

# ANIMAL CARE PROGRAM

## CALIFORNIA PROPOSITION 12 (2018) QUESTIONS AND ANSWERS - JULY 1, 2023 UPDATE



### 1. Has implementation for Proposition 12 (2018) (Prop 12) been pushed back to January 1, 2024?

No. Prop 12 minimum usable floorspace requirements went into effect for calves and whole veal meat on January 1, 2020, for egg-laying hens, shell eggs and liquid eggs on January 1, 2022, and for breeding pigs and whole pork meat on January 1, 2022. On September 1, 2022 when Animal Confinement regulations were finalized and went into effect, additional requirements such as distributor registration, third-party certification, and shipping document markings requirements went into effect. Refer to [Important Dates guidance](#) document on the [Animal Care Program's website](#) for a complete list of previous implementation dates and the upcoming deadline of January 1, 2024, after which producers and distributors are required to be third-party certified.

In [California Hispanic Chambers of Commerce v. Ross](#) (Case No. 34-2021-80003765), the Sacramento County Superior Court enjoined enforcement of California Health and Safety Code Section 25990(b)(2) related to sales of whole pork meat, but that injunction terminates on July 1, 2023, except with respect to noncompliant whole pork meat that:

1. as of July 1, 2023, is in the possession of an “end-user” (Cal. Code Regs., tit. 3, § 1322, subd. (o)) or a “pork distributor” (*id.*, subd. (t)) or on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix “M”) granted by the Food Safety Inspection Service of the United States Department of Agriculture (“federally-inspected entity”);
2. is self-certified by the end-user, pork distributor, or other federally-inspected entity to have been in their possession or was in the possession of another end-user, pork distributor, or other federally-inspected entity as of July 1, 2023; and
3. is ultimately sold, transferred, exported, or donated on or before December 31, 2023.

### 2. When did Prop 12 go into effect for breeding pigs and whole pork meat sold in California?

The requirement for a breeding pig to be confined with the minimum usable floorspace requirement of twenty-four square feet as described in California Health and Safety Code (HSC) Section 25991(e)(3) went into effect on January 1, 2022. Enforcement of that provision and HSC section 25990(b)(2) were enjoined by the Sacramento County Superior Court in [California Hispanic Chambers of Commerce v. Ross](#) (Case No. 34-2021-80003765), but that injunction terminates on July 1, 2023, except with respect to noncompliant whole pork meat that:

1. as of July 1, 2023, is in the possession of an “end-user” (Cal. Code Regs., tit. 3, § 1322, subd. (o)) or a “pork distributor” (*id.*, subd. (t)) or on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix “M”) granted by the Food Safety Inspection Service of the United States Department of Agriculture (“federally-inspected entity”);

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2. is self-certified by the end-user, pork distributor, or other federally-inspected entity to have been in their possession or was in the possession of another end-user, pork distributor, or other federally-inspected entity as of July 1, 2023; and
3. is ultimately sold, transferred, exported, or donated on or before December 31, 2023.

You can also refer to the [Important Dates guidance](#) document on the Animal Care Program's website for a complete list of previous implementation dates and the upcoming deadline of January 1, 2024, after which producers and distributors are required to be third-party certified.

### **3. What do end-users (3 CCR section 1322(o)) and pork distributors (3 CCR section 1322(t)) do with noncompliant whole pork meat in their physical possession on July 1, 2023?**

We recognize that current inventory is transient and current stocks of noncompliant whole pork meat will eventually be cleared from pork distributors and retail stores in California. CDFA understands that there will necessarily be a period of transition over the next six months. The declaratory and injunctive relief against enforcement of the prohibition on intrastate sales of whole pork meat pursuant to Health and Safety Code Sections 25990(b)(2) and 25991(e)(3), as imposed by the Court in [California Hispanic Chambers of Commerce v. Ross](#) (Case No. 34-2021-80003765), terminates on July 1, 2023, except with respect to noncompliant whole pork meat that:

1. as of July 1, 2023, is in the possession of an “end-user” (Cal. Code Regs., tit. 3, § 1322, subd. (o)) or a “pork distributor” (*id.*, subd. (t)) or on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix “M”) granted by the Food Safety Inspection Service of the United States Department of Agriculture (“federally-inspected entity”);
2. is self-certified by the end-user, pork distributor, or other federally-inspected entity to have been in their possession or was in the possession of another end-user, pork distributor, or other federally-inspected entity as of July 1, 2023; and
3. is ultimately sold, transferred, exported, or donated on or before December 31, 2023.

