant designations understood by distributors. With respect to subsection (f)(2), any sale subsequent to those sales where possession is taken at the USDA-FSIS plant is considered a sale pursuant to the Act. The Act exempts a commercial sale where possession is taken at the exempted location due to federal inspection authority at said location. The exemption applies to the location not the product, so further resale would not be exempted, meeting the intent of the Act to provide California consumers products from covered animals that are not raised in a cruel manner as defined. For some products like whole pork meat, virtually all product passes through an exempt location, yet the product is explicitly included in the language of the Act, further supporting subsection (f)(2) clarifying that the exemption applies to the location, not the product.

Subsection (f)(3) additionally exempts any donations to a religious, charitable, scientific, education, or other nonprofit organization that is exempt from federal taxes under section 501(c)(3) of the U.S. Internal Revenue Code. These requirements are necessary to explain the meaning of the term and to indicate the specific transactions or transfers of possession are subject to the provisions of HSC sections 25990 and 25991 and as used throughout the Article.

Subsection (f)(4) clarifies exemption to the definition of commercial sale as specified in subsections (f)(1) through (4) applies only to the specific transaction, not to the covered product, therefore, the exemptions listed do not apply to any subsequent sale of whole pork meat. The purpose for this subsection is to clarify to stakeholders that the exemption of whole pork meat which moves through a federally inspected plant in the definition of commercial sale only applies to that specific transaction where physical possession is taken at the federally inspected facility as defined in HSC section 25991(o). The Department included f(4) in this definition because feedback from stakeholders including many questions about this exemption of commercial sale and potential impact of whole pork meat purchased in the State.

Section 1322(g) specifies "consumer" means any person who purchases whole pork meat, as defined in HSC section 25991(u) and this Article, for the sole purpose of his or her own family use or consumption, or that purchases or consumes pork at a restaurant, food facility, or other similar business that serves cooked pork to customers or patrons. This definition is necessary to explain who is considered a consumer in the context of these regulations and the meaning of the term as used throughout the Article.

Section 1322(h) specifies "container" means, as described, devices which could be used to facilitate the handling, distribution, transportation, or commercial sale of whole pork meat. Such

containers would be subject to inspection by the Department or a third-party certifying agent to ensure compliance with HSC sections 25990 and 25991 and the requirements of these regulations. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1322(i) specifies “cottage food operation” means an establishment as defined in HSC section 113758. It is necessary for the Department to include this referenced definition because cottage food operations would be affected by the provisions of this proposal as an end-user needing to procure compliant whole pork meat for their business.

Section 1322(j) specifies “curing agents”, for purposes of section 25991(u) of the HSC, means any substance listed and described in section 424.21(c) of Title 9 of the CFR. The Department finds it necessary to explain the meaning of the term as used throughout the Article and for consistency with federal regulations that describe curing agents as understood and commonly used by the industry.

Section 1322(k) specifies “cut”, for purposes of section 25991(u) of the HSC, means any uncooked primal, wholesale, sub-primal, or retail cut, including, but not limited to, the definition as identified and described in the USDA’s Institutional Meat Purchase Specifications: Fresh Pork Series 400 (November 2014 Edition<sup>27</sup>) and the 2014 Uniform Retail Meat Identity Standards developed by the Industry-Wide Cooperative Meat Identification Standards Committee, but shall exclude any ground or otherwise comminuted pork meat products. The Department finds it necessary to defer to the USDA’s guidelines for consistency and clarity purposes and to describe cuts of whole pork meat subject to the requirements of the Act and these regulations using specifications understood and currently utilized by the regulated industry. The Department considers exclusion of ground and comminuted products from the term “cut” to be consistent with the context of the statute describing whole pork meat.

Section 1322(l) specifies “Department” means the California Department of Food and Agriculture, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1322(m) specifies “Document of title” means, as described, a document that in the regular course of business or financing is treated as evidence that the person in possession of it is entitled to receive, hold, and dispose of the document and whole pork meat it covers. This definition is necessary to clearly identify specific forms of documentation the Department considers a “document of title” which are often presented in the form of a bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of whole pork meat.

Section 1322(n) specifies “enclosure” means any cage, crate, pen, or other structure used to confine a breeding pig. This definition is necessary to further clarify and interpret the definition

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<sup>27</sup>USDA, Institutional Meat Purchase Specifications: Fresh Pork Series 400 (November 2014)



of an enclosure in HSC section 25991(h) so a person understands what structures would be considered an enclosure subject to the confinement requirements of this proposal.

Sections 1322(o), (o)(1), (o)(2), (o)(3), and (o)(4) specify the meaning of “end-user”. In subsection (o)(1) an end-user can mean a consumer; subsection (o)(2) states an end-user includes a retailer that only receives whole pork meat for commercial sale directly to a consumer; subsection (o)(3) states an end-user can mean a food processing facility or cottage food operation that only received whole pork meat for use as an ingredient for manufacturing a combination food product; and subsection (o)(4) describes that an end-user can mean a restaurant or food facility or other similar business inly cooking and serving whole pork meat to customers, patrons, or guests for consumption. The definition of an end-user as described is necessary to clearly identify the persons or businesses that receive whole pork meat only for purposes of manufacturing foods not covered under the Act, food service in restaurants serving patrons, or direct sales to consumers for only personal consumption. The regulatory burden of this proposal to ensure whole pork meat sold in the State is compliant with the Act is at the level of a pork distributor as defined in 1322(u) to be someone selling to an end-user. Understanding the definition of an end-user is integral into understanding who is a pork distributor. End-users must purchase and sell compliant whole pork meat, but they are not required to register with the Department like a pork distributor.

Sections 1322(p), (p)(1) and (p)(2) specify the meaning of “enforcement officer”. Subsection (p)(1) describes enforcement officer to mean any person employed by or under supervision by the Department and in subsection (p)(2) to mean any person employed by or under supervision by the DPH. It is necessary the Department define this term to inform the public of representatives that would exercise authority to conduct inspections of conveyances and shipping documents at Department’s Border Protection Stations, or tag, seize, deny entry, or divert shipments of covered products that are in violation of sections 25990 through 25992 of the HSC or the requirements of this proposal.

Section 1322(q) specifies “flavoring”, for purposes of section 25991(u) of the HSC, means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and Part 184 of 21 CFR. This definition is necessary to explain the meaning of the term as used in the Article and for consistency with federal regulations describing safe and approved flavoring substances in food.

Section 1322(r) specifies “food facility” means a facility as defined in section 113789 of the HSC. The Department believes consistency with the California Retail Food Code under Part 7, Division 104 (Environmental Health) of the HSC is necessary for clarity purposes among the regulated industry and to explain the meaning of the term as used throughout the Article.

Section 1322(s) specifies “food processing facility” means a facility as defined in section 109947 of the HSC. The Department believes consistency with the Sherman Food, Drug and Cosmetic Law under Part 5, Division 104 (Environmental Health) of the HSC is necessary for consistency

and clarity purposes among the regulated industry and to explain the meaning of the term as used throughout the Article.

Section 1322(t) specifies “person” has the same meaning as stated in section 25991(m) of the HSC. The term person is used extensively in the proposed regulations and it is necessary to include this definition as stated in HSC for ease of reference by the public and the regulated industry, and to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Section 1322(u) specifies “pork distributor” means a person or facility engaged in the business of commercial sales or distribution of whole pork meat to an end-user as defined in 1322(o) of this Article in the State. The definition is necessary to clarify that a pork distributor could also be a pork producer and is not a person or facility that only sells to another distributor or handles whole pork meat as an end-user, such as a retailer that receives whole pork meat to sell at that one location directly to a consumer. Given the complexities of the food production and distribution system, this definition is necessary to minimize the number of entities that must register and be certified while maximizing assurance that product sold to consumers in California are from animals not raised in a cruel manner as defined. Identifying a pork distributor as the final distribution location before products are shipped or sold to a myriad of retail or other end-user locations will minimize the regulatory burden for stakeholders. Including the term “facility” is important to make it clear that if a single business entity operates a distribution center where covered product is then moved to many individual retail locations, end-users, owned by the same business entity, the distribution center is considered a pork distributor and will need to comply with the requirements of this proposal.

Section 1322(v) specifies “pork producer” means a person in the business of keeping, maintaining, confining, or housing breeding pigs, as specified, which is necessary to explain and identify who will need to comply with this proposal. The definition of pork producer does not include facilities that hold an establishment number (prefix “M”) granted by the USDA-FSIS under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) which is consistent with the exclusion of these facilities from the definition of a “farm” in section 25991(i) of the HSC. These facilities are exempt because they are inspected by the USDA-FSIS tasked to inspect meat products sold in interstate commerce, and to reinspect imported products to ensure that they meet U.S. food safety standards. The definition specifies that establishments excluded from the definition of a pork producer are those that hold a USDA-FSIS granted establishment number of prefix “M” which identifies the plant as slaughtering hogs or processing meat products. Inclusion of this definition is necessary to explain the meaning of the term as used in this Article.

Section 1322(w) specifies “ready-to-eat” has the same meaning as stated in sections 317.2(l) and 381.125(b) of 9 CFR. It is necessary to reference these sections in this definition for consistency and clarity with federal regulations that require instructions on the covered product label that directs the consumer to cook the product or otherwise treat for food safety purposes prior to consumption and this can include frozen pork meat products. The term is common use

and recognizable by the regulated industry to describe products that do not require cooking before consumption.

Section 1322(x) specifies “requiring cooking”, for the purposes of section 25991(r) of the HSC, means the covered product cannot be consumed in the condition sold to an end-user which is necessary for food safety reasons and to further explain the meaning of the term as used in this Article.

Section 1322(y) specifies “retailer” means a facility location that conducts commercial sales of whole pork meat to a consumer without any further distribution to another end-user and would need to be aware of the requirements of these regulations. The definition is tied to a specific business location where sales of whole pork meat to a consumer occur due to the complexities of the supply chain of covered product and vertical integration of many businesses selling covered product while there are also small, independently owned businesses selling whole pork meat to consumers in the State. Inclusion of this definition is necessary to explain the meaning of the term as used in this Article.

Section 1322(z) specifies “seasoning”, for purposes of section 25991(u) of the HSC, includes the seasonings listed in Title 21 of the CFR section 182.10 and Part 184. This definition is necessary to explain whole pork meat includes added seasonings. A specific list of the most commonly added seasonings is included in the definition as well as references to federal regulations that include lists of seasonings and substances affirmed by FDA as generally recognized as safe and used by the regulated industry. The Department also believes it is necessary that the definition is consistent with existing federal regulations that describe safe and approved seasoning substances in food.

Section 1322(aa) specifies “uncooked”, for purposes of HSC section 25991(r), means requiring cooking prior to human consumption. The term “uncooked” is used in several key definitions in this Article and it is necessary to include this definition as stated in HSC for ease of reference by the public and the regulated industry, and to provide greater clarity for understanding and following the proposed requirements without having to read both the HSC and this regulation to comply.

Section 1322(bb) specifies “whole pork meat” has the same meaning as stated in section 25991(u) of the HSC. The term “whole pork meat” is used extensively in these regulations and the Department believes it is necessary to repeat this definition as stated in the HSC for ease of reference by the public and the regulated industry and to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

### Adopt Section 1322.1. Breeding Pig Confinement.

Section 1322.1 gives the Department authority to establish the enclosure requirements and associated timeframes for compliance pursuant to the Act and HSC sections 25990 and 25991. The Department is charged with implementing provisions of the Act to ensure California consumers have confidence that whole pork meat purchased in the State come from breeding pigs, no matter the origin, kept in the manner as prescribed by the Act. This section is necessary to implement those provisions.

Section 1322.1(a) states that no pork producer or pork distributor shall knowingly sell or contract to sell whole pork meat within the State if it is the product of a breeding pig confined in an enclosure that fails to meet the standard as detailed in the subsections below. This subsection is necessary to introduce the concepts of the subsections that follow for persons to comply with the confinement standard for breeding pigs raised for the purposes of producing whole pork meat from a breeding pig or immediate offspring of a breeding pig when the whole pork meat is marketed in California.

Section 1322.1(a)(1) states that after January 1, 2022, the enclosure housing breeding pigs shall provide a minimum of 24 square feet of usable floorspace per pig. This specification is consistent with HSC section 25991(e)(3) which also states that after December 31, 2021, confining a breeding pig with less than 24 square feet of usable floorspace per pig would be considered confining an animal in a cruel manner. This subsection is necessary to describe in the regulations the minimum enclosure requirements for breeding pigs as mandated by the Act.

Section 1322.1(a)(2) provides pork producers with the calculation of what is considered usable floorspace per breeding pig for clarity and consistency with HSC section 25991(s). This subsection is necessary to ensure that pork producers are aware of the requirements to house their breeding pigs in compliance with the HSC and these regulations.

Section 1322.1(a)(3) specifies that the exceptions to confinement standards as described in HSC section 25992 and Article 4 apply to the requirements of the section. This subsection is necessary to ensure the public and regulated industry are aware that exceptions to the listed breeding pig confinement requirements are applicable under the circumstances specified in the Act and this proposal.

Section 1322.1(b) authorizes the Department to require that pork producers housing breeding pigs must, commencing January 1, 2023, hold a certification as a certified operation pursuant to Article 5 of this proposal. The purpose of the certification is to provide documentation of conformance to the confinement standards for breeding pigs as mandated by HSC sections 25990 through 25992 and required in this proposal. The Department requires that verification by inspection, by an unconnected third-party, on the premises where breeding pigs are housed to properly ensure that whole pork meat entering California commerce is originating from farms in compliance with the confinement standards and animal cruelty provisions of the Act.

Verification and certification are accepted core standards that maintain the integrity of other programs such as the USDA NOP and the Department's ESQM program. As described in greater detail in Article 5, on-farm certification can be conducted by the Department, a third-party agent accredited by the Department, or an out-of-state government body and would document a pork producer's conformance with the requirements of HSC sections 25990 through 25992 and this proposal for purposes of selling whole pork meat from their breeding pigs or the direct offspring from their breeding pigs within or into the State. This subsection in conjunction with pork distributor registration and certification is necessary to provide uniform verification that products sold in commerce in California originated from breeding pigs housed in compliance with the Act. Recognizing that initial certification may take time, the section includes a one-year delay until January 1, 2023 to acquire this certification.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1322.2. Pork Distributor Registration.

Proposed section 1322.2 establishes the requirements for the registration of persons or businesses distributing whole pork meat within and into this State, which is a necessary component to creating an effective program to ensure California consumers have confidence that the breeding pigs raised for whole pork meat, regardless of origin, were raised in accordance with the Act. The Department has been mandated to implement the Act to ensure only compliant whole pork meat is sold into and within California. This section provides authority to regulate sales of this covered product through registration of pork distributor entities. Registration of persons or businesses is a practical means to identify covered product sales and implement a mechanism for preventing the sales of noncompliant whole pork meat into and within the State. Therefore, pursuant to this proposed section, the Department is requiring any person or business engaged in the commercial sale of whole pork meat as a pork distributor defined in 1322(u) must have a valid registration with the Department.

Section 1322.2(a) gives the Department authority to require a person conducting business in the State as a pork distributor, or an out-of-state pork distributor that conducts commercial sales of whole pork meat into California for purposes of human food, must register with the Department. A pork distributor, as defined by section 1322(u) of this proposal, is the person or entity selling whole pork meat to an end-user (i.e., to a consumer, retailer, food processor, or restaurant) in the State. The Department proposes to register pork distributors to allow for verification that sales of whole pork meat are only from sources certified as compliant with the breeding pig confinement requirements of HSC sections 25991 and 25992 and section 1322.1 of this proposal. The registration requirement is necessary as it will allow the Department to establish an inventory of entities conducting sales of whole pork meat to end-users in the State and ensure through accompanying certification requirements that handling, distribution, and recordkeeping are conducted in an auditable manner to demonstrate the sourcing and sales of only products that are in full compliance with the law.

Section 1322.2(b) gives the Department authority to specify that any person who is required to register as a pork distributor is to submit an application for registration as provided by the Department which will request necessary information about the applicant that the Department will use to document registrants. Specifically, subsection (b)(1) requires the applicant provide business contact and location information, including the location of the distribution facility, and website and email addresses, which is standard business information necessary to identify a business and business contact or person to a location and/or to enable interaction with the person or business contact either in person, by mail or email. This subsection additionally requests a federal tax identification number which is necessary to allow the Department to distinguish individual business entities for accurate recordkeeping. A federal taxpayer identification is a unique business identification number used as the Department requires a registration for each physical location of distribution and a business with unique federal taxpayer identification might have multiple distribution locations located within and outside of California requiring registration. Subsection (b)(2) requests the applicant to indicate the type(s) of covered products distributed in the State, which is necessary for the applicant to provide to the Department to document the covered product the person or entity is considering for distribution and that which the Department will need to know when determining compliance with the Act and the regulations.

Section 1322.2(c) specifies that the registration shall not be transferable to any person and shall be applicable only to the location for which it is originally issued. This subsection is necessary for tracking purposes to ensure the Department is made aware of the person who is registered as a pork distributor to conduct commercial sales of whole pork meat within or into the State and the physical location from which the distribution activity is occurring.

Section 1322.2(d) gives the Department authority to require a registration for each facility location where any of the business practices requiring a registration will be conducted. This authority is necessary to provide the Department with information for the physical location of each facility distributing covered products to allow for tracking the distribution of whole pork meat to an end-user and to identify each location where an inspection, audit, or complaint follow-up investigation may be necessary to ensure only compliant products are sold within or into the State. Authority requiring a registration for each facility location will additionally provide the Department with information to address noncompliance violations at a single distribution facility of a company and direct consequences to that specific facility instead of all distribution locations under the same ownership engaging in commercial sale of covered product within or into the State.

Section 1322.2(e) gives the Department authority to prohibit a pork distributor from engaging in the commercial sale of whole pork meat within or into the State unless they hold a valid registration from the Department for each facility location. This subsection authorizes the Department to regulate the commercial sale of whole pork meat for each facility location of a pork distributor through registration which is a practical means to identify covered product distribution and prevent the distribution of noncompliant covered product. This subsection is

necessary to ensure that all persons conducting distribution activities in the State and the facilities where distribution is occurring are properly registered after review of a submitted application to the Department. Comprehensive registration of pork distributors is integral to implementing an effective animal care program that the Department has been tasked to develop to ensure breeding pigs raised for whole pork meat and sold to consumers within the State were not kept in a cruel manner, regardless of their origin.

Section 1322.2(f) specifies that any change in ownership, business name, business location, business closure, or change in contact information of a registered facility must be reported to the Department within 30 business days of such change. Thirty days is adequate time for a registered pork distributor to report changes in their operations and for the Department to adequately record the changes. This proposed subsection is necessary as it will help to ensure the Department has the most up-to-date and accurate information of persons engaged in commercial sales of whole pork meat within and into the State as pork distributors.

Section 1322.2(g) specifies that all information on the application completed for registration and renewals for registration shall be truthful and not misleading. If an applicant or registrant is found to have provided false information, on an application for registration, the application cannot be accurately evaluated based on this false information. If after a registration is granted, it is found that a registrant provided false information on an application for registration, then registration was granted based on inaccurate information and may not have been granted otherwise. If an applicant is found to have provided false information, pursuant to this section, the Department may then deny, suspend, or revoke a registration. This subsection is necessary to inform the applicant that reporting and providing truthful information is a requirement because the Department will rely on this information when verifying compliance of whole pork meat sold through registered pork distributors to consumers and that those products are compliant with the requirements of the Act.

Section 1322.2(h) specifies the duration the registration is in effect, which is 12 months from the date it is issued. This subsection gives the Department authority to collect, update, and validate information on an annual basis from pork distributors which is necessary for the Department to have in order to maintain an up-to-date list of pork distributors selling whole pork meat within and into the State. The Department will rely on information provided on the application when conducting investigations, audits, and complaint follow-up to verify a distributor's compliance with the Act and these regulations to ensure only compliant covered products are available for Californians to purchase or consume.

Section 1322.2(i) states what criteria the Department will use in determining approval of an application for renewal which is necessary to inform prospective distributors how the Department will determine eligibility. Renewal eligibility will be based on compliance with the applicable requirements for engaging in the business of distributing whole pork meat in the State in accordance with HSC sections 25990 and 25991 and these regulations during the 12 months preceding the application for renewal.

Section 1322.2(j) states what documentation is needed for the Department to review and approve the initial registration or application for renewal. An application for initial registration or for renewal shall be accompanied by documentation of a valid certification in accordance with Article 5 for each location where registration or renewal is being sought. A registration or renewal shall not be issued to any facility location for which a valid certification, as required by this section, has not been submitted to the Department. The purpose of this subsection is to give the Department authority to grant registration only to those holding a valid registration pursuant to Article 5 because written certification ensures that persons operating as pork distributors have been verified as sourcing whole pork meat from farms that are certified operations in compliance with California's breeding pig confinement standards and are observing proper product segregation and recordkeeping as required by this proposal.

Section 1322.2(k) specifies that notwithstanding the requirements of subsection (j) of this section, a registration may be granted prior to January 1, 2023, to an applicant that self-certifies that a facility complies with all applicable requirements of sections 1322.4 and 1322.5 and sources whole pork meat from producers that are in compliance with section 1322.1. This period of self-certification is important and necessary to allow adequate time for registrants to obtain third-party certification verifying the facility is in compliance with the requirements of this proposal. On and after January 1, 2023, the holding of a valid certification pursuant to Article 5 proposal would be required for issuance of a registration by the Department.

Section 1322.2(l) provides an exemption from the pork distributor registration requirements of this proposal to facilities that hold an establishment number (prefix "M") granted by the USDA-FSIS under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) which is necessary to be consistent with the exclusion of these facilities from the definition of a "farm" in section 25991(i) and "sale" in section 25991(o) of the HSC. For clarity, the subsection uses the designation commonly understood by pork processors to specify that exempted establishments are those that hold a USDA-FSIS granted establishment number of prefix "M" which identifies the plant as handling or processing whole pork meat. These facilities are under the inspection authority of the USDA-FSIS tasked to oversee animal slaughter and processing sold in interstate commerce, and to reinspect imported products to ensure that they meet U.S. food safety standards. However, because "whole pork meat" is explicitly included in HSC section 25990(b)(2), during processing virtually all whole pork meat is originally inspected at a facility under federal authority, and the exemptions described in the Act refer the location under federal inspection authority, this section clarifying that only locations under federal inspection as defined are exempted from registration as a distributor is necessary. Sales of whole pork meat within California subsequent to those where possession is taken at the USDA-FSIS inspected plant are included under the Act's definition of sale. Buyers not under USDA-FSIS inspection as described and intending to distribute whole pork meat must have a valid distributor registration pursuant to this section. This subsection is necessary to explain the applicable exception from the distributor registration process and requirements for official plants as specified in the section.



Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1322.3. Inspection and Audit of Registered Pork Distributor Facilities.

Proposed section 1322.3 establishes the inspection and auditing activities conducted by the Department or certifying agents of registered pork distributors. Registration issued by the Department is a requirement of this proposal for a distributor to engage in commercial sales of whole pork meat to an end-user in the State. This section gives the Department and other certifying agents authority to inspect and audit pork distributors for compliance with the Act and these regulations as a condition of registration which is necessary to assure consumers whole pork meat purchased in California, regardless of origin, is in compliance with the provisions of the Act.

Section 1322.3(a) specifies that every person who is required to be registered pursuant to section 1322.2 of the Article shall comply with this section. This subsection gives the Department the authority to require distributors to comply with the requirements of the section in order to receive and maintain registration and is necessary to ensure registrants are aware that the Department and certifying agents shall conduct routine inspections and audits of distributor facilities to verify compliance with statutes and regulations. Verification is critical for consistent implementation and integrity of covered product compliance.

Section 1322.3(b) gives the Department authority to require distributors, as a condition of their registration, to allow the Department and a certifying agent entrance and access to the premises and business records which is a standard component of an inspection and audit. Registration issued by the Department is a requirement of this proposal for a distributor to lawfully engage in commercial sales of whole pork meat to an end-user in the State. Review of business records and an inspection of a premises will assist the Department and certifying agents determine and verify if a registrant is compliant with the Act and these regulations. The inspections and audits required by this subsection as a condition of registration will take place as described in sections 1326.2 and 1326.5 of this proposal. Verification is critical for consistent implementation and integrity of covered product compliance. Therefore, the Department proposed framework is based on experience in other programs like the Department's ESQM program and the USDA NOP, to ensure market stability by consistent implementation of regulatory requirements.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1322.4. Whole Pork Meat Shipping Document Requirements.

Proposed section 1322.4 gives the Department authority to require specific shipping documents accompanying the transport of whole pork meat with language that communicates and identifies

the covered products in transit are moving into or within California in compliance with the Act and these regulations. Such shipping document markings will facilitate product traceability to covered animals raised in compliance with the Act and assist distributors and buyers in efforts to ensure products offered for sale in California come from breeding pigs raised in compliant enclosures.

Section 1322.4(a) is necessary to identify the section as specific to the required shipping document markings when whole pork meat is transported into the State, transported within the State, or when transported through the State solely for sale in another state or country. Marking of shipping documents is necessary for the products to be easily identified during transport, properly segregated as applicable, and readily inspected by the Department or other enforcement officers, and certifying agents. Together, these requirements will ensure that shipments of whole pork meat are clearly identified and documented as compliant with the requirements of this proposal as they are moved into or within the State and sold to an end-user or transported for purposes of trans-shipment or export for non-California use.

Section 1322.4(a)(1) states the requirements for shipping invoices, shipping manifests, documents of title, and bills of lading shall include the appropriate statements “California 24+ Compliant” or it may be abbreviated “CA 24+”. As whole pork meat moves through the commercial marketplace, easily identifiable documentation indicating the product is compliant with the Act and these regulations will facilitate their lawful distribution. Without the proposed statements, buyers, inspectors, enforcement officers, certifying agents, and the Department have no practical way to determine if product is compliant without reviewing certification and registration status for each distributor moving product through the system. Therefore, the requirements of this section authorize the Department to require specific markings on shipping documents, bills of lading, etc. and is necessary to document that the breeding pigs used to produce the whole pork meat, from the breeding pigs, or from immediate offspring of the breeding pigs, contained in the shipments and as identified on these documents meet the confinement standards as stated in section 1322.1 of this Article. This subsection also requires that the statement shall be clearly legible and plainly printed or stamped on the shipment paperwork which is necessary to ensure the products can be easily identified during transport, properly segregated as applicable, and readily inspected by the Department or other enforcement officers, and certifying agents.

Section 1322.4(a)(2) is necessary to clarify the requirements for shipments of whole pork meat that are not intended for sale in the State but are being transported through the state to other states or countries. The shipments of whole pork meat must be labeled with the statement “Not for California Consumption” or “Not for California Sale” on shipping manifests, shipping invoices, document of title, and bills of lading. This subsection is necessary to communicate and clearly identify that the covered products are shipping through the State therefore not included in the definition of “commercial sale” in 1322(f), and ensure they remain segregated from whole pork meat that is subject to the requirements of specified statutes or regulations that apply to sales of whole pork meat to be used for human food purposes within California.

Section 1322.4(a)(3) allows the Department to require specific markings on shipping documents and bills of lading for shipments of noncompliant covered product moving directly from a USDA-FSIS inspected plant to another USDA-FSIS inspected plant to ensure this type of movement of noncompliant product is easily and uniformly identified by the Department or an enforcement officer. Proper identification of this noncompliant product will ease the movement and transport into and within the State to ensure perishable products arrive on time to scheduled destinations. This subsection is necessary to clarify the identification requirements for shipments of whole pork meat produced from breeding pigs, or the offspring of breeding pigs, not housed according to the standards described in HSC section 25991 and these regulations and that originate from a USDA-FSIS inspected facility for transportation to a final destination in California that is another USDA-FSIS inspected facility under the Federal Meat Inspection Act. Shipments of whole pork meat from sources that are not in compliance with the Act that are to be used at a federal plant with a prefix of “M” in California only to manufacture products not covered under the Act, are required to have specific statements clearly marked on the shipping invoices, documents of title, bills of lading, and shipping manifests. The labeling requirement is necessary because of the exemption from the definitions of “farm” and “sale” for USDA-FSIS inspected plants described in HSC sections 25991(i) and 25991(o), respectively, and to provide clear identification of products not conforming to the Act’s confinement requirements when shipped between two exempt facilities. It is important to note that any subsequent sale of whole pork meat from USDA-FSIS plants must be compliant with the requirements of the Act because the exemption as stated in the law attaches to the sale where physical possession was taken at a USDA-FSIS inspected plant, not to the whole pork meat coming from the plant. Therefore, this subsection requires the shipping documents as specified to clearly identify the product as not conforming to the Act’s confinement requirements.

Section 1322.4(b) gives the Department the authority to implement standards outlined in the Act and these regulations and the ability to act if examples of false advertising or misrepresentation of whole pork meat as compliant is found. Misrepresentation of covered products as a compliant product could result in noncompliant whole pork meat entering California commerce and consumers purchasing or consuming these noncompliant products under the guise of being compliant with the Act. This subsection is necessary to ensure pork producers and distributors are aware that commencing January 1, 2022, no person shall be deceptive in the labeling of their whole pork meat stating that it was produced in a “California compliant” environment unless the breeding pigs were raised in accordance with section 1322.1 of this proposal. Deceptive marketing of whole pork meat could result in noncompliant whole pork meat entering California commerce. This subsection is necessary to ensure that pork producers and pork distributors are aware that all shipping documents and bills of lading bearing the statement of “California 24+ Compliant” or “CA 24+” must be truthful and not misleading, and accurately identify products that are in compliance with this proposal and HSC section 25991.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

### Adopt Section 1322.5. Pork Distributor Recordkeeping.

Proposed section 1322.5 establishes the requirements pertaining to recordkeeping by pork distributors. This section gives the Department authority to require that pork distributors follow certain recordkeeping guidelines in order to receive and maintain valid registration as a pork distributor with the Department and lawfully engage in the commercial sale of whole pork meat to an end-user. Recordkeeping is a vital component to an effective, efficient system that the Department is tasked to implement to assure the animals producing whole pork meat sold into and within California meet the specifications of the Act in an effort to prevent animal cruelty.

Section 1322.5(a) gives the Department authority to require compliance with this section which is necessary for a pork distributor to sell whole pork meat within or into the State.

Section 1322.5(b) authorizes the Department to require pork distributors to demonstrate an audit trail through records, as defined in 1322(b), and detailed in section 1326.2 of Article 5 in order for the Department to validate that whole pork meat sold by a distributor is compliant. Because of the variability in processing and distribution systems, the recordkeeping requirement allows each distributor to determine how best to ensure only compliant whole pork meat enters the California market as demonstrated through a document audit trail. This audit trail composed of documentation is essential for the Department or certifying agent to be able to review because the supply chain of whole pork meat can be complicated if products exchange hands multiple times before being sold to an end-user in California. The subsection is necessary to clarify the purpose of keeping records for the distributor to better understand the type of information needed to support the registration pursuant to this Article and to certify operations pursuant to section 1326.2 of Article 5.

Section 1322.5(c) specifies that the records maintained by a pork distributor shall document, in a traceable manner, that whole pork meat being sold or distributed by the pork distributor is originating from certified pork producers that house breeding pigs in compliance with section 1322.1 of this Article. The purpose of this subsection is to authorize the Department to require the records of pork distributors to include documented evidence through an audit trail that whole pork meat a distributor is selling originate from producers who have a valid certification as described in Article 5 of this Chapter to demonstrate compliance with the Act and these regulations. This subsection is necessary to ensure that the Department and certifying agents have sufficient records for auditing purposes to verify compliance with statutes and these regulations, including the traceback of shipments to supplying farms in compliance with California's breeding pig confinement standards specified in the Act.

Section 1322.5(d) gives the Department authority to require pork distributors to document where physical possession of covered product takes place for each sales transaction. This subsection specifies that the recordkeeping requirement for registered distributors include documentation of where physical possession of whole pork meat takes place with each sales transaction. This is required due to the definition of sale in HSC section 25991(o) where it defines a sale occurring where the buyer takes physical possession. The location where physical possession takes

place will be unique to each sales contract for transaction of covered product depending on negotiated terms for freight or other means of transport.

Section 1322.5(e) specifies that records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or certifying agent as required by section 1322.3 of this Article. The purpose of the subsection is to give the Department authority to establish parameters by which pork distributors are to maintain specified records. A two-year minimum requirement is necessary to maintain a paper trail for traceback of covered product to demonstrate compliance with statutes and these regulations relating to commercial sale of whole pork meat in the State and is consistent with recordkeeping timeframes specified in the Federal Meat Inspection Act and the Department's SOP.

Section 1322.5(f) provides an exemption to facilities inspected under the Federal Meat Inspection Act by the USDA-FSIS pursuant to 21 U.S.C. Sec. 601 et seq. from the pork distributor recordkeeping requirements of this section. It is necessary to include this subsection to ensure the affected industry is aware that these federally inspected establishments are not required to register with the Department as pork distributors and are similarly exempt from mandatory maintenance of records for inspection as specified in this section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1322.6. Inspection of Conveyances.

Proposed section 1322.6 establishes the requirements allowing the Department, enforcement officers, and certified agents to inspect conveyances moving whole pork meat within and into California which is necessary to help ensure covered products moving are doing so in accordance with the regulations and Act.

Section 1322.6(a) specifies that when a pork distributor submits an application for registration, they are agreeing, as a condition of registration, to allow the Department or other enforcement officer, and a certifying agent, to inspect their vehicles and other conveyances under the registrant's operation or control for compliance with statutes and these regulations. This subsection is necessary to help ensure registrants are aware that all vehicles and conveyances may be subject to inspection relating to commercial sale of whole pork meat in the State for purposes of verifying compliance. Such direct inspections of shipments entering the State is necessary to fulfill the purpose of the statute and a critical part of the Department's proposed program framework from farm to end-user to ensure whole pork meat, regardless of origin, is compliant with the requirements of the Act approved by California voters.

Section 1322.6(b) authorizes the Department to require that every person shall stop at the request of an enforcement officer at any of the Department's Border Protection Stations for inspection purposes of vehicles and commodities to ensure they are pest free and meet all

regulatory requirements. The purpose, as it relates to this proposal, is the authority to inspect shipments of whole pork meat moving within or into the State to ensure they are accompanied by the required documents for transport according to these regulations. Such direct inspections of shipments entering the State through the Department's Border Protection Stations are necessary to fulfill the purpose of the statutes and a critical part of the Department's framework extending from farms to end-users necessary to ensure that whole pork meat is compliant with the requirements of the Act approved by California voters.

Section 1322.6(c) authorizes that the Department or other enforcement officer in California, may deny entry into the State or order diversion from in-state destinations any vehicle or other conveyance transporting whole pork meat that do not comply with the requirements of HSC sections 25990 through 25992 and the provisions of these regulations. This subsection is necessary as it provides clarity that violations that may result in denial of entry or diversion would include, but are not be limited to, the marking requirements as specified in section 1322.4 of this Article. Denial of entry or diversion as described is necessary for effective oversight of shipping document marking requirements and overall compliance of covered products entering California commerce consistent with the purpose of the statutes approved by California voters.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1322.7. Tagging and Seizure of Whole Pork Meat.

Proposed section 1322.7 gives the Department or another enforcement officer the authority to affix tags or notices to shipments of whole pork meat and authority for seizure or holding of whole pork meat when found, or suspected to be, in violation of the Act and these regulations. Requirements of this section are necessary to ensure the affected industry is aware of the manner in which the Department will implement methods to prevent product that does not meet the requirements of the regulations and the Act from being sold into or within the State.

Section 1322.7(a) gives authority to the Department or other enforcement officer to affix a warning tag or notice to shipping documents, as specified, or to lots or loads of whole pork meat that may be found in violation of HSC sections 25990 through 25992 and the provisions of these regulations. The Department or other enforcement officer may give notice of such violation to the producer, distributor, owner, or other person in possession of the whole pork meat. Further, it is necessary to use the word "may" in this subsection to provide discretion for rare, but possible circumstances out of the control of the Department or other enforcement officer such as extreme weather events, natural disasters, acts of God, global pandemics, or other similar circumstances when making a determination to affix a warning tag or provide notice of a violation, as stated. This subsection is necessary as an essential enforcement tool for preventing noncompliant whole pork meat from being distributed to end-users in the State and so persons are aware they are to be in compliance with the provisions of animal confinement standards specified in HSC sections 25990 through 25992 and these regulations.

Section 1322.7(b) states that no one shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department or other enforcement officer. The purpose of the subsection is to give the Department or an enforcement officer clear authority over the fate of tagged or seized product to ensure noncompliant whole pork meat is not sold into or within California in accordance with the Act and these regulations. This subsection is necessary because it will ensure the products are not sold in California commerce until the compliance problem with the shipment or load of whole pork meat is rectified by the producer or distributor in accordance with HSC sections 25990 and 25991 and the requirements of these regulations. The restriction on removing tags or notices as described in this section is necessary for effective oversight and implementation of these regulations and to ensure regulatory identification of noncompliant products is properly maintained during diversion or seizure activities.

Section 1322.7(c) gives the Department or other enforcement officer authority to seize and hold any containers, sub-containers, lots, or loads of whole pork meat in California that are in violation of HSC sections 25990 through 25992 or the provisions of these regulations at their discretion based on evidence gathered or at the time of inspection. Shipments may be tagged, and a hold notice issued as specified until a resolution is made according to procedures outlined in these regulations. It is necessary to use the word “may” in this subsection to provide discretion for rare, but possible circumstances out of the control of the Department or other enforcement officer such as extreme weather events, natural disasters, acts of God, global pandemics, or other similar circumstances when making a determination to seize and hold any whole pork meat lots or loads, or containers or sub-containers, as stated. This subsection is necessary because it gives authority for a mechanism to prevent noncompliant whole pork meat from being distributed to end-users in the State.

Section 1322.7(d) states that if a shipment of whole pork meat is tagged with a hold notice issued by the Department or other enforcement officer, that the shipment must be held and not further transported by the person in control of the shipment unless directed by the Department. The Department is mandated to implement the Act to ensure only compliant covered products are sold into and within California; this subsection gives the Department sole authority to direct movement of the tagged or seized covered product to a location to prevent the noncompliant or suspect noncompliant covered product from entering or to continue moving through the supply chain. If the noncompliant product is about to enter or is already in the supply chain, the Department has an obligation to prevent its progression by issuing a hold on the product at the specified location. This subsection is necessary to make a person aware of the actions that are not allowed when whole pork meat is tagged to help ensure noncompliant whole pork meat does not enter the human food supply in the State.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

### Adopt Section 1322.8. Written Certification.

Proposed section 1321.8 establishes the written certifications required for selling whole pork meat in California needed to demonstrate that the animals producing the covered products were raised in accordance with the Act which the Department has been charged to implement. This section gives the Department authority to require written certification of operations engaged in commercial sales of whole pork meat in California commerce as detailed in Article 5 to demonstrate compliance with the Act in a verifiable and auditable manner across the industry.

Section 1322.8(a) describes what would be acceptable to the Department as written certification from a supplier that whole pork meat was derived from breeding pigs or the direct offspring of breeding pigs that were not confined in a cruel manner for purposes of HSC section 25993.1. The Department is requiring that any such certification from a supplier to a business owner be based upon records that constitute an audit trail as defined in section 1322(b), and traceable to a farm of origin that raises breeding pigs according to standards outlined in section 1322.1 of this Article. The Department requires the authority of this subsection's requirements as they are critical to ensuring that written attestations of compliance with the Act from suppliers that buyers may be relying on in good faith are valid and can be substantiated as accurate and truthful.

Section 1322.8(b) specifies the recordkeeping procedures for an end-user who takes final possession of whole pork meat that was transported by a common carrier, private carrier, or other means of conveyance directly from a facility inspected by the USDA-FSIS under the Federal Meat Inspection Act pursuant to 21 U.S.C. Sec, 601 et seq. This section is needed because in these sales transactions there is not a registered distributor, as described in this proposal, as sales are direct to retailer and food processing facility end-users. Further sales of covered product to other end-users that meet the definition of a commercial sale would need to be from breeding swine confined in a manner consistent with the Act and these regulations. Therefore, the Department requires documentation and demonstration of compliance with the Act and these regulations as the burden of the retailer and food processing facility purchasing directly from a USDA-FSIS inspected facility.

Section 1322.8(b)(1) gives the Department authority to require that the end-user maintain records documenting written certifications that meet the requirements in (a) of this section, of whole pork meat received during the preceding 12-month period. This is a necessary time period in which to maintain records for instances where the Department or other enforcement agency would need to inspect the records for compliance with statutes and regulations.

Section 1322.8(b)(2) gives the Department authority to require the retailer or food processing facility end-user purchasing whole pork meat directly from a USDA-FSIS plant to maintain records of where physical possession of each sale of covered product took place. This information is included in the recordkeeping requirements due to the definition of sale in HSC section 295991(o) which does not include sale of whole pork meat where physical possession is taken at a USDA-FSIS plant. All subsequent sales of whole pork meat from the retailer to a consumer would fall under the definition of sale and therefore the covered product would need



to be compliant with confinement standards of the Act. If the food processing facility claims a sale, as the buyer, of covered product is exempt from the definition of sale and the confinement requirements of the Act, then this must be documented.

Section 1320.8(b)(3) gives the Department authority to require the retailer or food processing facility end-users make the records available on-site for inspection by the Department and other state or local health agencies upon request. Electronic records are considered on-site if they are accessible from an on-site location. This requirement is necessary to ensure compliance with the Act and these regulations.

Section 1322.8(c) states that the recordkeeping requirements of subsection (b) will not apply to end-users that are facilities inspected under the Federal Meat Inspection Act by the USDA-FSIS pursuant to 21 U.S.C. Sec. 601 et seq. This clarification was added because of the exemptions for these establishments from the definitions of “farm” and “sale” in HSC sections 25991(i) and 25991(o), respectively, as described above. This subsection is necessary because movement of whole pork meat from a facility that holds a USDA-FSIS granted establishment number with a prefix of “M” to another facility that holds a USDA-FSIS granted establishment number with a prefix of “M” that is an end-user as defined in this Article, would not be considered a commercial sale according to the Act and these regulations and therefore would not need to comply with the written certification recordkeeping requirements of this section.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1322.9. Denial, Suspension, or Revocation of Pork Distributor Registration.

Proposed section 1322.9 gives the Department authority to take actions against registered distributors for violations of the Act and this Chapter which is necessary to ensure the affected industry is aware of the actions the Department may take in response to noncompliance and their right to appeal the Department’s decision. The Department has been mandated to implement the Act to ensure only compliant covered products are sold into and within California. While registration with certification provides a means to identify compliant product distribution, the ability to deny, suspend, or revoke registration similarly provides a practical mechanism for excluding noncompliant sales. The impact of a pork distributor having their registration with the Department denied, suspended, or revoked is an inability to engage in commercial sale of whole pork meat in California. As outlined in this Article, only a pork distributor with a valid registration issued by the Department may engage in commercial sales of whole pork meat.

Section 1322.9(a) informs applicants and registrants of the reasons the Department may deny, suspend, or revoke a registration in accordance with these regulations. This subsection is necessary to provide the regulated industry and the public explicit understanding of the consequences of noncompliance regarding registration and establish consistent and transparent registration actions by the Department. The authority to deny, suspend, or revoke registration

provides a mechanism to prevent the commercial sale of whole pork meat within California that is not in compliance with the Act and this Chapter. The reasons for possible denial, suspension, or revocation of a registration are stated in subsections (a)(1) through (a)(5).

- Subsection (a)(1) specifies violations that resulted, or could have resulted, in the commercial sale of whole pork meat that was from a breeding pig or immediate offspring of a breeding pig confined in a manner in violation of these regulations could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor who is selling noncompliant covered products in the State would need to halt these sales to prevent further noncompliant product from entering the California marketplace. Violations that could have resulted in the commercial sale of covered product are also included because to fully implement the Act, the Department needs to prevent the sale of noncompliant covered products to California consumers. If the noncompliant product is in the supply chain destined for a California sale, the Department has an obligation to prevent that sale from occurring by denying, suspending, or revoking registration and not wait until the product is purchased by a consumer. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or with California.
- Subsection (a)(2) specifies repetitive failure to comply with the requirements of these regulations and the statutes pertaining to whole pork meat or breeding pigs in accordance with HSC sections 25990 through 25992 could be reason for the denial, suspension, or revocation of a registration by the Department. This reason is needed because if a distributor, applicant, or registrant, has demonstrated a pattern of noncompliance and failure to make necessary corrections to comply with the Act and this Chapter, then their ability to sell whole pork meat will either not be granted or will be removed by the Department to ensure consumers that the whole pork meat they purchase is compliant. This subsection is necessary to provide the Department with the authority to prevent the distribution of noncompliant covered products into or within California.
- Subsection (a)(3) specifies refusal to grant access or interference with inspections and audits as described in section 1322.3 or 1322.6 of this Article could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor will need to comply with inspections and audits to verify compliance with the Act and this Chapter and to allow the Department to follow up on accusations or complaints of noncompliance. The Department must have the authority to verify compliance to ensure only compliant whole pork meat is sold within and into California.
- Subsection (a)(4) specifies misrepresenting whole pork meat as being produced in compliance with these regulations could be reason for the denial, suspension, or revocation of a registration by the Department. An applicant or registered distributor who is found to have misrepresented covered product as compliant with the Act and this Chapter could result in noncompliant whole pork meat entering California commerce and then consumers purchasing or consuming noncompliant whole pork meat under the guise of these covered products being compliant with the Act. Distributors engaging in this type of activity need to have registration denied, suspended, or revoked so they can no longer engage in commercial sale of whole pork meat within or into California. This subsection is necessary

to provide the Department with the authority to prevent the distribution of noncompliant covered products into or within California.

- Subsection (a)(5) specifies providing false information on an application for registration or renewal could be reason for the denial, suspension, or revocation of a registration by the Department. If an applicant or registrant is found to have provided false information, on an application for registration, it is necessary that the Department be able to deny the registration as the application cannot be accurately evaluated based on false information. If after a registration is granted, an applicant or registrant is found to have provided false information on an application for registration, it is necessary that the Department be able to suspend or revoke the registration because it would have been granted based on the false information provided on the application and may not have been granted otherwise. This subsection is necessary to ensure only whole pork meat from breeding pigs or the immediate offspring of breeding pigs raised according to the Act is available for commercial sale within or into California.