CDFA reiterates that for the remainder of 2023, we intend to focus our implementation resources on 1) outreach to ensure that all distributors who are required to register do so; 2) accreditation of third-party certifying agents so that when third-party certification is required for producers and distributor registrations beginning on January 1, 2024, producers and distributors have more options; 3) certification of producers and distributors, and 4) complaint-based investigations.



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#### 4. Can distributors place orders of whole pork meat, prior to July 1, 2023, for future shipments delivered into California after July 1, 2023? For example, may an end-user or distributor place orders for noncompliant whole pork meat on June 29, 2023 intending the noncompliant whole pork meat not to be delivered until after September 1, 2023?

No. Enforcement of Health and Safety Code Section 25990(b)(2) was enjoined by the Sacramento County Superior Court in [California Hispanic Chambers of Commerce v. Ross](#) (Case No. 34-2021-80003765), but that injunction terminates on July 1, 2023, except with respect to noncompliant whole pork meat that:

1. as of July 1, 2023, is in the possession of an “end-user” (Cal. Code Regs., tit. 3, § 1322, subd. (o)) or a “pork distributor” (*id.*, subd. (t)) or on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix “M”) granted by the Food Safety Inspection Service of the United States Department of Agriculture (“federally-inspected entity”);
2. is self-certified by the end-user, pork distributor, or other federally-inspected entity to have been in their possession or was in the possession of another end-user, pork distributor, or other federally-inspected entity as of July 1, 2023; and
3. is ultimately sold, transferred, exported, or donated on or before December 31, 2023.

CDFA is focused on the orderly transition of whole pork meat in California commerce to compliant product which meets the standards approved by voters in 2018. The above memorializes CDFA's current implementation approach in regards to whole pork meat for the rest of 2023, focusing CDFA's implementation resources on 1) outreach to ensure that all distributors who are required to register do so; 2) accreditation of third-party certifying agents so that when third-party certification is required for producers and distributor registrations beginning on January 1, 2024, producers and distributors have more options; 3) certification of producers and distributors, and 4) complaint-based investigations.

#### 5. Can noncompliant whole pork meat be sold in California after December 31, 2023?

No. All noncompliant whole pork meat including that which was in the possession of an end-user (3 CCR section 1322(o)), pork distributor (3 CCR section 1322(t)) or an establishment under mandatory inspection under the Federal Meat Inspection Act and issued an establishment number with the prefix of “M” on July 1, 2023 may not be sold in California after December 31, 2023, regardless of when an entity took physical possession of the product.

#### 6. Does the phrase “is in the possession of” from the [California Hispanic Chambers of Commerce v. Ross](#) (Case No. 34-2021-80003765) refer to physical possession of noncompliant whole pork meat?

Yes. This phrase means that the noncompliant whole pork meat is in the physical possession at a location of an end-user (3 CCR section 1322(o)), pork distributor (3 CCR section 1322(t)) or an establishment under mandatory inspection under the Federal Meat Inspection Act and issued an establishment number with the prefix of “M” on July 1, 2023.

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### **7. For noncompliant whole pork meat to be eligible for sale in California before December 31, 2023, does the noncompliant whole pork meat have to be in California by 11:59pm on July 1, 2023?**

Noncompliant whole pork meat which was in the physical possession of an end-user (3 CCR section 1322(o)), pork distributor (3 CCR section 1322(t)), or an establishment under Mandatory inspection under the Federal Meat Inspection Act and issued an establishment number with the prefix of “M” on July 1, 2023 and self-certified as being in their possession by July 1, 2023 may be sold in California between now and December 31, 2023. By definition, end-users are located in California. A pork distributor or an establishment under mandatory inspection under the Federal Meat Inspection Act and issued an establishment number with the prefix of “M” can be located within or outside of California.

### **8. As a pork distributor (3 CCR section 1322(t)) with noncompliant whole pork meat in my possession on July 1, 2023, how do I comply with the requirements necessary to be issued a third-party certification prior to January 1, 2024?**

End-users (3 CCR section 1322(o)), pork distributors (3 CCR Section 1332(t)), and establishments under mandatory inspection under the Federal Meat Inspection Act and issued an establishment number with prefix of “M” are required to self-certify that any noncompliant whole pork meat sold between July 1, 2023, and December 31, 2023, was in their physical possession as of July 1, 2023 or came from a pork distributor (3 CCR section 1322(t)) or establishment under mandatory inspection under the Federal Meat Inspection Act and issued an establishment number with prefix of “M” that has self-certified that any noncompliant whole pork meat sold further down the supply chain was in their physical possession on July 1, 2023. During a pork distributor's on-site inspection for the purposes of third-party certification, this self-certification will be reviewed and verified along with all of the other requirements for certification including the audit trail requirement of any compliant whole pork meat obtained after July 1, 2023.