Section 1322.9(b) states that appeal and formal hearing procedures are available for persons wanting to appeal the decision of the Department to deny, suspend, or revoke a distributor registration. This subsection is necessary to allow applicants or registrants that have received a denial, suspension, or revocation of a registration to appeal the Department's decision to deny, suspend, or revoke their registration pursuant to the formal hearing proceedings as authorized in Title 2 of the Government Code, as specified Article 6 of this Chapter.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1322.10. Registration with the California Department of Public Health.

Proposed section 1322.10 establishes the requirements for compliance with the requirements pursuant to the DPH for the purposes of processed food registration, in addition to these regulations.

Section 1322.10(a) describes the requirement that any person operating a food processing establishment in California, still must adhere to the requirements for registration with the DPH in addition to registration requirements outlined in section 1322.2 of this proposal. Subsection (b) provides that evidence of the registration with DPH must be provided to the Department or its designee upon request. The processed food registration is an existing requirement of DPH for food safety regulatory purposes, and these subsections are necessary to make clear for the industry that registrants under this proposed Article are not exempt from DPH requirements for food processors and that the Department may ask for evidence of the registration with DPH if applicable.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### 5. Adopt new Article 4 and section 1324.

##### Adopt Article 4. Exceptions.

The Department is adopting a new Article 4 to specify the exceptions to the animal confinement requirements pursuant to HSC sections 25990 through 25992.

##### Adopt Section 1324. Definitions.

Section 1324(a) specifies “individual treatment”, for purposes of HSC section 25992(b), means activities relating to veterinary medicine as part of a veterinarian-client-patient relationship as defined in 21 CFR Part 530 section 530.3(i)<sup>28</sup>. This definition is necessary to further explain the term as used in the HSC. The Department believes the term as defined in the CFR is appropriate as related to veterinarians who are working with clients and their animals in a veterinary medical practice.

Section 1324(b) specifies “medical research”, for purposes of HSC section 25992(a), means all aspects of medical research that would be conducted under review of an Institutional Animal Care and Use Committee operating in accordance with 3 CFR Part 2 section 2.31<sup>29</sup>. This definition is necessary to further explain the term as used in the HSC and these regulations.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### 6. Adopt new Article 5 and sections 1326 through 1326.22.

##### Article 5. Certification and Accredited Certifiers.

The Department is charged with implementing provisions of the Act to ensure California consumers have confidence that covered products purchased in the State come from covered animals, no matter the origin, not confined in a cruel manner. A written certification is described in the Act as a defense to any action that a supplier is selling covered product in compliance with the California confinement standards. This Article describes use of written certification in a system that is similar to the well proven and current model of the USDA NOP where an unconnected third-party provides the certification of a producer or distributor operation. Due to the large number of regulated entities located within the State, outside the State, and outside

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<sup>28</sup> 21 CFR Part 530 section 530.3(i)

<sup>29</sup> 3 CFR Part 2 section 2.31

the country contributing to covered products sold in California, the Department has determined a system as proposed and described in these regulations is necessary to effectively fulfill the purpose of the Act. The Department is proposing new Article 5 to specify requirements for certified operations and for accredited certifiers, including requirements for producers and distributors applying for initial and continued certification, as well as the criteria for accrediting a private third-party to certify that these operations are in compliance with this proposal and the requirements of HSC sections 25990 through 25993.

#### Adopt Section 1326. Definitions.

Section 1326 establishes definition of terms used in this Article and clarifies that the meaning of definitions for terms worded in the singular form also applies to the plural form and vice versa as context requires or the case may demand. Although the Act included the meaning of some terms used throughout this Article, it is necessary to repeat some of the definitions and include a list of terms as defined in these proposed regulations for stakeholders reviewing the Article to have necessary definitions to comply all in one reference location.

Section 1326(a) specifies “accredit or accreditation” means a determination made by the Department that a private entity meets the requirements of these regulations to conduct certification activities as a certifying agent. This definition is necessary to ensure certifying agents are all auditing producers and distributors to the same set of standards for compliance with animal confinement statutes and documentation requirements described in these regulations.

Section 1326(b) specifies “Act” means the Farm Animal Cruelty statute, as amended pursuant to HSC, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1326(c) specifies “area of operation” means the types of animal production and distribution operations subject to these regulations which include multiple livestock species and products derived from them. This definition is necessary to clarify the types of operations for which a certifying agent is to perform certification activities such as audits and inspections of producers and distributors to ensure compliance with HSC sections 25990 through 25993 and these regulations.

Section 1326(d) specifies “certification or certify” means a determination made by a certifying agent to inspect and verify that producers and distributors are in compliance with the Chapter and HSC sections 25990 through 25994, which is documented by a certificate of California farm animal confinement compliance. This definition is necessary to explain the meaning of the term as used in the Chapter.

Section 1326(e) specifies “certified operation” means a production or distribution operation, or portion of such operation in the case of a split operation, that is certified by a certifying agent as utilizing a system of animal confinement or distribution of covered products as described in HSC

sections 25990 through 25994 and this Chapter. This definition is necessary to explain the meaning of the term as used in the Chapter.

Section 1326(f) specifies “certifying agent” means any private entity that is accredited by the Department as a third-party certifying agent, the Department, or another government entity that will certify a production or distribution operation for compliance with these regulations and the requirements of HSC sections 25990 through 25993. Certifications performed by third-party entities are a critical implementation component necessary to adequately ensure producers and distributors are in compliance with the Act and these regulations.

Section 1326(g) specifies the meaning of a “certifying agent’s operation” which means all sites, facilities, personnel, and records used by an accredited private certifying agent to conduct certification activities according to these regulations. This definition is necessary for ensuring clarity concerning the extent of an accredited certifying agent’s operation that would be subject to the Department’s oversight as described in this proposal.

Section 1326(h) specifies “covered animal” means a calf raised for veal, a breeding pig, or egg-laying hen kept on a farm pursuant to HSC sections 25991(f) and (i). This definition is necessary to clarify that the proposed regulations would apply to certification and certifier activities concerning the confinement of and/or activities associated with all three livestock species, as specified.

Section 1326(i) specifies “covered product” means certification and certifier activities concerning the production and distribution of shell eggs as stated in subsection (i)(1), liquid eggs as stated in subsection (i)(2), whole veal meat as stated in subsection (i)(3), and whole pork meat as stated in subsection (i)(4). The term “covered product” is necessary to explain the meaning of the term when the text applies to activities or requirements associated with all four product categories. The definitions as stated in these subsections refer to definitions cited from HSC sections 25991(p), (l), (v), and (u).

Section 1326(j) specifies “Department” means the California Department of Food and Agriculture, which is necessary to explain the meaning of the term as used throughout the Article.

Section 1326(k) specifies “distributor” means an egg distributor as defined in section 1320(k), a veal distributor as defined in section 1321(z), and a pork distributor as defined in section 1322(u). This definition is necessary to ensure distributors are registered with the Department to sell covered products in the State, as specified in these regulations.

Section 1326(l) specifies “distributor operation” means any operation or portion of an operation that conducts activities as a distributor. This definition is necessary to make clear to industry and certifying agents that a portion and not always the entirety of an operation could be conducting activities requiring certification as described in these regulations.

Section 1326(m) specifies “employee” means any person providing paid or volunteer services for a certifying agent, which is necessary to explain that the term means anyone working for a certifying agent, whether it is a paid position or not.

Section 1326(n) specifies “governmental entity” means any local, state, or federal domestic government, tribal government, or foreign governmental subdivision providing certification services. This definition is necessary as the Department is proposing to coordinate with and potentially accept certification and verification programs operated by other government agencies to ensure compliance with the animal confinement standards of this proposal.

Section 1326(o) specifies “immediate family”, in relation to a certifying agent, means their own family member, a spouse, or child, but also includes the immediate household of employee, inspector, contractor, or other personnel of the certifying agent. This definition is necessary for a certifying agent to recognize and prevent conflicts of interest in certification activities.

Section 1326(p) specifies “inspection” means the act of examining and evaluating the production or distribution operation of an applicant for certification or a certified operation to determine compliance. This definition is necessary so certifying agents, producers, and distributors are aware of what is considered an evaluation and review of their operations to verify compliance with the Act and regulations relating to covered animals and covered products.

Section 1326(q) specifies “inspector” means any person retained or used by a certifying agent to conduct inspections of production or distribution operations, or an authorized representative of the Department. This definition is necessary to ensure distributors and producers are aware of the persons who may conduct inspections of their operations to ensure compliance with the Act and regulations relating to animal confinement standards and the distribution of covered products.

Section 1326(r) specifies “label” means the written, printed, or graphic material displayed on a container, bulk container, or package of covered products, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product. This information is necessary so producers, processors, co-packers, distributors, and certifying agents are aware of the materials subject to review and inspection by certifying agents and/or the Department to ensure compliance with the label requirements of these regulations.

Section 1326(s) specifies “labeling” means all written, printed, or graphic material accompanying a covered product at any time or displayed at retail stores that describe the product and is necessary to ensure producers, processors, co-packers, distributors, and certifying agents are aware of the use of the term for inspection and verification of compliance with these regulations.

Section 1326(t) specifies “person” has the same meaning as stated in section 25991(m) of the HSC. The term “person” is used extensively in the proposed regulations and it is necessary to include this definition as stated in HSC for ease of reference by the public and the regulated

industry to provide greater clarity for understanding and following the proposed requirements in this Article without having to read both the HSC and this regulation to comply.

Section 1326(u) specifies “private entity” means any domestic or foreign nongovernmental for-profit or not-for-profit organization providing certification services which is necessary to clarify what is considered a private certifying agent versus certification services conducted by programs operated by other government entities.

Section 1326(v) specifies “producer” means an egg producer, a veal producer, or a pork producer as specified in sections 1320(m), 1321(aa), and 1322(v), respectively, of the Chapter. This definition is necessary as this proposed Article would apply to certification and accredited certifier activity concerning the confinement of egg-laying hens, veal calves, and breeding pigs and the term “producer” is used to clarify the text applies to activities or requirements associated with the production of all three livestock species identified in this proposal.

Section 1326(w) specifies “records” means information in written, visual, or electronic form that would serve to demonstrate that producers, distributors, or a certifying agent are in compliance with animal confinement standards in accordance with HSC sections 25990 through 25992 and in compliance with the Chapter. This definition is necessary to explain the meaning of the term as used throughout the Article.

Section 1326(x) specifies “responsibly connected” means any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification or accreditation. This definition is necessary to clarify the affiliation with applicants and the certifying agent. The Department’s proposed definition of “responsibly connected” relates to certifying agents that engage in the business of inspecting producer and distribution operations for compliance with these regulations pursuant to the Act and is necessary to provide clarity to certifying agents, producers, and distributors for purposes of recognizing and preventing conflicts of interest and for understanding the applicability of the requirements for submitting applications, training, and expertise of personnel. The requirement of “10 percent or more of voting stock” to be considered as responsibly connected is a generally accepted condition within other federal agricultural programs such as USDA NOP.

Section 1326(y) specifies “split operation” means a producer operation that is raising egg-laying hens, veal calves, or breeding pigs in housing compliant with the Act’s confinement specifications, in addition to raising egg-laying hens, veal calves, or breeding pigs in housing that is not compliant with the Act. A distributor operation can also be a split operation if they are distributing covered products that are California compliant and other covered products that are not California compliant. These types of producer or distributor operations would then be certified as split operations and only the animals and housing meeting California requirements are certified or only the covered products being sold in California are certified. To gain certification, the split operation would have to demonstrate how they segregate animals and/or covered products destined for California versus other markets. Therefore, in the context of these regulations, the certifying agent would only ensure compliance of the producer or



distributor operations that market covered animals or covered products compliant with HSC sections 25990 and 25991 and these regulations. This definition is necessary to clarify the term as used in the Article.

Section 1326(z) specifies “state” means any of the states of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico. This definition is a needed clarification to existing law since certifying agents would be conducting certification activities of producer and distributor operations in multiple states and would be reporting such activities to the Department under this proposal.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.1. General Requirements for Certification.

Section 1326.1 gives the Department authority to require that a person receiving or maintaining certification must comply with certain requirements and makes an agreement to these standards as a condition of certification. Producers raising covered animals and distributors selling covered products within and into California require certification, which identifies them as compliant with the Act and this Chapter, to sell or distribute covered products derived from covered animals within or into the State. A written certification issued by an unconnected third-party to the producer and distributor operation as outlined in these regulations is essential to the integrity of the regulatory framework proposed. However, because many producers and distributors of covered products are located outside of California, the Department must rely on other certifying agents, in addition to the Department, to ensure production and distribution operations meet the requirements for certification.

Section 1326.1(a) gives the Department authority to require that as a condition of receiving or maintaining certification, a person must comply with the requirements of the Act pursuant to HSC sections 25990 through 25994 and the requirements of these regulations which is necessary for producers and distributors to understand when applying for certification and the standards they are required to meet for certification to be granted.

Section 1326.1(b) gives the Department authority to require a person allow for on-site inspections as a condition of receiving and maintaining certification. The purpose of this subsection is to give the Department and other certifying agents authority to enter a premises to conduct on-site inspections pursuant to section 1326.5, audit records of production and/or distribution operations pursuant to 1326.2, and require an agreement to these provisions as part of an initial certification, for the maintenance of an existing certification, and for renewal. It is necessary for authorized representatives of the Department or a certifying agent to have physical access to the premises for visual in-person inspections to verify that the production or distribution operation records and facilities meet the requirements of these regulations and the Act. As described in sections 1326.2 and 1326.5, a certifying agent and/or authorized

representatives of the Department will determine eligibility for initial or continued certification based in part on the findings of on-site inspections. Therefore, access to production or distribution facilities, barns, offices, and records at these locations is a necessary component of the certification process and critical when verifying compliance with the Act and these regulations.

Section 1326.1(c) authorizes certifying agents and/or authorized representatives of the Department to have access to, for purposes of inspection and audit, a production premises which includes allowing access to pastures, fields, structures, and houses where covered animals may be kept. These areas are typically the locations on a production premises that a certifying agent must inspect to ensure all covered animals are confined in compliance with the Act and these regulations. The authorization to inspect and audit a producer's covered animal facilities and locations where animals have access is necessary to inform producers of the locations on their premises that they must allow certifying agents to access for inspection purposes and that as a condition of their certification. This is to verify certified producers are compliant with the Act and these regulations to ensure consumers in California that covered products purchased come from animals not confined in a cruel manner.

Section 1326.1(d) authorizes certifying agents and authorized representatives of the Department to have access to, for purposes of inspection, all covered products sold or intended to be sold, held, segregated, stored, packaged, labeled, or represented for sale or distribution at an applicant or certified distributor's operation. Certifying agents and authorized representatives of the Department must be able to access covered products at every stage of handling and distribution while under ownership by the distributor. During an inspection, the covered product could be in transport or moving through the distributor's facilities. Therefore, this subsection identifies each of those possible stages of distribution that could be taking place and that the distributor must provide access to this area for a certifying agent to determine if the covered products are in compliance with the Act and these regulations. This subsection is necessary to inform distributors of the areas or locations on their premises that they must allow certifying agents or authorized representatives of the Department to access for inspection purposes as a condition of their certification.

Section 1326.1(e) authorizes certifying agents and authorized representatives of the Department to have access to shipping containers and shipping documents and labeling for purposes of inspection and auditing. Certifying agents and authorized representatives of the Department must have access to these items as described for inspection and auditing purposes because as covered products move through distribution or are sold into or within California, the producers are required to maintain specific labeling and documentation, which identifies them as compliant with these regulations and the Act. Therefore, certifying agents and authorized representatives of the Department must have access to all shipping containers and documents to ensure accurate markings are displayed on the covered products or associated paperwork as required by this proposal.

Section 1326.1(f) authorizes certifying agents and authorized representatives of the Department to have access to review or copy records, as specified. The purpose of this subsection is to provide authority to certifying agents and authorized representatives of the Department to access, inspect, and copy records when verifying that the records are maintained in the manner as described in 1326.2 of this Article. Recordkeeping is a means for producers and distributors to document activities on their operation supporting compliance of covered animals and covered products with the Act and these regulations. Therefore, this subsection ensures producers and distributors are aware that allowance of access as described is a requirement to receive and maintain certification.

Section 1326.1(g) authorizes the Department to require a certified operation immediately notify their certifying agent of changes to the operation affecting compliance, as specified. The purpose of this subsection is to ensure the certifying agent has the most current information pertaining to the operation when contacting the operation for inspections. The certifying agent requires this information for routine and complaint-based audits of certified operations to ensure the certified operation is in compliance with the Act and these regulations.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.2. Recordkeeping by Certified Operations.

Section 1326.2 authorizes the Department to require certain records be kept by a certified operation in order to receive and maintain certification concerning the production and distribution of covered animals and products into and within the State. Maintenance of records enables certified operations to meet the requirements for establishing and continuing their certification because required records demonstrate compliance with the Act and these regulations when the records are up to date to sufficiently document the practices, procedures, and inputs used by the operation. The method or manner by which an operation chooses to maintain records can be established by the operation, however some certifying agents may provide recordkeeping checklists, samples, or templates suitable for documenting the necessary activities and transactions to receive and maintain certification.

Section 1326.2(a) gives the Department authority to require compliance with this section which is necessary for a certified operation to receive and maintain certification concerning the production and distribution of covered animals and products within or into the State.

Sections 1326.2(b) and (b)(1) through (8) authorize the Department to require certified operations follow certain recordkeeping specifications to receive and maintain certification. The stated types of records and criteria under which records must be maintained and kept by certified operations are consistent with similarly developed agricultural programs (USDA NOP and SOP) that rely on written records to trace and track product origin and progression through distribution and sales channels. Certifying agents and the Department will rely on these

documents to verify covered animals and covered products are compliant with the Act and these regulations. Therefore, maintaining records as proposed by this section is a vital component to the regulatory program and necessary to ensure only compliant products are made available to California consumers.

- Subsection (b)(1) describes the purpose of maintaining records by the producer which is to document that covered animals were confined in compliance with HSC sections 25991 and 25992 and these regulations and the records be in sufficient detail to document such compliance. For example, producer records could include, but are not limited to, a description of the covered animal confinement facilities and pasture description or housing dimensions and rotation schedules to show compliance with the confinement standards specified by the Act and these regulations.
- Subsection (b)(2) specifies the required records that must be maintained by a certified distributor that sells covered products in the State and be of sufficient detail to demonstrate the traceability, transfer of ownership, storage, and segregation of covered products as required by these regulations. The records required of this subsection are those involved with the distribution of covered products and would be used to reference a covered product and verify its compliance with the Act and these regulations at any stage of the distributor's physical possession or ownership. For example, distributor records could include, but not limited to, invoices, bills of lading, scale tickets, or other types of records that describe the handling and processing of covered products. The distributor recordkeeping must meet the stated specifications to provide sufficient information and detail to enable a successful documented roadmap for identifying, locating, and following to the point of sale to an end-user any covered product for inspection by authorized representatives of the Department and certifying agents.
- Subsection (b)(3) specifies that all records are to be maintained for not less than two (2) years beyond their creation. The purpose of this subsection is to give the Department authority to establish parameters by which certified operations are to maintain specified records. A two-year minimum record retention is necessary to maintain a "record trail" to conduct an audit of covered products and/or covered animals by a certified agent or the Department, which is consistent with recordkeeping timeframes as specified in the federal Egg Products Inspection Act and the Department's SOP. Further, the Department finds a 2-year record retention to not be overly burdensome for a certified operation yet sufficient to enable the Department or certifying agents to validate compliant covered animals and covered products in accordance with the Act and these regulations because certification is renewed every twelve months.
- Subsection (b)(4) specifies that records of all covered animal and covered product transaction records must be kept, and those records must contain specific information, as stated, for the preceding two (2) year period. A certifying agent and the Department may need to have access to the date, quantity, identity of the buyer and seller, and the address where possession of a covered product took place when determining if a covered animal or covered product is compliant with the Act and these regulations. This information is typical business transaction information which the Department does not find to be overly burdensome for a certified operation to maintain. With respect to the record retention period of 2 (two) years preceding all covered animal and covered product transactions, certification

is renewed every twelve months and the Department finds the time-period to not be overly burdensome yet is necessary to be able to validate if an animal or product currently in the course of production or distribution was produced or marketed in compliance with the Act and these regulations. Further, this subsection is consistent with recordkeeping timeframes as specified in the federal Egg Products Inspection Act and the Department's SOP.

- Subsection (b)(5) specifies that documentation and records shall be maintained for the preceding two (2) years. The subsection describes records that a business engaged in the movement of product would typically use in the course of business transactions consisting of production, processing, handling, packaging, storage, transportation, or sale records. These documents and their prescribed retention are standard business practices which the Department does not find to be overly burdensome for a certified operation to maintain and certification is renewed every twelve months. This recordkeeping timeframe is consistent with recordkeeping timeframes as specified in the federal Egg Products Inspection Act and the Department's SOP.
- Subsection (b)(6) specifies the types of documentation describing the certified operation's animals and products to include the number of covered animals or volume of covered products produced or processed from each facility or farm unit in the certified operation. This subsection also requires documentation describing the number of covered animal enclosures including the size and number of animals held within those enclosures and records pertaining to stocking, harvesting, and producing covered product. Certified producer and distributor operations raise and distribute a large number of covered animals and covered products and an on-site inspection will be a snapshot of activity that day to evaluate for compliance. Review of the types of records described in the subsection will allow the certifying agent to determine if the operation is historically and currently in compliance. For example, covered animal inventory records will show if an appropriate number of animals have been housed in the facility based on the total space available to covered animals. An example for a certified distributor is that due to perishability of covered products and the cost of storage, there will be a movement of covered products through a distributor leading to frequent turnover. Required records will demonstrate to a certifying agent that a distributor historically has been compliant and has the ability to maintain compliance with the Act and these regulations.
- Subsection (b)(7) specifies the types of records that are to be kept by split operations, as defined. This subsection authorizes the Department to require certified operations document proper identification and segregation of covered animals or covered product by describing how their facilities will maintain separate housing, storage, handling, distribution, and transportation to prevent commingling with noncompliant animals and products. This documented plan will ensure that only covered products from covered animals not confined in a cruel manner are sold within and into California commerce.
- Subsection (b)(8) requires that all records pertaining to the registration of distribution operations issued by the Department in accordance with sections 1320.2, 1321.2, and 1322.2 of this Chapter, when applicable, are maintained. The purpose of this subsection is to authorize the Department to require records demonstrating that the distributor operation is appropriately registered with the Department as a distributor and that the records are maintained and made available to an authorized representative of the Department and

certifying agent for verification. Distributor registration with the Department is required for commercial sale of covered products to an end-user in California.

Section 1326.2(c) gives the Department or other certifying agent authority to utilize remote electronic means to access records in addition to on-site access and physical inspection of any records and documents, as specified in this section, or any combination of these methods at the discretion of the certifying agent or the Department. This subsection provides flexibility for both the certifying agent and the operation by allowing access to records through e-mail or other electronic means when necessary. This subsection is necessary as it will enable adequate and timely inspections and review of records held by certification applicants and certified operations, often in remote locations or otherwise inaccessible due to weather or other acts of nature, to ensure compliance with the Act and these regulations.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.3. Application for Certification.

Section 1326.3 establishes the Department's authority to require a person seeking certification of a production or distribution operation by a certifying agent, including the Department, to submit an application for certification and provide the information outlined in this section. This application will document specific and unique information pertaining to a producer or distributor that will be used by certifying agents to determine if covered animals are raised in accordance with the Act and this proposal and that covered products sold into or within the State are distributed in accordance with the Act and these regulations.

Section 1326.3(a) gives the Department authority to require a person seeking certification to submit an application for certification including the information as specified in the subsections that follow. An application for certification will include unique information about production and distribution operations important for any certifying agent to have when considering an applicant for certification.

Section 1326.3(a)(1) states the information that will be required of applicants seeking certification including, their name, business name, physical and mailing addresses, telephone number, and the contact information, as specified, and requests the applicant to indicate if the contact person for the application is a part of a corporation that is submitting an application on a client's behalf. This information is necessary as it will establish and provide the Department or certifying agent with contact information for the operation seeking certification.

Section 1326.3(a)(2) requires the applicant provide information regarding any previous certification related to the Act and these regulations. A certifying agent needs this information from an applicant for certification to determine if the applicant has previously applied for certification from the same or a different certifying agent as it could potentially reveal statements

of certification denial or revocation, statements of noncompliance, and provide details of how issues of noncompliance were resolved. This information is necessary to help the Department or other certifying agent ensure any necessary corrective actions have been communicated and resolved before certification is granted.

Section 1326.3(a)(3) requires the applicant to provide specific information about the production or distribution facility including, the type and quantity of covered animals and/or of the covered products produced and distributed at the location. This information about the facility's business operations is necessary for a certifying agent to have when determining an applicant's eligibility for certification because it identifies the type of animals involved (egg-laying hens, veal calves, or breeding pigs) when evaluating confinement with provisions of the Act. The number of animals on the facility or volume of product distributed is necessary because proposed section 1326.5 of this Article requires on-site inspections. Therefore, knowing the number of animals and volume of products distributed is necessary for purposes of conducting inspections.

Section 1326.3(a)(4) requires a production applicant to provide details of confinement areas for the covered animals housed at the production locations. These details may include schematic diagrams or other drawings of the confinement systems, a written narrative description, or both. This subsection is necessary for the certifying agent to obtain this fundamental information to evaluate the conformance of an applicant's operation with the space requirements and enclosure standards described in statute and these regulations.

Section 1326.3(a)(5) requires specific information be included in a split operation application. An applicant for certification of a split operation must have established processes and protocols in place to prevent compliant covered animals or compliant covered products from mixing or commingling with noncompliant animals or product. The details of the applicant's processes and protocols may include schematic diagrams, drawings of the split operation, or include a written narrative description of the management practices, physical barriers, and standard operating procedures, or all of the above to demonstrate how the split operation will maintain separation and therefore compliance. It is necessary that applicants for certification of split operations provide documentation of these procedures for review by a certifying agent to ensure proper identification and segregation of animals and products produced or distributed at the operation according to the requirements of HSC sections 25990 and 25991 and these regulations to ensure only covered product from covered animals not confined in a cruel manner is sold within and into California.

Section 1326.3(b) gives the Department authority to accept governmental agencies outside of the State that have their own application process for producer or distributor operations to become certified by those government entities and that those government specific procedures may be used in such instances. California has many shell egg producers located within the State, but liquid egg, whole veal meat, and whole pork meat sold in California comes mainly from covered animals raised outside of the State including outside of the country. The Department is authorizing governmental agencies outside of the State to certify operations to ensure any producer or distributor who wants to engage in commercial sale of covered products

in California can have that opportunity under the certification system of their local governmental entity. This subsection is necessary to provide flexibility and recognizes out-of-state government agencies operating as certifying agents may have their own application processes and procedures.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.4. Review of Application for Certification.

Section 1326.4 establishes the requirements for certifying agents when determining possible eligibility for certification of producers and distributors which is necessary to explain to both applicants and certifying agents of the actions required or allowed when reviewing an applicant's application for demonstrated compliance with the Act and these regulations. Due to the large number of producers and distributors requiring certification and those regulated entities located inside the State, outside the State, and outside of the county, the Department will rely on other certifying agents to inspect and verify operations for compliance. This section details the process for reviewing an application for certification to ensure all certifying agents follow a standardized procedure.

Sections 1326.4(a) and (a)(1) through (a)(4) give the Department authority to require a certifying agent follow a specific process for review of an application for certification for approval and criteria used as a part of the process for granting certification.

- Subsection (a)(1) states that the application will be reviewed for completeness pursuant to section 1326.3 of this Article. A certifying agent will review an application for certification to ensure all information requested in section 1326.3 pertaining to the producer or distributor operation is documented on the application because this specific information will be used when determining if covered animals are raised or that covered products sold into or within the State are distributed in accordance with the Act and these regulations.
- Subsection (a)(2) specifies that all application materials will be reviewed to determine whether the applicant may qualify for certification in accordance with HSC sections 25990 and 25991 and these regulations. Application materials may include information describing they type and quantity of covered animals and covered products to be produced and distributed at the facility, a description of the covered animal confinement systems used at the facility, and a description of the management practices, physical barriers, and standard operating procedures established to prevent comingling of covered animals or covered products in the case of split operations. The Department anticipates this information may be included as separate documentation to the application, which is acceptable provided it accurately and legibly depicts the production covered animals or distribution of covered products as required because a certifying agent will use this information when determining an applicant's eligibility for certification. The certifier will communicate to the applicant whether the application appears complete and whether the operation has submitted evidence to demonstrate compliance with the Act and these regulations. If the application



does not include enough information for the certifier to determine whether the operation may be able to comply with the regulations, then the certifier may request more information from the operation at the discretion of the certifier.

- Subsection (a)(3) gives the Department authority to require the certifying agent review all relevant documentation when the applicant has applied for certification in the past and was issued notices of noncompliance. The application for certification requires applicants to include with their application a copy of any previous notifications of noncompliance, denial or revocation of certification, and then the certifying agent must review that information to verify the applicant has provided documentation to support resolution of each noncompliance. This subsection is necessary to help ensure any necessary corrective actions have been taken before a certification is issued to ensure only valid certifications are issued to producer and distributor operations in compliance with the Act these regulations.
- Subsection (a)(4) authorizes the Department to require a certifying agent to schedule an on-site inspection of the production or distribution facility location. Once the certifier's initial review of the application determines that the operation may be able to comply with the Act and these regulations, the certifier will schedule an on-site inspection. The certifying agent will schedule the inspection which is a part of the application process and necessary to ensure the information submitted by the applicant is verified and an operation qualifies for certification. The Department describes the requirements for on-site inspections in section 1326.5 of this Article and justifies those provisions in the corresponding section of this initial statement of reasons document.

Sections 1326.4(b) and (b)(1) authorize the Department to require the certifying agent review the application materials received and communicate the findings to the applicant, which is necessary to keep applicants informed of the status of application process. When a certifying agent reviews application for completeness to make a determination that the applicant appears to comply with the Act and the regulations, the certifier must clearly and timely communicate these findings to the applicant. This communication would generally be documented and communicated in writing, however, comes at the discretion of the certifying agent.

Section 1326.4(b)(2) requires the certifying agent to provide the applicant with a copy of the on-site inspection report generated after each on-site inspection performed by a certifying agent. Pursuant to section 1326.5 of this Article, certifying agents must conduct an on-site inspection of the of a production or distribution operation facilities as part of the application process to ensure compliance with the Act and these regulations. This subsection authorizes the certifying agent to give the applicant a copy of the on-site inspection report, which provides transparency of the findings of the inspection for documentation of compliance or issues of noncompliance.

Section 1326.4(c) allows an applicant to withdraw their application for certification at any time during the application review process. An applicant may contact the certifying agent to convey their desire to terminate the application before a notice of noncompliance or a notice of denial of certification is issued by the certifying agent. This provision is necessary because it has the potential to benefit an applicant when the certifying agent is in the process of issuing notices of noncompliance or denying the application for certification. This provision will allow the applicant

to withdraw the application to avoid receiving an official notice of noncompliance or notification of certification denial from a certifying agent to provide an opportunity for the applicant to possibly remedy the issue(s) before reapplying for certification. If an applicant did not have the ability to withdraw their application and a certifying agent were to issue a notice of noncompliance or notification of certification denial, when the applicant reapplied for certification, the applicant would be required to document any previous such notices or denials pursuant to section 1326.3 of this Article. Therefore, this subsection preemptively eliminates the requirement to disclose issues of noncompliance and provides an opportunity for an applicant to resolve any potential issues of noncompliance in advance of a subsequent application for certification.

Section 1326.4(d) authorizes the Department to allow an out-of-state government entity to use its own authorized procedures for application review instead of this section's requirements, provided the process includes an on-site inspection to verify the applicant's compliance with the Act and applicable provisions of this Chapter in a manner equivalent to those described in section 1326.5. This subsection is necessary to allow for flexibility and use of recognized procedures of another government entity when reviewing applications for certification. Certifying agents may originate from other U.S. states, USDA, or other countries where similar proven procedures may already be in place to accurately verify compliance with the requirements for certification as specified. However, as required, an on-site inspection is necessary for an accurate visual verification of the production or distribution operation applying for certification to eliminate any possible miscommunication or misunderstanding of the operation complying with the requirements of the Act and these regulations.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.5. On-site Inspections.

Section 1326.5 establishes procedures for on-site inspections conducted by certifying agents for inspection and verification of a producer or distributor operation compliance with the Act and these regulations. Once a certifying agent's initial review determines that the applicant may be able to comply with the Act and regulations, they will schedule an on-site inspection. The purpose of the on-site inspection is to assess whether the operation complies or has the ability to comply with the Act and regulations and verify information provided by the applicant reflects the operation's activities and is truthful. The on-site inspection is a component of the regulatory framework proposed for the implementation of the Proposition 12 initiative to ensure only covered products from covered animals not confined in a cruel manner are sold within and into California.

Sections 1326.5(a) and (a)(1) give the Department authority to require a certifying agent to conduct on-site inspections of the grounds and facilities of a certification applicant and that the on-site inspection shall be conducted at least once every 12 months for continuation. As

described in this Article, the Department is proposing to use certifying agents (the Department, private certifying agents, and out-of-state government entities) to certify producer and distributor operations, therefore, certifying agents are responsible for conducting the required on-site inspection which is a component of the certification process. For an initial on-site inspection, the certifying agent will review each production unit, facility, and site that produces or distributes covered animals or covered products to ensure their production or distribution system is compliant. For example, the initial on-site inspection of a production facility raising covered animals may include inspection of the barns and herd records and for a distribution facility, the certifying agent may inspect the receiving and processing building and recordkeeping systems. Initial on-site inspections may also include verification of the management practices, physical barriers, and standard operating procedures in place to prevent commingling of covered animals or covered products at split operations. These inspections are necessary to verify an applicant's compliance, and while each inspection process can differ slightly based on the unique methods employed by an individual certifying agent, the basic steps or components of the inspection process and standards for determining compliance is expected to remain consistent for all certifying agents in order to ensure a thorough and uniformly applied certification process. This subsection goes on to require that a certifying agent conduct an annual inspection once every 12 months for a certified operation to maintain certification. An annual inspection is an agricultural industry standard for frequency of visits to ensure participants continue to maintain standards as required for specific programs, therefore the Department proposes a similarly structured schedule for on-site inspections.

Section 1326.5(a)(2) gives the Department authority to allow for additional on-site visits as needed and determined by a certifying agent. This subsection is necessary to provide flexibility to certifying agents that may need to conduct additional inspections or follow-up with the applicant on a particular issue discovered on a previous inspection to determine continued compliance with HSC sections 25990 and 25991 and these regulations. The subsection also authorizes that additional inspections may be announced or unannounced. Unannounced visits are an effective tool to ensure compliance and serve to provide a certifying agent the opportunity to observe the activities of an operation without prior notification and may serve as a deterrent to operations who may consider operating in violation of the Act and regulations between scheduled on-site inspections.

Sections 1326.5(b) and (b)(1) authorize the Department to require certifying agents conduct the first on-site inspection within three (3) months of making a determination that the applicant appears or is able to comply with the requirements for certification. Once it appears to the certifying agent that the applicant is compliant or is able to comply with the requirements, based upon the application and information provided by the applicant as required by section 1326.3 of this Article, the certifying agent is required to schedule an on-site inspection. The certifying agent will communicate with the facility to schedule the on-site inspection either in writing or by telephone or other electronic means. The subsection provides for up to three (3) months to conduct the inspection which provides for flexibility and may be necessary to allow time for the facility to be compliant with statutes and regulations if minor changes are needed after the certifying agent reviews the application and communicates findings to the applicant.

Section 1326.5(b)(2) describes that during the scheduled on-site inspections as required in subsection (b)(1), there must be a representative of the operation applying for certification present and that the inspection take place at a time when the facility's activities can be observed. The subsection gives the Department authority to require that a person is available to answer relevant questions about the certification application and that the facility is available for observation when it's operating or capable of operating in compliance with the Act and these regulations to ensure covered animals or covered product is compliant. The procedures outlined in this subsection however do not apply to unannounced on-site inspections by a certifying agent, including the Department, that may occur for verification of compliance with statutes and regulations because it may not be feasible for the business operation to always have such representation available.

Section 1326.5(c) authorizes the Department to require an on-site inspection of an operation be performed by the certifying agent to verify, as stated in subsection (c)(1), an operation's compliance or capability to comply with the Act and this Chapter. The certifying agent will evaluate and verify that each production unit, facility, and site that produces or distributes covered animals or covered products included on an operation is conforming to the confinement standards for covered animals and covered products. For example, the on-site inspection of a production facility producing covered animals may include inspection of the confinement and recordkeeping systems and for a distribution facility, the certifying agent may inspect the receiving and processing and recordkeeping systems. On-site inspections may also include verification of the management practices, physical barriers, and that standard operating procedures are in place to prevent commingling of covered animals or covered products on split operations. Subsection (c)(2) authorizes the certifying agent during the on-site inspection to verify the information the applicant provides on the application for certification accurately reflects the practices used or to be used by the applicant or the certified operation. The on-site inspection is necessary as it will serve to confirm that the information submitted by the applicant for an initial certification and for a continuation of certification accurately reflects the practices at their operation and meets the requirements of HSC sections 25990 and 25991 and these regulations. These inspections are necessary to verify an applicant's compliance, and while each inspection process can differ slightly based on the unique methods employed by an individual certified agent, the basic steps or components of the inspection process and standards for determining compliance is expected to remain consistent for all certifying agents in order to ensure a thorough and uniformly applied certification process.

Section 1326.5(d) authorizes the Department to require the inspector of the certifying agent conduct an exit interview with an authorized representative of the operation to confirm the accuracy and completeness of the inspection. The exit interview will generally take place at the conclusion of the on-site inspection and is a summarization of the agents findings and is necessary for the inspector to make the applicant aware of any need for additional information and any problems observed during the on-site inspection.

1326.5(e) authorizes the Department to require the certifying agent to provide to the applicant a copy of the completed on-site inspection report. The certifying agent will provide a copy of the report to the applicant at the conclusion of the exit interview or may later provide a hardcopy via mail or an electronic copy via other electronic means. It is necessary for the certifying agent to provide a copy of the inspection report to ensure the applicant has a record of the inspection conducted at their facilities and may discuss the report with the certifying agent as needed.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.6. Granting Certification.

Section 1326.6 gives the Department authority to establish the procedures by which a certifying agent shall grant a certificate of compliance to a producer or distributor for meeting the requirements of the Act and these regulations. Written certification that producers are raising covered animals and distributors are selling covered product within and into the State is essential to the integrity of the regulatory framework proposed. Section 25993.1 of the HSC describes a written certification as defense to action for a supplier, producer, or distributor in this proposal, that covered product purchased by a buyer, ultimately consumers of California, was not derived from covered animals confined in a cruel manner. The Department is utilizing this written certification, verified by an unconnected third-party, to ensure covered product sold in California is raised in accordance with the Act.

Section 1326.6(a) gives the Department authority to require a certifying agent to review all application materials submitted and the on-site inspection report when determining if an applicant will be granted or denied certification of their operation. Within a reasonable period of time, the certifier will evaluate the inspection report and all the information and documents requested and provided by the applicant during the application process. If the certifying agent determines that the confinement or distribution system and all the procedures and activities of the applicant's operation are in compliance with the Act and regulations, the certifying agent will grant certification. This subsection ensures the decision made by the certifying agent to grant certification is made based on all the relevant information included in the application and to ensure the process for granting certification is the same from applicant to applicant and certifying agent to certifying agent.

Section 1326.6(b) authorizes the Department to require a certifying agent to provide specific information on the certificate of compliance issued to a farm or distribution operation. The required information is specific to ensure all certificates of compliance contain the same details about the certified operation for ease of inspection and compliance. Many of the certifications for compliance with the Act and these regulations will be issued by certifying agents beside the Department, yet the Department will be reviewing and auditing certificates to ensure an operation is compliant. For example, a distributor must show their certificate of compliance when they apply or renew registration with the Department which is required to sell covered

products to an end-user in the State. The certificate of compliance shall include the name and address of the certified operation as stated in subsection (b)(1), the effective date of certification as stated in subsection (b)(2), date of the most recent on-site inspection as stated in subsection (b)(3), the covered animals or covered products for the certification and if it is a split operation as stated in subsection (b)(4), and in subsection (b)(5) the name, address, and telephone number of the certifying agent. These subsections are necessary to document and identify the operation as qualifying for certification for the stated covered animal and/or covered product as evidenced and determined on the date specified and verified by a certifying agent as required by the regulations and to ensure the certificate has been issued uniformly by a certifying agent.

Section 1326.6(c) authorizes the Department to accept certifications issued by other governmental agencies provided the certification includes an on-site inspection to verify compliance with sections 25990 through 25994 of the HSC and these regulations. The Department will accept a certification issued by an out-of-state governmental body when the certification is based on an on-site inspection to allow for flexibility and use of recognized procedures of another government entity when granting a certification. Certifying agents may originate from other U.S. states, USDA, or other countries where similar proven procedures may already be in place to accurately verify compliance with the requirements for certification, as specified. However, the Department requires an on-site inspection for an accurate visual verification of the production or distribution operation applying for certification to eliminate any possible miscommunication or misunderstanding of the operation complying with the requirements of the Act and these regulations.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.7. Denial of Certification.

Section 1326.7 gives the Department authority to establish the procedures certifying agents must take when denying an applicant for certification and informs applicants of the procedures and availability of options an applicant may take to rectify the noncompliance issues or appeal the notice of denial. Due to the large number of producers and distributors raising covered animals and contributing covered product into California commerce and these regulated entities being located within the State, outside of the State, and outside of the country, the Department is relying heavily on certifying agents besides the Department to grant certifications. To ensure integrity of the proposed regulatory framework for implementation of the Proposition 12 initiative, the certifications issued must be valid and defensible. This process will therefore need to include denial of certification when an operation is not in compliance with the Act and these regulations. This section gives certifying agents a process to follow when issues of noncompliance are found during the application process and for denial of a certification. Without certification, a producer cannot raise covered animals from which covered products are derived to sell in California and a distributor cannot sell covered products to an end-user in California. Due to the potential loss of market access, consequence of certification denial, and

other certifying agents besides the Department denying certification, this section is required to set a uniform protocol.

Section 1326.7(a) gives the Department authority to require a certifying agent to follow this section when an applicant for certification is not in compliance with the requirements of the Act and this Chapter pursuant to the recordkeeping, application for certification, and the on-site inspection requirements. The certifying agent will issue a written notification of noncompliance to the applicant, either by mail or electronically, that details each item of noncompliance found during the review in need of correction before certification could be granted. This subsection is necessary to specify the process when noncompliant issues are found during the application review process and corrective actions taken before certification is granted or denied in order to give the applicant an opportunity to come into compliance.

- Subsection (a)(1) specifies that the notice of noncompliance shall contain a description of each noncompliant issue which is necessary to provide an applicant with clear information on areas of the operation that are deviating from the requirements and that must be corrected.
- Subsection (a)(2) specifies that facts, such as the relevant statutes and regulation citations, shall be provided for each issue of noncompliance identified by the certifying agent which is necessary to provide an applicant with clear information on the basis of a certifying agent's identification of noncompliance.
- Subsection (a)(3) specifies that a deadline must be given to the applicant to rebut or correct each area of noncompliance and submit documentation to the certifying agent of how each area of noncompliance was resolved which is necessary to make it clear to applicants that a rebuttal or documented corrective measures in areas of noncompliance will be accepted until a specific date.

Section 1326.7(b) gives the Department authority to require an applicant for certification who received a notice of noncompliance to follow specific steps to address the noncompliance issues as stated on the notice of noncompliance issued by a certifying agent and as detailed in subsections (b)(1) through (b)(3) below which are necessary to clarify the available options to applicants. These options are provided to the applicant for them to ultimately gain certification of compliance and be allowed to raise covered animals or sell covered products within or into the State.

- Subsection (b)(1) specifies that the applicant may submit supporting documentation explaining how they corrected any noncompliance issues as indicated on the written notice of noncompliance. The notice details areas of noncompliance and this subsection provides the applicant the opportunity to demonstrate in writing how they took action to rectify or otherwise correct the noncompliant issue identified. This subsection is necessary to provide an opportunity for the applicant to make the necessary corrections and continue with the certification application process.
- Subsection (b)(2) specifies that a new application may be submitted to a different certifying agent along with documentation of the notices of noncompliance from the previous certifying agent and corrective actions taken by the applicant which is necessary to clarify the accepted process when choosing to use a different certifying agent.

- Subsection (b)(3) specifies that the applicant may submit information to the certifying agent as a rebuttal to the noncompliance described in the notice of noncompliance. This subsection allows the applicant an opportunity to challenge the findings of a certifying agent if the applicant does not agree with the certifying agent's determination of noncompliance and include supporting evidence of the rebuttal as well.

Section 1326.7(c) gives the Department authority to require certifying agents take specific steps after they have issued a notice of noncompliance to an applicant as detailed in subsections (c)(1) through (c)(3) below which are all necessary to explain the required actions of the certifying agent and subsequent possible outcomes. All qualified producers and distributors who apply for certification, which is necessary to access the California market regarding raising of covered animals and sales of covered products, should have the opportunity to be granted certification and the steps following receipt of a notice of noncompliance will allow the applicant and certifying agent to work together for compliance, if possible.

- Subsection (c)(1) describes that the certifying agent will evaluate an applicant's corrective actions and supporting documentation submitted, or the written rebuttal, and then conduct another on-site inspection if the certifying agent believes it's necessary.
- Subsection (c)(2) specifies that when the corrective action or rebuttal is sufficient to demonstrate the applicant is in compliance and will qualify for certification, then the certification must be issued to the applicant.
- Subsection (c)(3) specifies that when the corrective action or rebuttal is not sufficient to demonstrate the applicant is in compliance and will not qualify for certification, then the applicant shall be issued a written notice of denial of certification.

Section 1326.7(d) gives the Department authority to require a certifying agent to issue a written notice of denial of the certification to an applicant who fails to respond to the initial notification of noncompliance, which is necessary to inform the applicant of the impending denial of certification for failing to respond.

Section 1326.7(e) gives the Department authority to require a certifying agent to state on the denial notice that a certifying agent completes and sends to the applicant who is denied the certification the reasons for denial and clarify rights available to the applicant who has been denied certification as detailed in subsections (e)(1) through (e)(3) below.