### **9. How should documents of title and shipping manifests accompanying shipments of whole pork meat transported into and within California be marked?**

The requirements for shipping document markings on all shipments of shell eggs, liquid eggs, whole veal meat, and whole pork meat went into effect on September 1, 2022 when Animal Confinement regulations were finalized. Refer to [Shipping Document guidance](#) and [tutorial video](#) for more instructions.

The statement on documents of title and shipping manifests accompanying shipments of whole pork meat should reflect whether the whole pork meat was produced in compliance with HSC section 25991(e). Shipping documents accompanying compliant whole pork meat are marked with “Pork CA Prop 12 Compliant” (3 CCR section 1322.4(a)(1)) and shipping documents accompanying noncompliant whole pork meat are marked with “Not Prop 12 Compliant” (3 CCR section 1322.4(a)(2)). For shipments of noncompliant whole pork meat destined for export or transshipment, all documents of title, shipping invoices, bills of lading, and shipping manifests shall be marked with “Not Prop 12 Compliant”, “For Export” or “For Transshipment” (3 CCR section 1322.4(a)(2)). Documents of title and shipping manifests of noncompliant whole pork meat that is subject to the [California Hispanic Chambers of Commerce v. Ross](#) exception noted above should still be accurately marked as “Not Prop 12 Compliant.”

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### 10. Who enforces Prop 12 prohibitions on the sale of noncompliant covered product (HSC Section 25990(b))?

Per HSC Section 25993(a), CDFA and the California Department of Public Health are responsible for developing rules and regulations to implement Prop 12, which were finalized and went into effect on September 1, 2022. HSC Section 25993(b) provides remedies for violations. Decisions on whether to pursue specific remedies allowed under the law are made by the Attorney General or local jurisdictional authorities like a District Attorney or City Attorney. For more information regarding enforcement please see HSC Section 25993 and Business and Professions Code Sections 17200 et seq.

### 11. Who enforces Animal Confinement regulations (3 CCR Sections 1320-1327.3)?

The Prop 12 regulations provide that CDFA will be the agency responsible for implementing the provisions of the regulations including registration, accreditation, certification, and document inspection. When fully implemented, including third-party certification of compliance which is required for distributor registration in 2024, the regulations and CDFA activity will provide the framework for consumers and other end-users like retailers, grocers, and restaurants to have confidence that the covered product they buy or sell in California is compliant with Prop 12.

### 12. As a distributor, selling or distributing whole pork meat to an end-user in California, what are the next steps I need to take to ensure compliance with statutory and regulatory requirements?

Most important is that distributors register with CDFA by submitting a completed distributor registration application. This registration was required by January 1, 2023 and is renewed every twelve months. CDFA is continuing to accept applications for registration. To apply to be a distributor, please complete and submit the [Application for Distributor Registration](#). And Please see the Guidance for Distributors document for guidance for distributors. Each facility location distributing or selling covered product to an end-user in California is required to register.

After January 1, 2024, all distributors will need to submit a valid third-party certification along with their application for a new registration and for the purposes of registration renewal.

Please reference [list of certifying agents on CDFA's website](#) to provide this certification.

### 13. As a retailer, what are the next steps I need to take to ensure compliance with statutory and regulatory requirements?

Individual retail locations are not required to register with CDFA. While sales of covered product which take place between a retailer and a customer fall under Prop 12, retailers benefit from a good-faith reliance rule if they receive a written certification of compliance from their distributors. Specifically, HSC section 25993.1 states that it shall be a defense to any action to enforce subdivision (b) of Section 25990 that a business owner or operator relied in good faith upon a written certification by the supplier that the whole veal meat, whole pork meat, shell eggs, and liquid eggs at issue was not derived from a covered animal who was confined in a cruel manner, or from the immediate

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offspring of a breeding pig who was confined in a cruel manner. If retailers have documentation that all covered products are from registered distributors, those distributors should have the ability to trace product to compliant farms. An audit trail (3 CCR sections 1320(b), 1321(b), 1322(b)) is not required for noncompliant whole pork meat in physical possession of the retailer, a pork distributor (3 CCR Section 1332(t)), and establishments under mandatory inspection under the Federal Meat Inspection Act and issued an establishment number with prefix of "M" and self-certified as being in their possession by July 1, 2023.

If the retailer purchases covered product directly from a facility with mandatory inspection under the Federal Meat Inspection Act or Egg Products Inspection Act and the facility is not a registered distributor, then the retailer is required to maintain records documenting written certifications of compliance for the covered product sold at that location.