- Subsection (e)(1) specifies that it must contain the procedures to reapply for certification pursuant to sections 1326.3 and 1326.8 of this Article. A producer or distributor operation who received a denial of certification is allowed to apply again with the same certifying agent or a different certifying agent. Receiving a denial of certification does not prohibit an operation from coming into compliance with the Act and these regulations to then attempting to obtain valid certification again in the future.
- Subsection (e)(2) specifies that the denial notice shall inform the applicant that they have the right to mediation pursuant to section 1327.2 of this Chapter. Mediation is an option for resolution of disagreements between the applicant and certifying agent because it is a less expensive option than a formal hearing and the applicant has not had their right to engage in business in California taken away. The applicant could reapply for certification.



- Subsection (e)(3) specifies that the denial notice must also contain information on how an applicant can appeal the denial of the certification pursuant to a formal hearing. This appeal option for applicants and can be used if resolution through the mediation process cannot be agreed by the two parties or if the applicant does not want to use mediation for their appeal.

Section 1326.7(f) gives the Department authority to permit an applicant for certification to have the option to reapply for certification at any time following their initial denial of the certification to the same certifying agent or a different certifying agent. The re-application for a certification is to include all documentation relating to the denial, such as, a copy of the notice of noncompliance, the denial of the certification, and a description of the actions taken, with supporting documentation, to correct the noncompliance issues. This subsection is necessary as it will assist the certifying agent when reviewing all the facts surrounding the denial and to evaluate the new application for possible certification.

Section 1326.7(g) gives the Department authority to require a certifying agent to follow these procedures when receiving a new application for certification that contains issues of noncompliance, a previously denied application, or a revoked certification. The certifying agent must consider it as a new application and begin the process in accordance with sections 1326.3 and 1326.4 of this Article. This subsection is necessary to clarify the processes to take place when a person resubmits a previously denied application, received a notification of noncompliance, or had certification revoked to ensure an applicant understands documentation to be included in a new application for certification in compliance with the Act and these regulations.

Section 1326.7(h) gives the Department authority to specify the procedures a certifying agent will follow if the certifying agent believes the applicant willfully provided false statements on the application form or is otherwise purposefully misrepresenting the applicant's operations or compliance with the certification requirements in accordance with the Act and these regulations. In such instances, the application will be denied without first issuing a notice of noncompliance. This subsection is necessary as items of noncompliance and timeframes for correction can only be reasonably described by a certifying agent based on facts and truthful circumstances and not in situations where false or misrepresenting information is being willfully provided by an applicant.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.8. Continuation of Certification.

Section 1326.8 gives the Department authority to establish the procedures for continuing an existing certification of producer and distributor operations by certifying agents. Written certification, as described in HSC Section 25993.1, is a defense to any action from a seller to a buyer, ultimately California consumers, that covered products sold are derived from covered

animals not confined in a cruel manner. Therefore, a description for the process of renewing this certification is a necessary component to creating an effective and defensible implementation program to ensure California consumers have confidence when purchasing covered products in the State, regardless of origin.

Section 1326.8(a) describes the procedures that must be taken on an annual basis for a certified operation to maintain and continue their certification. The way the certified operation submits the information required by subsections (a)(1) through (a)(3) described is between the certified operation and the certifying agent. Certified operations seeking renewal should submit the updated information to the certifying agent prior to the on-site inspection required pursuant to subsection (b) to avoid a potential notice of noncompliance. An annual renewal of certification and on-site inspection for verification of compliance with the Act and these regulations was chosen by the Department because it is a common interval within industry and will ensure the regulatory framework of this program has integrity to have only compliant covered products sold in California commerce.

Section 1326.8(a)(1) authorizes the Department to require that certified operations annually submit to the certifying agent a summary, supported by documentation, of any deviations from, or changes to, the information submitted on the previous year's application. The annual update will add new information to an existing certification to describe changes to the operation, if applicable, and not reiterate information that was previously submitted to the certifying agent. The information submitted will ensure the certifying agent has the most up to date information about the operation and plan an on-site inspection accordingly if scope of covered animals has changed or new barn construction, for example, has been completed in the past year.

Section 1326.8(a)(2) specifies that certified operations are to provide an update to corrections made for noncompliance issues previously identified by the certifying agent. These noncompliance issues could have been found during the past twelve months since the certification was initially granted or renewed due to findings of an audit, on-site inspection, complaint follow up, or review by the Department. The certification may still be valid, but the certified operation is in the process of correcting issues of noncompliance and evidence of corrective actions taken for resolution of noncompliance is required for renewal of certification. This information is necessary as it will ensure the certifying agent is aware that certified operations and their facilities are compliant with applicable statutes and regulations before granting a renewal.

Section 1326.8(a)(3) specifies that the certified operation may submit any other information as deemed necessary by the certifying agent to determine the certified operation and their facilities are in continued compliance with applicable statutes and regulations. This subsection is necessary to provide flexibility with respect to information needed to demonstrate compliance for continued certification. The proposed regulatory framework for implementation of the Proposition 12 initiative relies heavily on certification of producers and distributors for compliance with the Act and these regulations and many of these certifications will be issued by certifying agents besides the Department. If the certifying agent requires additional information

in the renewal of certification to ensure compliance, then the certifying agent can make this request.

Section 1326.8(b) gives the Department authority to require the certifying agent schedule an on-site inspection of the operation to determine if the operation is still in compliance or assess any updates to the certification for compliance. The on-site inspection is an essential component of the certification process to verify information submitted in the application is accurate and truthful to ensure only compliant covered product derived from covered animals not confined in a cruel manner is sold within and into the State.

Section 1326.8(c) authorizes a certifying agent to issue a written notification of noncompliance, as detailed in section 1326.20 of this Article, if it is found that the certified operation is not in compliance with the Act and these regulations after on-site inspection and review of renewal application materials. This section gives direction to the certified operation and certifying agent of proper procedures to follow if items of noncompliance are found during review of application for certification renewal.

Section 1326.8(d) gives the Department authority to require a certifying agent issue a renewal of certification after the inspection is complete and the certifier has reviewed both the annual update and the inspection report. The new certificate of compliance for the operation will follow the instructions in section 1326.6(b) which states the required contents included in a certificate of compliance. This subsection gives direction to the certifying agent to issue a new certificate of compliance if it is found that the certified operation is in compliance with the Act and these regulations.

Section 1326.8(e) gives the Department the authority to require a certified operation to communicate to their certifying agent within thirty days of any changes to a certified operation's contact information or status of business operations as described. A certified operation may reach out to their certifying agent via telephone, mail, or other electronic means to provide the update. This section is to ensure the certifying agent has the most up to date information for its certified operations and that these updates cannot wait until the annual renewal process to be communicated to the certifying agent.

Section 1326.8(f) gives the Department authority to specify that if the certifying agent is a government entity outside of the Department then that governmental body can use their own certification renewal process as long as it is functionally equivalent to the process described in this section and includes an on-site inspection as described in section 1326.5 of this Article to verify compliance with the Act and these regulations. This section is necessary for government entities who are performing recognized certifications of producers and distributors for compliance with California compliance standards and they can follow their own established protocols for renewal as long as the process includes an on-site inspection of the certified operation every twelve months.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

Adopt Section 1326.9. Areas and Duration of Accreditation as a Certifying Agent.

Section 1326.9 establishes the Department's authority to accredit certifying agents. Use of certifying agents accredited by the Department is an essential component of the program to implement the Act due to the large number of producer operations raising covered animals, potentially over 13,000 locations including farms outside of California and outside of the country, and large number of distributors, potentially 6,000 locations, selling covered product from those covered animals within or into the State. All of these producer and distribution operations may not choose to raise covered animals destined for sale in California or all distributors may not choose to sell covered product, but the expansive size of potentially regulated entities for the animal care program proposed in these regulations means the Department must rely on other unconnected third-parties, accredited by the Department, to certify operations as compliant with the Act and this Chapter. A successfully proven model to meet the requirements of the large-scale USDA NOP is the accreditation of certifying agents by USDA to perform certification of organic producers and handlers. The Department is similarly proposing a program where written certification, as outlined in HSC Section 25993.1, is granted by the Department, an outside government entity, or an accredited certifier to verify compliance with the Act that shell eggs, liquid eggs, whole veal meat, and whole pork meat were derived from covered animals not confined in a cruel manner.

Section 1326.9(a) gives the Department authority to accredit a qualified domestic or foreign certifying agent to certify a domestic or foreign production or distribution operation as a certified operation in accordance with the Act and this Chapter. This subsection is necessary to give the opportunity for any third-party entity to apply for accreditation with the Department. California has many shell egg producers located within the State, but liquid egg, whole veal meat, and whole pork meat sold in California is mainly from covered animals raised outside of the State including outside of the country. The Department has specifically included foreign and domestic certifying agents for potential accreditation to ensure any producer who wants to engage in commercial sale of covered product in California can have that opportunity.

Section 1326.9(b) is necessary to clarify that the duration of the accreditation granted by the Department for a certifying agent shall be for five (5) years from the date of approval of accreditation pursuant to section 1326.14 of this Article. The Department has determined a five (5) year accreditation period is suitable for maintaining an accreditation for purposes of certifying production and distribution operations. In addition, this is the same frequency of renewal for USDA NOP accredited certifying agents. The proposed application process for certifying agent accreditation is very thorough and detailed to ensure the Department only grants accreditation to qualified applicants. There are other requirements, including an annual report and on-site evaluations by the Department, of the accredited certifier detailed in this proposal to maintain their accreditation during the five (5) years between each renewal.

Section 1326.9(c) gives the Department authority to accept a foreign certifying agent accredited by a foreign government authority to accredit foreign producer and distributor operations providing the criteria are equivalent to the requirements of these regulations. This subsection is necessary to provide for flexibility when the Department is considering certifying agents located outside of the U.S.

Section 1326.9(d) gives the Department authority to, at its discretion, certify a production or distribution operation as a certified operation provided it has determined that the operation is compliant with applicable statutes and regulations. The Department reserves this authority because direct certification by the Department may be needed in some instances where an accredited certifying agent or other government entity certifying agent is not available to the production or distribution operation due to geographical location and lack of access to a local certifying agent. The Department serving as a certifying agent will ensure any business desiring to raise covered animals destined for sale as covered product in California will have access to offer their shell eggs, liquid eggs, whole veal meat, or whole pork meat to consumers in the State.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.10. General Requirements for Accredited Certifying Agents.

Section 1326.10 gives the Department authority to require evidence of certain requirements of certifying agents to obtain and maintain accreditation. Accreditation by the Department must only be granted to private certifying agents who meet the requirements of this section and the Department therefore has the authority to only approve qualified persons to certify operations as compliant with the Act and this Chapter. This proposal details an animal care program to ensure compliance with the Act which includes verification of producers raising covered animals and distributors selling covered product within and into the State. A written certification by an unconnected third-party to the producer and distributor operations as outlined in these regulations is essential to the integrity of the regulatory framework proposed. Due to the large number of regulated entities located within and outside of the State, the Department will rely on certifying agents, including private third-party businesses accredited by the Department, to maintain consumer confidence that only compliant shell eggs, liquid eggs, whole veal meat, and whole pork meat are available for purchase by Californians regardless of product origin.

Section 1326.10(a) gives the Department authority to approve a private entity to become an accredited certifying agent and maintain that accreditation.

Section 1326.10(a)(1) gives the Department authority to require the private entity to have sufficient expertise, which is shown to the Department through submitting the application requirements described in the Article, in covered animal production and covered product

distribution techniques to fully comply with and implement the terms and conditions of the certification program in accordance with applicable statutes and regulations governing the confinement of specified animals. This subsection is necessary to ensure that only qualified private entity certifying agents with the necessary knowledge and experience to conduct certifications as required are to be accredited by the Department.

Section 1326.10(a)(2) gives the Department authority to require a private certifying agent to receive and maintain accreditation, must carry out the provisions of the Act and the certification terms and conditions of these regulations which is necessary for applicants and accredited certifying agents to understand what they are agreeing to follow when certifying producers and distributors for compliance.

Section 1326.10(a)(3) gives the Department authority to require a private certifying agent to use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, as determined by the Department through materials submitted in the application, the annual report submitted to the Department, and on-site inspections of the private certifying agent's offices to review records as described in the Article. Sufficient number of staff is used here because the number of employees needed by an accredited certifying agent will depend on the number of operations they are certifying, driving distances to locations, and other certification activities the private entities are performing. This subsection gives the Department authority to ensure the private certifying agent is capable of handling the capacity of inspections that may be needed for producer and distributor certification.

Section 1326.10(a)(4) gives the Department authority to require the private certifying agent to ensure that its decision-making employees have sufficient expertise in covered animal production and covered product distribution to successfully perform the duties assigned to receive and maintain accreditation. The term sufficient is used here because the Department will use information gathered in the application, review of annual report, and on-site inspections as described in this Article to determine if the private certifying agent has employees with the expertise to perform certification activities. This subsection is necessary to give the Department authority to ensure the private entity is equipped to handle all aspects of the certification process, so producer and distributor operations are fairly evaluated and certified according to the Act and these regulations.

Section 1326.10(a)(5) gives the Department authority to make a private certifier accredited by the Department communicate all information regarding compliance with the Act and applicable regulations to applicants for certification to ensure all producer and distributor operations are aware of what is required for compliance. Due to the reliance on accredited certifying agents for certification of producers and distributors for compliance with the Act and this proposal, the Department needs to be sure these certifying agents are treating all applicants fairly so operations have equal opportunity to comply and be granted certification.

Section 1326.10(a)(6) gives the Department authority to require a private certifier to keep records pursuant to the requirements of section 1326.17(b) and make all such records available

for inspection and copying by authorized representatives of the Department to receive and maintain accreditation. This authority will ensure the Department has access to records to conduct routine audits and inspections of accredited certifying agents for verification of compliance as required by this proposal. The Department relying on accredited certifying agents to certify producer and distributor operations as compliant with the Act is an integral part of the proposed program to ensure covered animals are not raised in a cruel manner if covered products from those animals are sold within or into the State.

Section 1326.10(a)(7) gives the Department authority to require an accredited certifying agent follow California's Public Records Act (PRA) for records generated while performing certification of producers and distributors for compliance with the Act and these regulations. As an accredited entity, the private certifying agent becomes an arm of the Department's enforcement and therefore is required to comply with California's PRA. This section makes the applicant or accredited certifying agent aware of what is required of them to receive and maintain accreditation by the Department.

Sections 1326.10(a)(8), and (a)(8)(A) and (B) give the Department authority to require an accredited certifying agent prevent conflicts of interest between the certifying agent and operations they are certifying for compliance with the Act and these regulations. Third-party certification means there is not relationship between the certifier and the operation to ensure an unbiased evaluation is performed. Reliance on third-party certification of producers raising covered animals and distributors selling covered products to an end-user in California is a key component of the regulatory framework in this proposal and the validity of the certification gives integrity to the program. A 12-month time period is reasonable to ensure fairness in the application for certification process and is consistent with conflict of interest requirements in similarly structured programs from which these regulations are modeled. If the certifying agent is reasonably connected to the operation they are certifying, then there is potential for favoritism or implicit bias in their evaluation of compliance with the Act and these regulations. Integrity of a written certification issued by a certifying agent is met by the Department having the authority to ensure persons performing certification services are truly third-parties and do not have a vested interest to potentially be biased while reviewing an application for certification with the Act and these regulations.

Section 1326.10(a)(8)(C) gives the Department authority to prohibit an accredited certifying agent from receiving gifts or favors as described to prevent these additional benefits from influencing the decision making process of an accredited certifying agent when evaluating a producer or distributor for compliance with the Act and these regulations. The accredited certifying agent must remain an unbiased third-party when making the decision to certify an operation to ensure integrity of their auditing skills and ultimately the program proposed in these regulations.

Section 1326.10(a)(9) gives the Department authority to prohibit an accredited certifying agent from making false statements as described to ensure that each producer or distributor applying for certification with an accredited certifying agent is not misled concerning a certifying agent's

accreditation status to conduct certification activities because ability to engage in commercial sale of covered products in California is reliant on valid certification as described in these regulations.

Section 1326.10(a)(10)(A) gives the Department authority to require an accredited certifying agent to submit to the Department within 14 days of creation, any notices of proposed suspensions or revocations, and of any issued suspensions or revocations sent pursuant to regulation section 1326.20. This subsection is necessary for the Department to maintain the most up-to-date information on the loss, or pending loss, of certification of producers and distributors raising covered animals and selling covered products into or within the State. The time period of 14 days was chosen as a reasonable timeframe for the accredited certifying agent to alert the Department to the notice of adverse determination issued because the notice might be issued on a Friday or near a working holiday and the accredited certifying agent will have time to comply with this requirement. The Department requiring this notification will also assist in monitoring the compliance activity of accredited certifiers to help ensure uniformity and fairness within the industry.

Section 1326.10(a)(10)(B) gives the Department authority to require the accredited certifying agent to submit to the Department a list information of certification activities from the previous year as described in this Article. The Department is requiring this information to be submitted by accredited certifying agents annually because certification is renewed annually as well, and the Department needs to have an accurate list of certified operations for verification of compliance with the Act and these regulations. In addition, this subsection is necessary to help the accredited certifying agent understand expectations by the Department to be granted and maintain accreditation to certify production and distribution operations for compliance with applicable statutes and regulations.

Sections 1326.10(b)(1) and (b)(2) specify that the Department shall not be liable for any actions taken on the part of a private entity accredited by the Department as a certifying agent. The Department is accrediting the private certifying agent to perform certification of producer and distributor operations, but the Department is not overseeing day to day operations or all business activities of the certifying agent and therefore is not held liable. The Department is also given the authority to require certification records pertaining to the Act and this Chapter be transferred to the Department in the event of dissolving of the certifying agent's business so the Department has documented evidence of the certification process and inspections in order to verify compliance with the Act and these regulations. The Department wants to prevent records critical to documentation of producer or distributor certification with applicable statutes and these regulations from being lost. There is an exception to this transfer of records requirement if the accredited certifying agent is only transferring ownership as a part of a merger or sale of the company to another certifying agent business or merger who would be continuing to certify and inspect the producer and distributor operations. These disclosure statements are necessary to ensure accredited certifying agents are aware of their liability and responsibilities upon dissolving of an accredited certifying agent's business.



Section 1326.10(c) gives the Department authority to require an accredited certifying agent to not discriminate for the reasons specified to ensure all producer and distributor operations who want to engage in commercial sale of covered products in California shall have the opportunity to do so as long as the operation is certified as compliant with the Act and this Chapter. This subsection is necessary to ensure each application for certification is treated fairly and evaluated only based on applicable statutes and regulations to certify that the production or distribution operation meets all requirements.

Section 1326.10(d) gives the Department authority to require a person applying with the Department as an accredited certifying agent, to sign a statement of agreement as prepared by the Department to carry out the provisions of the Chapter. A statement of agreement between the Department and an accredited certifying agent is needed for documented full transparency of the accreditation granted by the Department for the certifying agent to carry out inspections and issue certifications of compliance with the Act and these regulations because the Department is relying heavily on third-party entities to perform these certifications of compliance due to the large number of regulated entities and their locations outside of the State and outside of the country.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.11. Applying for Accreditation as a Certifying Agent.

Section 1326.11 gives the Department authority to establish how a private entity will apply for accreditation as a certifying agent with the Department.

Sections 1326.11(a) and (b) give the Department authority to receive, review, accept, or deny applications for accreditation as a certifying agent. The applicant must submit all documents and information to the Department as specified in regulation sections 1326.12 and 1326.13 for evaluation to determine if the applicant meets the standards and requirements outlined in section 1326.10 of this Article. This subsection is necessary to inform applicants for accreditation that they are expected to submit all the document requirements in this Article for review by the Department. The Department is relying heavily on accredited certifying agents to inspect and issue certifications of compliance to producer and distributor operations. The Department must have a robust application process for accreditation of certifying agents to ensure only qualified persons are granted accreditation.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.12. Applicant Information for Accreditation as a Certifying Agent.

Section 1326.12 gives the Department authority to require specific information from an applicant be submitted to the Department to be considered for accreditation as a certifying agent. The information requested in subsections (a) through (e) is necessary when determining the skills, knowledge, and experience of a candidate's third-party inspection abilities during the application process for accreditation as a certifying agent to conduct the certification as directed by the Department in accordance with the Act and these regulations.

Section 1326.12(a) gives the Department authority to require specific contact information from the business entity applying for accreditation to be a certifying agent, including their taxpayer's identification number. The required contact information is to ensure the Department can maintain communication with the certifying agent and the taxpayer identification number is necessary as it will allow the Department to distinguish individual business entities as different accredited certifiers for accurate internal recordkeeping. A taxpayer identification number is a unique business identification number used by the Department for the accredited certifier because the Department requires information of each physical location where certification activities are taking place and one certifying agent might have multiple offices across multiple states. The unique taxpayer identification number for an accredited certifier ties together multiple office locations potentially located within and outside of California to perform certification services.

Section 1326.12(b) gives the Department authority to require all the contact information for each of the business's chapters and subsidiary offices including email, telephone numbers, and mailing addresses be submitted to the Department. This is necessary because a certifying agent may have multiple offices across multiple states performing certifications of producer and distributor operations for compliance with the Act and this Chapter. The Department is relying heavily on third-party certification for compliance as an essential component of the proposed regulatory framework and therefore the Department must know where the accredited certifying agents are located for routine or complaint based on-site inspections.

Section 1326.12(c) gives the Department authority to require an applicant for accreditation submit to the Department which areas of operation the certifying agent will certify and an estimate of the number of certifications issued annually if accreditation is granted. This information is needed by the Department as part of the application process to ensure the applicant has enough qualified people and expertise to perform the certifications they are planning to complete. The Department also requires applicants provide a copy of fee schedules to be charged for certification services performed as an accredited certifying agent in order for the Department to maintain data on the ongoing cost of certification incurred by the industry and to effectively monitor the accessibility of certification services for producers and distributors.

Section 1326.12(d) gives the Department authority to have the accreditation applicant provide information regarding the type of business the private entity applicant will be engaging in as a certifying agent. This information will document how the business will be conducted in accordance with these regulations including, but not limited to, the conflict of interest provisions

and estimated cost to industry and stakeholders depending if the certifying agent is a for-profit or not-for-profit business.

Section 1326.12(e) gives the Department authority to require accreditation applicants to submit a list of locations where previous certification activities took place and where planned future certification activities will take place. This information is needed to ensure only qualified applicants are granted accreditation and they have experience and expertise in the areas where they are planning to certify producer and distributor operations. Covered animals and covered products originating from in the State, outside of the State, and outside of the country will be sold in California and the Department will not be inspecting and certifying all those operations. Reliance on third-party certifications as outlined in this proposal through accredited certifying agents is how the Department will ensure California consumers that covered products sold in California are compliance with the Act regardless or state or country of origin.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.13. Evidence of Expertise and Ability.

Section 1326.13 states the type of documentation the Department is authorized to require from an applicant seeking accreditation. The information requested in subsections (a) through (e) is necessary for the Department when determining the certifying agent's competency to certify producers and distributors in accordance with the Act and these regulations. Accreditation of third-party certifiers by the Department is an essential component of the proposed program to implement the Act due to the large number of producers and distributors contributing to covered product sold in the State. Issuance of written certification, as described in HSC section 25993.1, by an accredited certifying agent will give California consumers confidence that covered products they purchase are compliant with confinement standards outlined in the Act regardless of where covered animals were raised.

Section 1326.13(a)(1) gives the Department authority to require a list of all persons employed by the certifying agent seeking accreditation who will be directly involved in the certification of producers and distributors for compliance with the Act and these regulations to ensure the applicant has staff to complete the projected number of certifications on an annual basis and proper training of these employees has occurred as required in this Article. This subsection is necessary to ensure the Department is aware of all persons who may be authorized to conduct audits and inspections of producer and distributor operations under these regulations for compliance with the Act.

Section 1326.13(a)(2) gives the Department authority to request information describing the qualifications and experience of the personnel employed by the certifying agent that the Department may review and evaluate to ensure a candidate for accreditation can adequately conduct inspections and audits of producers and distributors who raise covered animals or sell

covered products in the State. Specifically, subsection (a)(2)(A) requests qualification and experience information for each inspector that will be used by the private entity applying to become an accredited certifying agent, and subsection (a)(2)(B) requests this information for each person designated by the private entity to review and evaluate applications for certification. This information is needed by the Department for properly evaluating the qualifications and experience of the certifying agent applicant's personnel who will be performing certifications of compliance with the requirements of the Act and these regulations. An example of this training would be animal welfare auditor training and certification provided by the Professional Animal Auditor Certification Organization which is a non-profit providing training for on-farm inspectors and auditors.

Section 1326.13(a)(3) gives the Department authority to require an applicant to submit their own training program or documented evidence of utilizing an outside formal training program of its employees who will be inspecting and making the decision of certification of compliance with the Act and these regulations. This section is necessary to ensure the certifying agent applicant for accreditation has only qualified employees to conduct inspections and audits of operations applying to become certified according to these regulations.

Section 1326.13(b)(1) gives the Department authority to require that the certifying agent applicant provide the Department with a copy of their procedures to be used when evaluating producer or distributor applications for certification. It is necessary for the Department to have this information when evaluating and approving an applicant for accreditation to ensure the certifying agent follows the requirements of applicable statutes and regulations outlined in this proposal and will assist the Department ensuring uniformity and fairness in the evaluation of activities conducted by accredited certifying agents.

Section 1326.13(b)(2) gives the Department authority to require the certifying agent applicant provide the Department with a copy of their procedures to be used to evaluate certified operations for compliance and for the reporting of violations with the Act and these regulations. It is necessary for the Department to have this information when evaluating and approving an applicant for accreditation to ensure the certifying agent follows the requirements of applicable statutes and regulations when reviewing and investigating a certified operation and will report any violations of statutes or regulations to the Department.

Section 1326.13(b)(3) gives the Department authority to require the certifying agent applicant provide the Department with a copy of their procedures for maintaining records according to these proposed regulations. It is necessary for the Department to have this information when evaluating and approving an applicant for accreditation to ensure the certifying agent applicant has in place recordkeeping procedures as set forth in section 1326.10(a)(6) of this Article.

Section 1326.13(c) gives the Department authority to require the certifying agent applicant provide the Department with a copy of their written procedures for preventing the occurrence of conflicts of interest. It is necessary for the Department to have this information when evaluating and approving an applicant for accreditation to ensure the certifying agent applicant will prevent

the occurrence of conflicts of interest as described in section 1326.10(a)(8). Integrity of a certification of compliance issued by an accredited certifying agent is maintained by ensuring the inspection and review is done by truly a third-party so no bias, whether conscious or subconscious, is given by the certifying agent.

Section 1326.13(d) gives the Department authority to accept other information from the certifying agent applicant in support of granting their accreditation. The Department is relying heavily on third-party certifiers to inspect, verify, and certify producer and distributor operations for compliance with the Act and these regulations. If a private business has applied for accreditation with the Department and they would like to submit additional materials as evidence of their qualifications and expertise, then the Department will accept those supplemental materials.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.14. Granting Accreditation.

Section 1326.14 gives the Department authority to grant accreditation to a qualified certifying agent applicant and is necessary to clearly identify the procedures the Department will follow when granting this accreditation. Transparency of the process will allow all interested parties who want to become accredited by the Department to certify producer and distributor operations with information on how they will be evaluated.

Sections 1326.14(a) and (a)(1) give the Department authority to obtain all the information as required by proposed sections 1326.12 and 1326.13 to review before granting or denying accreditation. A complete application for accreditation is needed by the Department to make an informed and defensible decision to grant a certifying agent accreditation.

Section 1326.14(a)(2) gives the Department authority to make a determination of whether the certifying agent applicant meets the requirements for accreditation as specified in proposed section 1326.10, upon review of all of the information submitted by the applicant in accordance with proposed sections 1326.12 and 1326.13, and, if necessary, information obtained from an on-site evaluation in accordance with proposed section 1326.16. The on-site evaluation is not mandatory for the initial granting of accreditation due to the proposed regulatory program being new to the Department and an expected large number of private certifying agents applying for accreditation at the start of the program.

Section 1326.14(b) gives the Department authority to issue accreditation approval in writing to a certifying agent and include the information as specified in subsections (b)(1), (b)(2), and (b)(3) described below which is necessary to inform the accredited certifying agent of specific terms as related to the accreditation.

Section 1326.14(b)(1) specifies that the notification of accreditation approval will be only for specified areas that the certifying agent is qualified to inspect for compliance with applicable statutes and regulations based on review of the application. A certifying agent may have extensive expertise and training in auditing breeding pig operations, but no experience in auditing veal calf operations.

Section 1326.14(b)(2) specifies that the notification of accreditation approval will include an effective date for the certifying agent to be approved to certify operations. This date is important because the certifying agent is only then granted accreditation to certify operations and should not have been certifying operations as compliant with the Act and these regulations prior to granted approval by the Department.

Section 1326.14(b)(3) specifies the date of expiration of the accreditation which is necessary for both the Department and the certifying agent to know when the accreditation expires to ensure only certifying agents with current accreditation are certifying operations for compliance with the Act and these regulations.

Section 1326.14(c) gives the Department authority to approve a certifying agent for accreditation until such time the agent fails to renew the accreditation, voluntarily ceases its certification activities, or their accreditation is suspended or revoked by the Department pursuant to regulation section 1326.21. This subsection is necessary for the certifying agent to understand under what grounds the accreditation would no longer be valid and certification activities related to the Act and this Chapter would have to cease.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.15. Denial of Accreditation.

Section 1326.15 gives the Department authority to deny an application from a private certifying agent to become accredited under this Article to certify producer and distributor operations as compliant with the Act and this Chapter. The Department needs the authority to deny an application for accreditation to ensure only qualified certifying agents are accredited to perform certifications of compliance. The regulatory framework of this proposal relying heavily on third-party entities performing certifications of operations raising covered animals or distributing covered products within and into the State because of the large number of entities contributing shell eggs, liquid eggs, whole veal meat, and whole pork into California commerce.

Section 1326.15(a) gives the Department authority to issue a notice of noncompliance to an applicant for accreditation based on the information gathered through the application process or after an on-site inspection by the Department of the certifying agent applicant. An on-site inspection is at the Department's discretion for new accreditation applicants because the Department assumes there will be many private certifying agents applying for accreditation

when regulations are adopted and there are many established third-party certification companies currently performing animal welfare audits. The Department will provide a written notice of noncompliance with, as stated in subsection (a)(1) a description of where the applicant failed to meet the standards required in these regulations for accreditation, subsection (a)(2) what the certifying agent needs to do to come into compliance, and subsection (a)(3) deadlines to resolve issues of noncompliance with submitted supporting evidence of correcting each issue of noncompliance or submit a written rebuttal of the notification of noncompliance. The Department will be specific in what further actions or corrections are needed for the certifying agent applicant to be granted accreditation. The proposed regulatory framework to implement the Act relies on accredited third-party certifying agents to certify producer and distributor operations and the Department will work with certifying agents by giving the applicants written documentation of what is required of them to comply with these regulations and the opportunity to correct the issues of noncompliance. This section is necessary for applicants to know they will be provided a clear description of why their accreditation was not initially granted and what steps they need to take within a certain time frame to receive approval to become an accredited certifying agent.

Section 1326.15(b) gives the Department authority to proceed with application for accreditation review after the applicant has submitted evidence of correcting issues of noncompliance and the Department will communicate the noncompliance resolution in writing to the applicant. The accreditation of certifying agents is a critical component of the proposed regulations and there is a rigorous application process. It is necessary for the Department to document in writing the resolution of noncompliance issues to ensure the applicant knows they have come into compliance.

Section 1326.15(c) gives the Department authority to deny the application for accreditation if the applicant fails to correct noncompliance issues, fails to meet deadlines set by the Department to fix issues of noncompliance, fails to file a rebuttal by the date specified on the notice, or a filed rebuttal is refused. The Department will provide this denial of accreditation in writing to the applicant so there is a record of the decision. The certifying agent has the right to apply again for accreditation by following the same guidelines as the initial application process because the Department will accredit certifying agents in compliance with this Article. The certifying agent also has the right to file a formal appeal because denial of accreditation by the Department means the private certifying agent cannot certify producer and distributor operations for compliance with the Act and these regulations, therefore excluding the private certifying agent from engaging in this type of business in California or at locations outside of State with covered animals or covered products destined for commercial sale in California.

Section 1326.15(d) gives the Department authority to begin noncompliance procedures which may result in suspension or revocation of accreditation if a certifying agent was granted accreditation prior to an on-site evaluation and it then was found during an on-site inspection that the accredited certifying agent had issues of noncompliance. This subsection is necessary to explain that in these described situations, the Department will proceed with procedures to suspend or revoke the certifying agent's accreditation if the certifying agent is unable to comply

with the requirements of this Chapter. The proposed regulatory framework to implement the Act relies on the certification of producer and distributor operations by accredited third-party certifiers and the Department retains the authority to take away this certification ability of accredited certifying agents if the certifying agent is not in compliance with the requirements of this Article.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.16. On-site Evaluations.

Section 1326.16 gives the Department authority to conduct on-site evaluations of private certifying agent business locations to receive and maintain accreditation by the Department to certify producer and distributor operations for compliance with the Act and these regulations. The proposed regulatory framework for implementation of the Proposition 12 initiative utilizes verification of compliance with statutes and regulations through third-party inspection of regulated entities by certifying agents accredited by the Department. Accredited third-party certifiers are required due to the large number of producers and distributors raising covered animals and selling covered products and the location of these entities within California in addition to out of State and out of country. An on-site evaluation of certifying agents is needed for the Department to verify information required by applicants and accredited certifying agents to ensure the business is complying with the Act and these regulations.

Section 1326.16(a) gives the Department authority to perform on-site inspections of new or currently accredited certifying agents including a review of records and procedures related to the requirements outlined in this article for granting and continuation of valid accreditation. On-site visits are needed by the Department to inspect and verify the certification of producers and distributors records in-person because the Department is relying heavily on accredited certifying agents as part of the proposed regulatory framework. Accredited certifying agents will be located within California in addition to out of State and out of the country. The Department requires annual reports from the accredited certifying agents and the on-site evaluation is used to validate information received and ensure regulations as described in this Chapter are followed.

Section 1326.16(b) gives the Department authority to conduct an initial on-site evaluation prior to issuance of a notice of accreditation at the Department's discretion because when the regulations are adopted, there will be many private certifying agents applying for accreditation and the Department will expedite the application process at its discretion based on the application for accreditation. Many private certifying agents have established businesses of conducting animal welfare audits and the Department will take that experience into consideration when deciding to perform an initial on-site evaluation. This subsection goes on to give the Department authority to conduct another on-site inspection before renewal of accreditation, renewed every five (5) years, and at a minimum one more on-site inspection



during the period of accreditation. This means an accredited certifying agent will be inspected in-person by the Department roughly once every two and half years. The on-site inspections are necessary as they will allow the Department to ensure the certifying agent is in compliance with applicable statutes and regulations to maintain their accreditation status, the validity of which is critical to ensuring that producers and distributors are being properly certified for compliance with the Act.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.17. Annual Report, Recordkeeping, and Renewal of Accreditation.

Section 1326.17 gives the Department authority to establish certain requirements for accredited certifying agents to maintain and renew their accreditation with the Department including submission of an annual report to the Department, record retention specifics, and the process for renewing accreditation. The Department is relying heavily on certification of producers and distributors for compliance with the Act and these regulations by accredited private certifying agents to implement the Proposition 12 initiative. The Department needs to have accurate and up-to-date information about the certifying agent's activities pertaining to this Article and the authority to receive this information according to the deadlines detailed in this section for maintenance and renewal of accreditation.

Section 1326.17(a) gives the Department authority to require accredited certifying agents submit a specified report to the Department annually, which is due on or before January 30 of each year. The Department chose an annual reporting interval on the same date each year to make it easy for accredited certifying agents to submit at the beginning of each calendar year. Certifications issued by the accredited certifying agent are renewed every twelve months, therefore the Department will have accurate information who is a certified operation and when operations are due for renewal. Subsections (a)(1), (a)(2), and (a)(3) state the annual report shall include complete, accurate, and updated information in accordance with regulation sections 1326.10(a)(10)(B), 1326.12, and 1326.13. On this annual report, the accredited certifying agent can also request changes to their area of accreditation, for example if the certifying agent is expanding services into additional covered animals and include supporting documentation for the Department to review to approve this request. The annual report will also include a description of the measures, if required by the Department, as stated on the most recent on-site evaluation. The requirements of this subsection are necessary because the annual report will assist the Department with tracking and recordkeeping of covered animals and covered products raised and sold within or into the State.

Section 1326.17(b) gives the Department authority to require accredited certifying agents keep records as stated in subsections (b)(1) and (b)(2) for a minimum of three (3) years beyond their receipt or creation and excludes the documents described in (b)(3), application for accreditation with the Department, from the three-year recordkeeping requirement. Three (3) years was

chosen for the record retention of accredited certifying agents because certifications of operations are renewed every twelve months and the lifecycle of covered products is not greater than three (3) years. For example, whole pork meat from insemination of a breeding pig to harvest is eleven months and then the transportation, cold storage, shelf life of whole pork meat will not go beyond another year. If a complaint of noncompliance triggers an investigation and on-site evaluation of an accredited certifying agent's records, then the records relevant to that covered animal or covered product would be available for review by the Department. The three-year record retention requirement proposed in these regulations is less than the 5 or 10-year retention periods required by the USDA NOP for accredited certifiers and, thus, believed by the Department to be less burdensome to the industry while sufficient for the Department's effective oversight of certifying agents.

Sections 1326.17(c)(1) and (2) give the Department authority to renew accreditation of certifying agents according to the procedures described including that the Department must receive the application for renewal at least six (6) months prior to the five-year expiration date, and each subsequent renewal. Submission of the application for renewal six (6) months prior to expiration will ensure the Department has time to review the application and conduct an on-site evaluation to then renew qualified certifying agents' accreditation prior to expiration. Certifying agents that do not submit an application for renewal according to the timelines set in these regulations will have their accreditation expire before the renewal can be processed and will therefore not be able to perform inspections or grant certification services according to the standards outlined in these statutes and regulations. Only accredited private certifying agents are permitted to certify producer and distributor operations as compliant with the Act and these regulations to ensure integrity of the proposed animal care program.

Section 1326.17(d) gives the Department authority to grant renewal of accreditation to certifying agents which meet the requirements of this Article and a notification of accreditation renewal will be sent the accredited certifying agent including the information as stated in the granting accreditation section of this Article. Written notification of renewal communicates with the certifying agent that they are granted permission to continue certification of producers and distributors for compliance with the Act and this Chapter under authority of the Department.

Section 1326.17(e) gives the Department authority to deny a renewal of accreditation for a certifying agent who is found noncompliant with the Act and requirements of these regulations after review of application for renewal. A previously accredited certifying agent whose accreditation is expired and found in violation of the requirements of this Article will not be granted application renewal and in the denial notice the Department will include reason(s) why the accreditation was not renewed for the certifying agent to take appropriate corrective actions to come into compliance and then have the opportunity to reapply for accreditation according to this Article. The certifying agent also has the right to contest the Department's decision to deny renewal of accreditation by filing a formal hearing appeal. If a private certifying agent is not accredited by the Department, then that business cannot perform certification services of operations for compliance with the Act and these regulations. A formal hearing process is the

same appeals process used for other programs in the Department where the ability to do business in California is taken away due to issues of noncompliance.

Section 1326.17(f) gives the Department authority to initiate proceedings to suspend or revoke the certifying agent's accreditation if there are issues of noncompliance upon review of the application for renewal, including the on-site evaluation, and the accreditation has not expired. A private certifying agent not in compliance with the Act and these proposed regulations will need to have their accreditation suspended or revoked according noncompliance procedures outlined in section 1326.21 of this Article to ensure only qualified private certifying agents are performing certification services. The integrity of the regulatory program proposed for implementation of the Proposition 12 initiative relies heavily on certification of producers and distributors by accredited third-party certifying agents due to the large number of regulated entities and locations of producers outside of the State and outside of the country.

Section 1326.17(g) gives the Department authority to allow an accredited certifying agent to amend the scope of their accreditation granted by the Department at any time. An example of this would be if the accredited certifying agent plans to expand their certification services to include veal calves, which they did not do when initially granted accreditation. The request for amendment shall be sent to the Department and contain information applicable to the requested change in accordance with regulation sections 1326.12 and 1326.13. This subsection is necessary to provide flexibility to allow modification to a previous accreditation for growth of business services offered by an accredited certifying agent as they expand areas of expertise.

Section 1326.17(h) gives the Department authority to require an accredited certifying agent to notify the Department of any changes to contact information or updates to business activities within thirty business days of the changes. This section is to ensure accredited certifying agents understand what is expected of them to maintain their accreditation and for the Department to have the most up to date information about accredited certifying agents performing certification services related to the Act and this proposal.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.18. General Compliance.

Section 1326.18 gives the Department authority to inspect certified operations and accredited certifying agents for verification of compliance with the Act and these regulations. The proposed regulatory framework relies on the certification of producers raising covered animals and distributors selling covered products and many of these certifications will be performed by a certifying agent who is not the Department. Therefore, the Department retains the right to inspect these facilities as part of auditing the regulatory program or on an at-risk basis following a complaint or investigation. This section outlines how the Department will inspect and issue

notices of noncompliance and the regulated entities' rights to appeal after receiving an adverse determination.

Section 1326.18(a) gives the Department authority to require as a condition of certification or accreditation, the producer, distributor, or private certifying agent is agreeing to allow the Department to perform on-site inspections to evaluate compliance with the Act and these regulations. This condition applies to all certified producer and distributor operations certified according to this Chapter, regardless of who issued the certification. This subsection is necessary to ensure certified operations and accredited certifying agents can be verified by the Department for compliance with the Act and these regulations to ensure integrity of the regulatory framework proposed for implementation of the Proposition 12 initiative.

Sections 1326.18(b), (b)(1), and (b)(2) give the Department authority to proceed with a suspension or revocation of certification granted to an operation by any certifying agent, which could be the Department, an accredited private certifier, or other government certifier. Subsection (b)(1) establishes suspension or revocation may take place when a certified operation is in violation or not in compliance with the Act or these regulations, and subsection (b)(2) establishes suspension or revocation may take place when a certifying agent, accredited certifier, or other government certifier, fails to take appropriate action to enforce the Act or these regulations. The suspension or revocation of certification, including rights to appeal the decision, will be based on the procedures outlined in section 1326.20 of this Article. These subsections are necessary to inform certified operations and certifying agents of the general compliance standards considered by the Department when in violation of, out of compliance, or for failure to act as specified, may result in the initiation of a suspension or revocation. Without valid certification, as a producer or distributor, covered products from covered animals cannot be sold within or into the State. The Department requires the ability to suspend or revoke certification of operations not in compliance with the Act and these regulations to ensure only covered products from covered animals not confined in a cruel manner are sold in California.

Section 1326.18(c) gives the Department authority to initiate a suspension or revocation of a certifying agent's accreditation if they failed to meet, conduct, or maintain the requirements of their accreditation pursuant to the Act and these regulations. The suspension and revocation process including right to appeal the Department's decision is outlined in section 1326.21 of this Article. This subsection is necessary because only accredited certifying agents who follow the requirements of the Act and these regulations are permitted to grant certification of producer and distributor operations. The regulatory framework of this proposal relies heavily on use of accredited certifying agents to inspect, verify, and issue certification to producers raising covered animals and distributors selling covered animals. The Department requires the authority to initiate a suspension or revocation of accreditation to ensure only compliance covered products are sold within or into the State.

Section 1326.18(d) gives the Department authority to require that any notice of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, or a suspension or revocation notice shall be sent to a certified operation or accredited certifying

agent to the recipient's place of business via a delivery service which provides dated return receipts. Such delivery services could be via the U.S. Postal Service or any other resource available which includes a delivery confirmation of the notice of adverse determination. Sending the notice through a service as described will ensure the recipient receives the document in order for them to have the information related to their right to do business in California according to the Act and these regulations through sale of covered products or performing certification services as an accredited certifying agent and also including the operation's rights to appeal a decision.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.19. Investigation of Certified Operations.

Section 1326.19 gives the Department authority to require that certifying agents report to the Department any complaints they receive about noncompliance pertaining to their certified operations. This requirement applies to all certifying agents including accredited private certifiers and other government certifiers. The Department needs to be informed of complaints received by certifying agents regarding their certified operations to provide an opportunity for the Department to verify appropriate follow up is occurring by certifying agents or the Department and for the Department to be aware of potentially noncompliant covered product sold within or into the State. Certification of producers and distributors for compliance with the Act and these regulations is part of the regulatory framework proposed for implementation of the Proposition 12 initiative and many of those certifications will be performed by a certifying agent who is not the Department. A written certification is a defense to action that a supplier is selling covered product to a buyer which is derived from a covered animal not raised in a cruel manner and the Department will, at its discretion, decide whether to further investigate the complaint themselves or have the certifying agent investigate by conducting additional inspections which is necessary to provide for flexibility when considering the severity of a complaint, history of the certified operation, and location of the operation.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.20. Noncompliance Procedure for Certified Operations.

Section 1326.20 gives the Department authority to establish the procedures certifying agents must follow when an inspection, review, or investigation reveals a certified operation is not compliant with the Act or these regulations. This section applies to all certifying agents including the Department, accredited certifying agents, or other government certifiers. A detailed process for issues of noncompliance, including rights to appeal, is needed to ensure there is integrity of the animal care program proposed to implement the Act. A fair and verified

regulatory framework including repercussion for noncompliance, will ensure that covered products sold within and into California are from animals not confined in a cruel manner.

Sections 1326.20(a), (a)(1), (a)(2), and (a)(3) give the Department authority to dictate the procedures a certifying agent will follow when issuing a notification of noncompliance to a certified producer or distributor. These instructions apply to all certifying agents to ensure all regulated producers and distributors receive a standardized notice of noncompliance to give operations the ability to come into compliance. The notice shall be in writing and contain a description of each noncompliance issue as stated in subsection (a)(1), the facts in each case as stated in subsection (a)(2), and the date the certified producer or distributor must rebut or correct the issues as stated in subsection (a)(3). Any noncompliance issues will be based on the operation not complying with the standards as specified in the Act and regulations to maintain their certification status. These subsections are necessary to inform certifying agents and certified operations of the procedures to take place when after an inspection, record review, or based on an investigation, the certifying agent determined there is a violation pursuant to the Act or these regulations.

Section 1326.20(b) gives the Department authority to require a certifying agent to notify in writing to the certified operation when any noncompliance issues have been resolved as determined by the certifying agent based on facts and evidence presented by the certified operation that they have remedied all noncompliance issues by the deadline set in the initial notice of noncompliance. This document is called a notification of noncompliance resolution and will be part of the recordkeeping for this certified operation and certifying agent to ensure both parties understand noncompliance has been resolved.

Section 1326.20(c) gives the Department authority to require the certifying agent to send written notification to a certified operation of a proposed suspension or revocation of certification if a resolution from notice of noncompliance is not completed by the deadline set by the certifying agent. This subsection gives the certifying agent the ability to issue proposed suspension or revocation of certification to producer and distributor operations who are not in compliance with the Act and these regulations. Subsections (c)(1) and (c)(2) state that the notice shall contain the certifying agent's reasons for the proposed suspension or revocation and the proposed effective date for suspension or revocation to go into effect and includes a maximum of 30 days for the proposed period to allow the certified operation the opportunity to file an appeal through mediation or the formal hearing process while their certification is still valid. Subsection (c)(3) requires the notice of proposed suspension or revocation to include information regarding future eligibility to be granted valid certification again so the producer or distributor operation understands when they can potentially conduct business again related to the Act and these regulations. Subsection (c)(4) requires the notice of proposed suspension or revocation also include the operation's right to appeal the decision through a mediation process as described in section 1327.2 of this Chapter or through a formal hearing. If an appeal is filed during the proposed suspension or revocation, maximum of 30 days, then the certification will remain valid, meaning the operation can still raise covered animals or sell covered product within or into the State, pending the decision of an appeal. This is to give the certified operation an opportunity to

continue business in California commerce while a third-party entity reviews the appeal of proposed suspension or revocation and file an appeal within a set timeframe.

Section 1326.20(d) gives the Department authority to describe procedures the certifying agent will follow if they find a certified operation has willfully violated the Act or these regulations through bypassing the written notice of noncompliance and immediately issuing a notice of proposed suspension or revocation to a certified operation. The proposed suspension or revocation will need to contain the same information as outlined in subsection 1326.20(c). This subsection gives certifying agents ability to use their discretion when deciding to issue a notice of noncompliance or immediately issue a proposed notice of suspension or revocation. This decision will be on a case by case basis depending on the history of compliance with the certified operation and the severity of the issue of noncompliance. The certified operation has the same right to appeal the decision of proposed suspension or revocation issued by a certifying agent.

Sections 1326.20(e), (e)(1), and (e)(2) give the Department authority to specify the procedures a certifying agent must follow when a noncompliant certified operation fails to correct their issues of noncompliance within the time prescribed by the certifying agent, or found to be noncompliant with the Act and these regulation based on a rebuttal, mediation, or formal hearing outcome. Subsection (e)(1) states the certifying agent will send a written notice of suspension or revocation of certification to the operation. Subsection (e)(2) states a notice of suspension or revocation will not be sent to a certified operation during the process of mediation or formal hearing if the certified operation has filed an appeal during the proposed suspension or revocation and the final appeal decision is pending.

Sections 1326.20(f), (f)(1), (f)(2), and (f)(3) give the Department authority to specify the process for a certified operation that has had its certification suspended or revoked by their certifying agent, to be eligible to have their certification reinstated, allowing the operation to raise covered animals or sell covered products within or into California. Subsection (f)(1) states an operation with a suspended certification may submit a request to the Department to have the certification reinstated. This request must include supporting documentation demonstrating why the certification should be reinstated and the corrective actions the operation has completed. In these cases, the original certifying agent could be an accredited certifying agent or other government certifying agent and the suspended operation will then directly submit a request certification for compliance to the Department. Subsection (f)(2) states that when an operation or person responsibly connected to an operation has had their certification revoked, they will not be eligible to become recertified for a period of two (2) years. A period of ineligibility following the revocation of certification is consistent with, and modeled after, the USDA NOP; however, the Department is proposing a two-year period of ineligibility rather than five (5) years. A two-year period is sufficient and would allow operations to make necessary corrections to comply with the requirements of the Act and these regulations. Subsection (f)(3) outlines the rights an operation with a certification that has been suspended or revoked to appeal this adverse determination through the mediation process described in section 1327.2 of this Article or through a formal hearing. The suspension or revocation of certification will stand during this

appeals process and the producer or distributor will not be allowed to engage in commercial sale of covered products from covered animals within or into California until the appeals process is complete and found in favor of the operation having their certification reinstated.

Section 1326.20(g) states if the certifying agent for an operation is a governmental body other than the Department, they may use their own established and equivalent noncompliance procedures for suspension and revocation of an operation's certification. In these instances, the governmental certifying agent can follow their own processes and procedures for noncompliant certified operations that could differ from instructions outlined in subsections (a) through (e) of this section, but the two-year period of ineligibility following revocation of certification as required under subsection (f) would still apply and the operation will have the same rights to appeal an adverse determination as described. This subsection is necessary to provide flexibility with respect to the noncompliance procedures used when another governmental body is the certifying agent.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.21. Noncompliance Procedure for Accredited Certifying Agents.

Section 1326.21 gives the Department authority to establish procedures the Department will follow when an inspection, review, or investigation reveals an accredited certifying agent is found not to be in compliance with the Act or regulations. The proposed regulatory framework for implementation of the Proposition 12 initiative relies heavily on the use of private certifying agents accredited by the Department to certify producers and distributors as compliant with the Act and these regulations. Due to the large number of regulated entities contributing covered animals and covered products into California commerce and location of those entities within the State, outside of the State, and outside of the country, the Department will rely on inspection and verification of producers and distributors by a third-party. Rigorous processes and requirements are described in this Article for granting, maintenance, and renewal of accreditation of private certifying agents by the Department. The Department also has the authority to suspend and revoke this accreditation to ensure only qualified private certifying agents maintain their ability to conduct the business of certification services for the purposes of the Act and these regulations.

Section 1326.21(a) gives the Department authority to issue a notification of noncompliance when an accredited certifying agent is found to be noncompliant with the Act and these regulations. The issue of noncompliance can be determined after the Department reviews documents submitted by the accredited certifying agent as part of their maintenance of accreditation, after conducting an inspection, or after an investigation. The subsection also describes the contents of the notification to be sent to the accredited certifying agent by the Department which must include a description of each noncompliance issue as stated in subsection (a)(1), the evidence and facts in each case of noncompliance as stated in subsection



(a)(2), and the date the certifying agent must rebut or correct the issues and submit documentation of the corrective actions taken as stated in subsection (a)(3). The notice of noncompliance will have all of the information an accredited certifying agent needs in order to come into compliance because the Department has previously accredited this certifying agent and is relying on accredited certifiers to inspect and verify producers and distributors for compliance with the Act and these regulations. The accredited certifying agent will then have the opportunity to correct issues of noncompliance before accreditation is suspended or revoked.

Section 1326.21(b) gives the Department authority to resolve issues of noncompliance after the accredited certifying agent submits evidence that they have corrected issues of noncompliance within the prescribed time period by issuing a written notice of noncompliance resolution. The written notice will ensure both parties have documented evidence of the noncompliance resolution. This subsection is necessary to clarify how an accredited certifying agent can demonstrate their efforts to resolve an issue of noncompliance and maintain a valid accreditation.

Section 1326.21(c) gives the Department authority to send written notification to an accredited certifying agent of a proposed suspension or revocation of accreditation when a rebuttal submitted by the certifying agent is unsuccessful or correction of the noncompliance is not completed within the prescribed time period. Proposed suspension or revocation of accreditation may be specific to certain business areas of the certifying agent or may apply to the accreditation of the certifier as a whole. For example, the accredited certifying agent may have multiple regional office locations and issues of noncompliance were only found at one of the locations or the issue of noncompliance could be how the certifying agent is inspecting veal calf operations, but no issues of noncompliance were found with how the certifying agent was inspecting breeding pig operations. Tailoring the proposed suspension or revocation to specific areas of the certifier will allow accreditation and therefore issuing of certifications to continue at the other business areas for the accredited certifying agent where appropriate. This subsection is necessary to inform an accredited certifying agent of the impending suspension or revocation of accreditation or partial accreditation thereof and states the notice shall contain as stated in subsection (c)(1) the reasons for the proposed suspension or revocation, the proposed effective date as stated in subsection (c)(2), the impact on the future accreditation eligibility with the maximum time given for a proposed suspension or revocation of thirty days as stated in subsection (c)(3), and the right to appeal pursuant to the formal hearing process as stated in subsection (c)(4). A time period of thirty days for proposed suspension or revocation is the same amount of time used by USDA NOP for proposed suspension or revocation of accredited certifiers and the Department agrees this is enough time for the accredited certifier to correct the issue of noncompliance or file an appeal. If the accredited certifying agent appeals the Department's decision to propose suspension or revocation of accreditation within the time period described in the notice, then the decision for proposed suspension or revocation will stand pending an outcome of the formal hearing. This means the accredited certifying agent can still conduct certification services related to the Act and this Chapter until there is a final decision in the appeals process.

Section 1326.21(d) gives the Department authority to send an accredited certifying agent a written notice of proposed suspension or revocation of accreditation and bypass the issuing of a notice of noncompliance if the Department finds willful violations of the Act and these regulations by an accredited certifying agent. This subsection is necessary because it gives the Department authority to expedite the process of proposed suspension or revocation of accreditation in more severe cases of noncompliance where there is evidence of willful violation on the part of the accredited certifying agent. Accredited certifying agents have gone through an extensive application process and signed a statement of agreement in order to be granted accreditation by the Department to certify producer and distributor operations, therefore knowing and agreeing to comply with the Act and these regulations.

Section 1326.21(e) gives the Department authority to issue a notice of suspension or revocation of accreditation to accredited certifying agents if they fail to correct issues of noncompliance by the prescribed deadline in the proposed suspension or revocation notice or if they do not file an appeal during the proposed notification time. An accredited certifying agent has been given authority by the Department to certify producer and distributor operations as compliant with the Act and these regulations. If the accredited certifying agent is found to be noncompliant, then their ability to perform certification services related to the Act and this Chapter must cease to ensure only valid certifications are issued for covered animals and covered products.

Section 1326.21(f) gives the Department authority to require certifying agent to cease all relevant certification activities when their accreditation is suspended or revoked as stated in subsection (f)(1), and transfer their certification records affected by the suspension or revocation of accreditation to the Department, as stated in subsection (f)(2). A certifying agent with a suspended or revoked certification must stop all certification activities related to the terms of their notice of suspension or revocation because only qualified private certifying agents are allowed to issue certifications of operations related to the Act and these regulations to ensure integrity of the regulatory framework proposed for implementation of the Proposition 12 initiative. Due to the large number of regulated entities raising covered animals and contributing covered product to California commerce are located outside of the State and outside of the country, the Department is relying heavily on certifications performed by accredited certifying agents. The Department requires relevant certification records of producers and distributors certified by the certifying agent to be transferred to the Department for management by the Department during the interim of suspension, or if revocation of accreditation, until the operation is certified by a different certifying agent. This requirement will ensure the Department has a record of operations certified by the certifying agent with suspended or revoked accreditation to facilitate continued certification if needed.

Sections 1326.21(g), (g)(1), (g)(2), and (g)(3) give the Department authority to specify when a certifying agent may be eligible again to apply for accreditation subsequent to a suspension or revocation by the Department and rights to appeal the decision issued by the Department to suspend or revoke an accreditation. If the accreditation was suspended, the certifying agent may apply again at any time to the Department to reinstate accreditation as long as they follow

the terms of the suspension in regards to duration of suspension and necessary corrective actions to demonstrate they are now in compliance with the Act and these regulations as stated in subsection (g)(1). A certifying agent that had their accreditation revoked will not be eligible for reinstatement of accreditation for a minimum of two (2) years as stated in subsection (g)(2). A period of ineligibility following the revocation of accreditation is consistent with, and modeled after, the USDA NOP; however, the Department is proposing a two-year period of ineligibility rather than three (3) years. A two-year period is sufficient for this purpose and would also facilitate restoration of certification services in compliance with the Act and these regulations after certifying agents have made necessary corrections. A certifying agent has the right to contest the suspension or revocation of accreditation through a formal hearing and the notice of suspension or revocation of accreditation will remain in effect during an appeal process as stated in subsection (g)(3). Suspension or revocation of accreditation will limit or remove a private certifying agent's ability to conduct certification business related to the Act and these regulations. The formal hearing process is the appeal option for stakeholders in the Department's other programs where the ability to conduct business in California is removed.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

#### Adopt Section 1326.22. Government Entity Providing Certification.

This subsection is necessary to allow for flexibility and use of another government entity, besides the Department, to certify producer and distribution operations. Certifying agents may originate from the federal government, other U.S. state agricultural departments and local government entities, or other countries where similar proven procedures may already be in place to accurately verify compliance with the Act and proposed requirements for certification as specified.

Section 1326.22(a)(1) provides for the annual voluntary registration of government entities performing certifications of producer and distribution operations according to the Act and these regulations with the Department. This information will be helpful to the Department when they receive inquiries from stakeholders about how to obtain certification of their production or distribution operation to sell covered products from compliant covered animals in the State.

Section 1326.22(a)(2) asks government entities certifying producers and distributors for compliance with the Act and these regulations to share with the Department when the government entity issues a proposed or noticed suspension or revocation of certification as described in section 1326.20 of this Article. The Department requests this information to have the most up to date information regarding the compliance of covered animals and covered products sold in the State to assure compliance with the Act and regulations.

1326.22(a)(3) asks government entities to submit to the Department on January 30 of each year a list of all the operations, along with pertinent contact information, the government entity issued

certification to in the previous year in addition to operations where certification was suspended or revoked. The Department is asking other government entities performing certification of producers and distributors, related to the Act and these regulations, to share the names of operations so the Department can have an up to date list of producer and distributor operations with current certification as the Department is charged with implementing the Act for preventing the sale of covered products in California if the products are derived from a covered animal confined in a cruel manner.

Section 1326.22(b) gives the Department authority to use a mediation process similar to what is described in section 1327.2 of this Article if the certifying agent is a government entity and found to be noncompliant in their certification activities according to the Act and regulations in this proposal. In these cases where the certifying agent is another government entity, the Department will use mediation to resolve issues of noncompliance, but if corrective actions are not taken or cannot be resolved through mediation then the Department will no longer accept certifications from that government entity. This subsection is necessary to define the noncompliance procedures used by the Department when another governmental body is the certifying agent because the Department is not accrediting other government certifying agents.

#### 7. Adopt new Article 6 and section 1327.1 and 1327.2.

##### Adopt Article 6. Informal Hearing and Mediation.

The Department is adopting a new Article 7 to establish processes for stakeholders to dispute adverse outcomes related to the Act and this Chapter.

##### Adopt Section 1327.1. Seizure or Holding of Covered Product Informal Hearing Procedures.

This proposed section allows a person to appeal the Department's decision to seize or hold covered product as described in sections 1320.7, 1321.7, and 1322.7 of this Chapter through an expedited informal hearing process due to perishability of covered products. An informal hearing process through the Department was chosen as the first appeal option for the seizure or holding of covered product because the process is expected to be speedier than a formal hearing and the adverse determination of seizure or holding of covered product is not prohibiting an operation from conducting business in California. The Department has the authority to seize and hold covered product which is noncompliant or suspected to be noncompliant with the Act and these regulations to prevent noncompliant shell eggs, liquid eggs, whole veal meat, and whole pork meat from being sold into California commerce.

Section 1327.1(a) describes that the section pertains to persons contesting the Department's decision to seize or place a hold on shell eggs, liquid eggs, whole veal meat, and whole pork meat if the load, shipment, or lot of covered product is suspected or found to be in violation of the Act and these regulations.

Section 1327.1(b) provides the deadline of three (3) business days from the date of receipt of the notice of seizure or holding of covered product for a respondent to request an informal hearing. The Department will accept informal hearing requests through email, fax, or telephone to offer multiple options for stakeholders to contest the adverse determination. The time of three (3) days was chosen to ensure matters involving perishable covered products are promptly adjudicated.

Section 1327.1(c) gives the Department authority to have the issued seizure or holding of product remain in effect until the informal hearing decision is rendered by the appointed Hearing Officer. This authority is to ensure noncompliant covered product is not sold into California commerce and the informal hearing process described in this Article is expedited as a consideration to covered products being perishable.

Section 1327.1(d) gives the Department authority to hold the informal hearing within three (3) business days after a timely request for the informal hearing is received from the respondent. Three (3) days was chosen to ensure informal hearings involving perishable products are promptly scheduled.

Section 1327.1(e) states the informal hearing shall be presided over and conducted by a Hearing Officer designated by the Secretary of the Department. The Secretary designates individuals to serve as Hearing Officers for the Department's informal hearings for adverse determinations issued under other programs as well. This subsection is necessary to inform a person requesting an informal hearing of the type of individual who will be selected to preside and conduct the hearing and that this person serves under the Secretary as a Hearing Officer.

Section 1327.1(f) gives the Department authority to have the standard of proof to be applied by the Hearing Officer be a preponderance of the evidence, presented by the respondent and the Department, unless statutes or regulations applicable to the determination provide a higher standard. This subsection is necessary to inform any respondent how the decision will be determined by the Hearing Officer.

Section 1327.1(g) specifies that a teleconference line shall be made available at every hearing. This is necessary to ensure a respondent will have access to the informal hearing process even if they are not able to travel to the hearing location based on each individual circumstance, or if some unforeseen occurrence prevents a respondent from attending the hearing in person.

Section 1327.1(h) specifies that the hearings shall be recorded by the Department and that a transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request. This is necessary for purposes of maintaining the administrative record and for future reference so that a respondent, or any interested person, will know that the Department will document the hearing through recording and transcript, and that it will be available to any interested party.

Section 1327.1(i) specifies that the Hearing Officer's decision will be issued within 3 business days after the conclusion of the hearing and effective immediately upon issuance. This expedited 3-day time frame will provide the Hearing Officer with adequate time to review the evidence presented and arguments made at the hearing and to write a decision for the matter. The perishable nature of held or seized covered product was taken into consideration for the time frame to inform the respondent of a decision after the informal hearing and this decision then becomes immediately effective.

Section 1327.1(j) gives the Department authority to serve the decision on the respondent either by U.S. Mail or, if available, by electronic mail. The decision is issued in writing through one of these methods to serve the decision on a respondent in a timely manner.

Section 1327.1(k) provides the specific Code of Civil Procedure (CCP) citation for appealing the Hearing Officer's decision and order. This is necessary to notify the respondent where they can obtain information should they choose to appeal the Hearing Officer's decision.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate GC and HSC sections used to authorize the requirements of the section.

#### Adopt Section 1327.2. Mediation.

This proposed section describes an appeal option for certified operations to contest the decision made by a certifying agent to deny certification, propose suspension or revocation of certification, or notice suspension or revocation of certification. The regulatory framework proposed to implement the Act relies heavily on certifying agents outside of the Department (private certifiers and other government entities) to inspect, verify, and issue certification for compliance with the Act and these regulations. The Department will accredit private certifying agents to certify producer and distributor operations, but ultimately the Department will not be directly involved in many certification transactions. If a dispute arises between an applicant or certified operation and certifying agent, mediation as described in this section is a good first option of appeal. Mediation is generally less expensive and expected to render an outcome sooner than the formal hearing process.

Section 1327.2(a) gives the Department authority to offer mediation as an option for a producer or distributor operation to appeal the decision made by a certifying agent to deny certification, propose suspension or revocation of certification, or notice suspension or revocation. Mediation is a less expensive option for producers and distributors to utilize as an appeal process for an adverse determination issued by a certifying agent. Due to the large number of producers and distributors raising covered animals and selling covered product within and into the State and these regulated entities are located within the State, outside of the State and outside of the country, the Department will rely heavily on accredited private certifying agents and other government agencies issuing the certifications.

Section 1327.2(b) states the operation disputing a denial of certification, proposed suspension or revocation, or noticed suspension or revocation will submit the request in writing to the certifying agent who issued the adverse determination within thirty days of receipt. This time of thirty days to file an appeal in the form of mediation is the same as the time for regulated entities to dispute a certification adverse determination in USDA NOP and will give the operation time to review the Act and regulations to understand their appeal options and issued denial, suspension, or revocation due to a noncompliance determination made by the certifying agent.

Sections 1327.2(c), (c)(1) and (c)(2) give the certifying agent the authority to accept or reject the mediation request submitted by the producer or distributor operation and this decision must be submitted in writing to the operation. Mediation is an informal process and the certifying agent has the right to decline the request made by the applicant or certified operation. If a certifying agent rejects the request for mediation of an issued adverse determination, the notice of rejection must include an operation's right to file a formal hearing appeal within thirty days of the notice of rejection of mediation. The formal hearing is a second option for producers and distributors issued an adverse determination because without a valid certification, covered products from covered animals cannot be sold within or into California commerce. Producers and distributors need to have an additional appeal option, formal hearing, if mediation is rejected by the certifying agent.

Section 1327.2(d) specifies that the mediation will be conducted by a third-party mediator agreed on by both parties to clarify that both the operation and certifying agent need to agree on a mediator to review the dispute and facilitate an outcome. This subsection is necessary to ensure one of the parties in the mediation doesn't choose a mediator without agreement from the other party. Requirement of this subsection will increase the likelihood of an outcome to which both parties agree.

Section 1327.2(e) gives the Department authority to require a decision from the mediation session to be agreed upon by both parties within thirty days of the mediation. After thirty days, the mediation is terminated, and the initial adverse determination issued by the certifying agent which prompted the mediation session will still be in effect. The operation does have the right to appeal the adverse determination again as a formal hearing. The thirty-day deadline for a decision from the mediation process gives a deadline to ensure the mediation process does not continue to an indeterminate amount of time without resolution.

1327.2(f) states that a decision made through the mediation process described in this section will need to comply with the Act and these regulations. The mediation process and agreed outcome between the operation and certifying agent does not fall outside relevant statutes and regulations because only covered product from covered animals not confined in a cruel manner is allowed to be sold in California commerce.

1327.2(g) states that when the certifying agent is another government body, besides the Department, and a mediation is requested by an applicant or certified operation, an established

process similar to the once described in this section can be used if that is agreed and preferred by the government certifying agent. Mediation is still a first appeal option for producers and distributors if they dispute a decision made by another government certifying agent, but the government certifying agent can use their own mediation process. This gives flexibility for other established mediation processes familiar to the government certifying agent to be used and the Department is not directly dictating the mediation process to be used by the federal government or another state's department of agriculture.

Note portion: The Department is adding the appropriate authority and reference citations for the section pursuant to GC section 11349.1 and 1 CCR section 14. These citations are necessary to document the appropriate code sections used to authorize the requirements of the section.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT  
(Materials Relied Upon)

1. California Proposition 12, Farm Animal Confinement Initiative (2018)
2. United Egg Producers, Animal Husbandry Guidelines for U.S. Egg-Laying Flocks, Guidelines for Cage-Free Housing, 2017 Edition
3. Federal Meat Inspection Act (21 U.S.C. 601 et seq.)
4. Egg Products Inspection Act (21 U.S.C. 1031 et seq.)
5. Title 3, California Code of Regulations section 900
6. Title 3, California Code of Regulations section 1350
7. Food and Agricultural Code section 27510
8. CDFA Workshop to Discuss CA Proposition 12: Farm Animal Confinement Initiative (2018), February 22, 2019, Sacramento, CA
9. Sumner, D.A., Goldstein, R., Hart, J.D., Lee, H., Matthews, W.A., & Medellin-Asuara, J. (2020). *Standardized regulatory impact assessment of proposed regulations to implement proposition 12*. University of California, Davis, UC Agricultural Issues, and California Department of Food and Agriculture
10. California Department of Public Health, Memo dated November 13, 2020
11. CDFA State Organic Program (FAC sections 46000-46029 and 3 CCR sections 1391-1391.7)
12. USDA National Organic Program (7 CFR Part 205)
13. Internal Revenue Code (26 U.S.C. 501(c)(3))
14. Health and Safety Code section 113758
15. USDA, Food Safety Inspection Service, Meat, Poultry and Egg Product Inspection Directory, Legend for Establishment Numbers
16. Title 21, Code of Federal Regulations, Part 172 sections 172.510 and 172.515(b); Part 182 sections 182.10, 182.20, 182.40, and 182.50; and Part 184
17. Health and Safety Code section 113789
18. Health and Safety Code section 109947
19. Title 21, Code of Federal Regulations, Part 160
20. Title 21, Code of Federal Regulations, Part 101 section 101.3



21. Title 21, United States Code, Part 343 section 403; Title 9, Code of Federal Regulations section 590.5; Health and Safety Code section 109992; and Food and Agricultural Code section 27519.6
22. Health and Safety Code section 110460
23. Title 9, Code of Federal Regulations, Part 424 section 424.21(c)
24. USDA, Institutional Meat Purchase Specifications: Fresh Veal Series 300 (November 2014)
25. 2014 Uniform Retail Meat Identity Standards
26. Title 9, Code of Federal Regulations Part 317 section 317.2(1) and Part 381 section 381.125(b)
27. USDA, Institutional Meat Purchase Specifications: Fresh Pork Series 400 (November 2014)
28. Title 21, Code of Federal Regulations, Part 530 section 530.3(i)
29. Title 3, Code of Federal Regulations, Part 2 section 2.31
30. Economic and Fiscal Impact Statement, STD 399 with Attachment

#### SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment. Egg producers and distributors, veal producers and distributors, and pork producers and distributors may prescribe certain standards, technologies, or equipment at their discretion, providing they comply with the minimum standards for animal confinement in accordance with the Act and as specified in this proposal.

#### CONSIDERATION OF REASONABLE ALTERNATIVES

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.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

The two alternatives considered do not vary the basic requirements of the Act itself, for example, the alternatives did not consider whether eggs must be cage-free, or by when. The two alternatives considered the economic impacts of the Department's discretionary choices, namely through definitions and procedures, used to implement the Act. The two alternative regulations considered and ultimately rejected include (1) lower-cost regulations and (2) higher-cost regulations:

Alternative 1: Under the lower-cost alternative, annual farm cost and consumer expenditure increases by \$982 million; = \$19.5 billion in present value at a 5% discount rate.

The lower-cost regulations apply a narrower interpretation of which food products are covered and which businesses are subject to annual registration and certification requirements. Intent of the Act is not fully applied across sales of covered products and therefore California residents would not be able to confidently purchase and consume covered products knowing they were sourced from covered animals raised according to the confinement standards of the Act, regardless of origin of product. The lower-cost alternative would be confusing for the California consumer because there would be a mix of compliant and non-compliant covered product for sale in California. The lower-cost regulations are defined in detail in SRIA 4.2.1, however some key variations in the lower-cost regulations, versus the proposed regulations, are as follows:

- “Shell eggs” include only raw or pasteurized eggs with the shell still intact, therefore, excluding all forms of hard-cooked eggs such as peeled, sliced, or chopped.
- “Liquid eggs” include only eggs broken from the shell with the yolks and whites in their natural proportions, or with the yolks and whites separated, mixed or mixed and strained as defined by the Code of Federal Regulations, therefore excluding frozen, dried, cooked, and prepared egg products (e.g. egg patties or egg “pucks” consisting of mostly eggs except for added seasoning and flavoring).
- The Act’s confinement requirements are limited to sales of shell eggs, liquid eggs, whole veal meat, or whole pork meat at the retail level to a consumer.
- Restaurants, prepared food vendors, and food processors are not required to source shell eggs, liquid eggs, whole veal meat, or whole pork meat compliant with the Act for their business of further processing those ingredients.

The Department rejected this option because the narrow definitions of shell eggs and liquid eggs did not coincide with the intent of the Act that was overwhelmingly passed by voters to ensure eggs purchased and consumed by Californians were not from egg-laying hens confined in a cruel manner. Whether the shell egg consumed is purchased raw or hardboiled, peeled, and included in a snack pack, the Department determined that hardboiled eggs need from be from egg-laying hens confined according to the Act’s standards to meet the expectations of Californians. Californians that voted to ensure liquid eggs purchased in California were from egg-laying hens not confined in a cruel manner are most likely not aware of all food manufacturing processes or the extensive list of egg products defined in the Egg Products Inspection Act. Due to the versatile use of liquid eggs in food processing, and food service, the Department adopted the definitions of liquid egg to include all products in the federal Egg Products Inspection Act. The Department feels confident this was the expectation of voters when they voted for Proposition 12 in 2018. Whether the liquid eggs are frozen, dried, or cooked into a patty, if the covered egg product is sold in California, then it must have originated from egg-laying hens not confined in a cruel manner.

The Department also rejected this lower-cost alternative option because there would be a mix of compliant and noncompliant covered products sold in California and it would be difficult for the consumer to know if they were purchasing shell eggs, liquid eggs, whole veal meat, and whole pork meat from animals not confined in a cruel manner. Also, the lower-cost alternative would be more difficult to regulate because wholesale and retail costs of covered products coming from covered animals not confined in a cruel manner are significantly higher than the prices of covered products from animals housed in a cruel manner. With a narrower scope of products included in the lower-cost alternative option and compliant and noncompliant covered products in the California marketplace, there would more opportunities for cheating, greater challenges for enforcement, and unfair cost burden put on California small businesses, mostly restaurants who purchase shell eggs, liquid eggs, whole veal meat, and whole pork meat from a retailer.

Alternative 2: Under the higher-cost alternative, annual farm and consumer expenditure increases by \$1.263 billion; = \$25.26 billion in present value at a 5% discount rate.

Higher-cost regulations impose more stringent restrictions on some covered products moving through California and expand the definition of covered products; they imply larger negative economic consequences, including reduced California port activity. Benefits may be larger under the higher-cost alternative if more covered animals are not raised in a cruel manner. The higher-cost regulations are defined in detail in SRIA section 4.2.2. Specifically, the higher-cost regulations include all the requirements of the proposed regulations plus the following additional requirements:

- Raw ground veal, raw ground pork, and their products (meaning foods composed of raw ground veal or pork plus seasonings, coloring, curing agents, etc.) are considered cuts of “whole veal meat” and cuts of “whole pork meat,” and thus subject to the Act’s requirements.
- The Act’s requirements apply to covered food products moving through California for sale and end-use in another state or country.
- Consumer-facing labeling is required for all covered products or prepared foods containing a covered product. Labels would allow the buyer to scan a QR code at retail or when consuming a prepared food made with covered product and see record of the Act’s animal confinement certification and traceability of product back to farm of origin.

The Department rejected this option because in the Act definitions of whole veal meat and whole pork meat exclude processed or prepared foods such as hot dogs. Raw ground and comminuted products made from veal or pork are specifically identified in these regulations as not needing to be included under the definitions of covered products. This decision was made based on informal feedback from pork stakeholders and due to the definitions in statute. Analysis for the SRIA include calculations with and without ground pork because there has been mixed informal feedback from stakeholders regarding the exclusion of ground and comminuted products.

The higher-cost alternative option to apply the Act's confinement standards of covered products only moving through California and destined for export, use on cruise ships, or sale in other states was rejected because the Department did not think including these products under the Act's animal confinement standards was the intention of the law. California has busy ports for export and import and if all shell eggs, liquid eggs, whole veal meat and whole pork meat moving through these ports had to be compliant with the Act and these regulations, then import/export business in California would be devastated and moved to other states. The Department specifically excluded covered products moving through the State for a destination outside of the State or country in these regulations for stakeholders to understand the processes and expectations for these types of products.

The final suggestion in the higher-cost alternative option was rejected by the Department because the requirement for a consumer facing labeling with a unique QR code was determined to be overly burdensome for stakeholders including restaurants which are often independently owned and classified as small businesses. Instead of putting the burden of proof to defend and communicate that a food is or contains covered product from covered animals not confined in a cruel manner to the Department on these small businesses, the Department decided to move this compliance one level up in the supply chain to a distributor. In addition, many of the final consumer facing packaging of liquid eggs, whole veal meat, and whole pork meat are under inspection of USDA, FSIS and any labeling of those products would need to be approved by FSIS. These regulations do require distributors to register with the Department and be certified as selling covered products that can be traced back to a certified farm not confining animals in a cruel manner.

This proposal is necessary for compliance with section 25990, 25991, 25992, and 25993 of the HSC.

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

The Department has not identified any reasonable alternatives to the proposed action that would lessen any adverse impact on small businesses. Sections 25990 and 25991 of the HSC require persons selling shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State to meet the minimum confinement and enclosure size requirements and establish a deadline for implementation and compliance. The intent of this proposal is to comply with HSC section 25993 by promulgating regulations to implement the farm animal confinement standards and requirements as approved in 2018 by California voters in accordance with HSC sections 25990 through 25993.

#### BENEFITS OF THIS REGULATORY ACTION

This proposal would establish a regulatory framework for purposes of implementation of the provisions of the Act as mandated by section 25993 of the HSC. Effective implementation of

the provisions specified in HSC sections 25990 through 25994 by adopting these regulations would benefit the objectives of the citizens of California that voted to approve the Proposition 12 initiative and the standards for animal confinement and prohibition of animal cruelty that it described. Egg, pork, and veal producers and distributors would benefit from this proposal because the Department is establishing compliance requirements for producing and selling covered products in the State in accordance with current law as specified in HSC sections 25990 through 25994 to ensure the orderly sale of covered products from covered animals not confined in a cruel manner regardless of their state or country of origin within California. This proposal does not directly impact human health and welfare of California residents, worker safety, or the State's environment, however the Department can infer that benefits accrue to Californians knowing that breeding pigs, veal calves, and egg-laying hens are raised with a minimum space requirement, which may be more space than covered animals previously were allotted. There are no quantitative studies that document or measure the effect of confinement covered animals according the standards outlined in the Act for people in California. The proposed regulations are necessary to implement animal confinement requirements and sale of the covered products pursuant to HSC sections 25990, 25991 and 25993.

#### FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF SIGNIFICANT ADVERSE IMPACT ON BUSINESS

This proposal is necessary to adopt regulations to implement the provisions of HSC sections 25990, 25991, and 25993 regarding the sale of covered products in the State. The economic impact incurred by businesses to comply with requirements of this proposal is a result of the Proposition 12 initiative approved by the California electorate as implemented by these proposed regulations for consistency with HSC sections 25990, 25991, and 25993.

This regulatory proposal will impact egg, veal, and pork producers; food processing facilities (referred to as "food manufacturing" in SRIA); distribution; food retailers (supermarkets/grocery/convenience stores); and restaurants (and drinking establishments) that purchase or sell shell eggs, liquid eggs, veal meat, or pork meat in California, as specified.

#### Businesses (and individuals) affected by this proposal:

California egg producers:	approximately 6,546 farms
California veal producers:	approximately 0 farms
California pork producers:	approximately 1,236 farms
California restaurant/drinking establishments:	approximately 76,200
California supermarkets/grocery/convenience stores:	approximately 20,000
California food processing facilities:	approximately 450
Total number of businesses affected:	approximately 104,432

Anticipated compliance requirements as a result of this proposal: Producers and distributors who sell their shell eggs, liquid eggs, whole pork meat, and whole veal meat in California would need to comply with the certification, registration, and labeling requirements as

proposed. Private third-party certifiers would need to be accredited by the Department to certify producer and distributor operations.

*Certification.* The proposed regulations require producers and distributors to be certified as compliant with the Act. This may be done by a private third-party that is accredited by the Department, a government entity outside of the State, or directly by the Department. Certification compliance consists of credible regulatory documentation (audit trail) of a production or distributor operation's good standing with certification requirements in these regulations and conformance with the specific confinement standards in accordance with HSC section 25991.

*Registration.* The proposed regulations require annual distributor registration application and renewal with the Department to identify and ensure compliance of distribution facilities supplying California markets.

*Labeling.* The proposed regulations only require product container labeling for shell egg cartons, which is already a requirement under the Department's ESQM program (3 CCR section 1354), although this proposal would require some modifications to the existing required labeling on printed cartons. Proposed regulations do not require specific labeling of other products such as liquid eggs, whole pork meat and whole veal meat on consumer facing packaging, however, a label could be implemented voluntarily by the industries. Proper labeling of shipping manifests and bills of lading is required by this proposal, as these documents are already generated and printed for covered products distributed and sold in the State.

*Paperwork/Reporting.* There are new paperwork and reporting requirements under this proposal. The requirements include annual distributor registration application and renewal, certifier agent application for accreditation and renewal, that may be retained and otherwise required by statute or regulation, and submitted to the Department as part of routine business transactions in order for the sale of covered products in California. Accredited third-party certifying agents are required to submit paperwork to the Department of the operations that have been either approved or denied certification. Every producer and distributor operation must be certified as compliant to raise covered animals in California and/or sell covered products in California. This certification requires necessary records to be maintained for review or audit by a third-party certifier or the Department, as specified.

*Recordkeeping.* There are new recordkeeping requirements under this proposal that may impact egg, pork, and veal distributors and producers. The proposed regulations require that records must be sufficient for an audit trail and documented in a traceable manner that covered product originated from certified operations compliant with the Act, for example, records of their operations, such as, production and shipment records, invoices, receipts, and related paperwork. The records are not required to be sent to the Department, however certified producers and certified distributors must keep the records on-site or available electronically for two (2) years. Accredited third-party certifiers are to submit annual reports

to the Department as a part of their recordkeeping requirements as specified in this proposal. The Department conducts routine audits and inspections of farms, distributors, end-users, and certifying agencies to ensure compliance with statutes and regulations.

Estimated Cost for Businesses to Comply: Producers and distributors selling shell eggs, liquid eggs, whole pork meat, and whole veal meat would need to comply with the provisions for animal confinement or ensure covered product sold in the State originate from animals that comply with the provisions for animal confinement as specified in HSC section 25990 and 25991.

*Whole pork meat.* A typical breeding pig farm has about 1,000 breeding pigs and produces 20,000 hogs for slaughter per year. Estimated initial cost for a typical breeding pig operation is \$66,000 per farm to convert barns and pens into housing compliant with the Act. Estimated ongoing cost is greater than the initial cost of conversion at \$100,000 per year for a typical breeding pig farm due to lower piglet output per sow and increased sow mortality.

*Shell eggs and liquid eggs.* A typical egg farm is one million egg-laying hens producing a total of 25 million dozen eggs per year. Estimated initial cost is \$68 million per typical egg farm to convert to the Act's cage-free requirements. Estimated annual ongoing cost is \$6.8 million per typical egg farm.

*Whole veal meat.* There is no veal produced in California.

*Paperwork/Reporting and Recordkeeping.* The recordkeeping/reporting requirement for a typical California business is estimated at \$5,000/year and a conservative estimate of 7,900 businesses will need to comply with proposed recording requirements for a total of \$39.5 million/year. The possible 7,900 businesses include egg producers, pork producers, and distributors of covered eggs, pork, and veal products. Each of these operations must be certified as compliant to raise covered animals in California and/or sell covered products in California. This certification requires necessary records to be maintained for review or audit by a third-party certifier or the Department. This number of California businesses, 7,900, is potentially an overestimate based on the current number of commercial egg and pork producers in California being much smaller than the United States Department of Agriculture (USDA) 2017 Agricultural census reference of 6,500 covered farming operations in the State. The Act does not have a minimum herd or flock size requirement for compliance (ESQM program), or a minimum number of dollars sold to register (State Organic Program), so any farm selling eggs would need to comply with recordkeeping requirements. In addition, California distributors are responsible for documenting traceability of selling shell eggs, liquid eggs, whole veal meat, and whole pork meat sourced from certified farms, which may originate at locations outside of the State or country.

Additional detailed numbers for these calculations are in the Standardized Regulatory Impact Assessment (SRIA) and appendix.

## DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

This proposal is not mandated by federal law or regulations and does not duplicate or conflict with any federal regulations because there are no federal regulations governing farm animal confinement requirements if the products from specified animals are marketed to California consumers.

## ECONOMIC IMPACT ASSESSMENT

This proposal is necessary to adopt regulations to implement specified provisions of HSC sections 25990 through 25994 regarding the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State.

The Department completed a SRIA, which is included in this filing. A summary of the results of the assessment is as follows:

*a. The creation or elimination of jobs within the State.*

Impacts on jobs in California is minimal compared to the impact on consumer expenditures for the covered food items. Overall, the Department projects a loss of 31 jobs statewide in the calendar year 2022, when final deadlines for the Act go into effect and proposed regulations are fully implemented, and then a loss of 332 jobs in 2023, after adjustments for the full reduction in cage-free shell egg production are fully incorporated. A large portion of the jobs lost are in the shell egg production and associated industries because the mandates of the Act require these industries to move into a cage-free production system.

*b. The creation of new businesses or the elimination of existing businesses within the State.*

Creation and elimination of businesses is natural given any significant change to the business conditions. The regulations considered here will change the nature of veal, pork, and eggs produced and marketed in California. The current businesses from farm through end-user will be affected. Some farms may choose to exit during implementation rather than make adjustments others may find the implementation of the regulations attractive for entry. The Department expects this flux to be small relative to the numbers already in the production, distribution, and retailing businesses. Indirect impacts are also small for the same reason. The Department expects entries and exits in the range of less than 100 businesses roughly in balance.

California has a large shell egg industry. Egg producers in California face higher costs by \$72 million, and egg output will decline by 51 million dozen relative to the baseline in 2022. Shell egg farm revenue rises by \$7 million.

*c. The competitive advantages or disadvantages for businesses currently doing business within the State.*



The cage-free mandate for egg-laying hens and 24-square-foot mandate for breeding sows (the portion of the proposed regulations that is enforced starting on January 1, 2022) may cause some egg and pork producers to exit their business because they find it uneconomical to adapt their facilities to comply with the new mandates required by the Act. The Department expects that some preexisting producers whose facilities already meet the Act's standards will enjoy corresponding competitive advantages. Preexisting cage-free egg producers, whose potential market grows when regulations take effect, will have an advantage over those who have not engaged in cage-free production in that they will not face costs of converting facilities. Similar competitive farm issues apply to breeding pig operations but there are very few such businesses in California.

In-state farms will find it more costly to compete with farms outside of the State when selling shell eggs, liquid eggs, whole veal meat, and whole pork meat to an out-of-state buyer compared to farms located in states that do not have the same animal confinement standards as described in the Act.

Food processing facilities based in the State will have to use more expensive ingredients, shell eggs, liquid eggs, whole veal meat, and whole pork meat, that are compliant with the Act compared to food processing facilities located outside the State.

*d. The increase or decrease of investment in the State.*

As discussed in Section 6.2 and 6.3 of the SRIA, some new businesses and investment may enter the market as a result of the proposed regulations, the overall effect of the regulations (as summarized in Section 1.4, reported in Section 4, and detailed in Appendices 1–4 of the SRIA) is to decrease the total amount of shell eggs, liquid eggs, whole pork meat, and whole veal meat consumed in California. Although some one-time investments in construction, machinery, and labor will be made by businesses as they adapt their facilities, in the long run the Department expects that the regulations proposed to implement the Act will decrease average annual investment in the California egg, pork, and veal producers and distributors, relative to the Baseline. Although investment in other businesses in California may correspondingly decrease as investors move resources elsewhere, the Department expects the net effect to be a modest decrease in overall investment in the State.

California consumers will be affected by higher food prices and respond with lower quantity consumed. In the 2022 calendar year, when the Act's standards go into full effect, proposed regulations will increase consumer expenditures in California of \$1,195 million. The largest impacts are on consumers of shell eggs and whole pork meat due to increased cost of these covered products at wholesale and retail.

*e. The incentives for innovation in products, materials, or process.*

Farms may have some incentives to innovate in their business processes as they adapt their facilities to be compliant with the Act's confinement standards. However, businesses involved in the design and manufacturing of products and materials for adaptation, such as animal cages, are not typically located in California.

- f. *The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the State's environment and quality of life, among any other benefits identified by the agency.*

This proposal does not directly impact human health and welfare of California residents, worker safety, or the State's environment, however the Department can infer that benefits accrue to Californians knowing that breeding pigs, veal calves, and egg-laying hens are raised with a minimum space requirement, which may be more space than covered animals previously were allotted. This proposal is needed to implement the Proposition 12 initiative which was passed by California voters in 2018. A benefit is for proper and orderly implementation of a law directly decided by voters for them to purchase with confidence covered products from covered animals not raised in a cruel manner. There are no quantitative studies that document or measure the effect of purchasing shell eggs, liquid eggs, whole veal meat, and whole pork meat from farms animals not confined in a cruel manner for people in California.

Economic studies have shown that some government regulations of meat and egg production and processing increase consumer willingness to pay in food markets. About 20% of California's shell egg consumption prior to 2022 already met California cage-free egg standards. Cage-free shell egg consumers were already willing to pay more than twice as much, on average, for cage-free shell eggs than for conventional shell eggs. Other consumers who are not willing to pay full cage-free prices may be willing to pay a smaller increased amount or cage-free shell eggs than for conventional shell eggs. Both of these types of consumers would therefore receive some corresponding benefits (even if they are hard-to-quantify benefits such as moral satisfaction, peace of mind, social approval, etc.) from knowing all eggs raised and sold in California are cage-free after January 1, 2022. In addition, non-consumers of the covered products may benefit from assurance that shell eggs, liquid eggs, whole veal meat, and whole pork meat sold in California meet the specified housing standards even if they do not plan to consume these foods. The Department notes that a large majority of voters in 2018 approved, 63%, the Proposition 12 initiative to eliminate egg-laying hens, veal calves, and breeding pigs from being cruelly confined in the State or if products from those animals are sold in the State.

Animal confinement space allowances prescribed in the Act (cage-free for egg-laying hens, 43 square feet for veal calves and 24 square feet for breeding pigs) are not based in specific peer-reviewed published scientific literature or accepted as standards within the scientific community to reduce human food-borne illness, promote worker safety, the environment, or other human or safety concerns. Health and Safety Code confinement standards are described as a minimum standard for space allowance to prevent cruel confinement of

covered animals and the law was not primarily written with the concern or benefit of human food-borne illness, worker safety, environment, etc. The standard of cage-free in HSC references the UEP 2017 guidelines and is the cage-free standard set by the egg industry to provide uniform guidance of cage-free egg operations. Minimum space requirements for veal calves and breeding sows outlined in HSC are not drawn from specific industry standards or published scientific research prescribing 43 square feet for veal calves and 24 square feet for breeding pigs. The Department has no regulatory discretion over the Act's animal confinement mandates, so any such effects would stem not from the way regulations were written or implemented, but from the mandates directly imposed by the Act. It would be outside the scope of the SRIA to conduct a detailed food safety, worker safety, or public health analysis of the Act's confinement changes themselves. The Department does not estimate that any of these worker or public health benefits would vary between the proposed regulations and alternative regulatory packages considered in the SRIA.