

DEPARTMENT OF FOOD AND AGRICULTURE

Animal Health and Food Safety Services
Final Statement of Reasons

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Part I. General

1.1. Procedural History of Rulemaking

45-day Public Review and Comment Period:

Notice for the originally proposed regulatory text was offered for public review and comment from May 28, 2021 through July 12, 2021. A public hearing on the proposed regulations was held August 27, 2021 and written comments were accepted via email on August 27, 2021 as well. The Department of Food and Agriculture (Department) and the Department of Public Health (DPH) received written comments from 88 entities and individuals during this comment period, and 39 individuals provided verbal comments and 44 entities and individuals provided written comments via email on August 27, 2021, the day of the public hearing.

15-day Notice of Modified Changes:

From December 3, 2021 through December 17, 2021, the Department and DPH issued a Notice of Modified Text, the modified text, and documents added to the rulemaking file. The modified text addressed concerns raised during the 45-day public comment period and/or during the public hearing, clarified the intent of the regulatory language, and edited the proposed regulatory text for grammar, punctuation, or organizational purposes.

The documents added to the rulemaking file consisted of an Addendum to the Initial Statement of Reasons (ISOR) and additional Materials Relied Upon. The Addendum to the ISOR, in addition to explaining changes shown in the modified text, clarified statements made in the ISOR. The added Materials Relied Upon provided further support for the proposed modified text in Article 4., section 1324 and Article 5., section 1326.5.

A notification was sent to all persons whose comments were received during the 45-day public comment period, including those who provided verbal comment at the public hearing, and all persons who requested notification of the availability of such changes of this 15-day public review period. These documents were posted on the Department's website and a link was provided in the notification. This public comment period generated 2,226 written comments.

Second 15-day Notice of Modified Changes:

From June 10, 2022 through June 24, 2022, the Department and DPH issued a Second 15-day Notice of Modified Text and the second modified text to the rulemaking file. The proposed modifications were necessary to further clarify the intent of the regulatory text and to make the requirements consistent throughout the Chapter. A notification was sent to all persons whose comments were received during the 45-day public comment period, including those who provided verbal comment at the public hearing, during the 15-day public comment period, and all persons who requested notification of the availability of such changes of this 15-day public review period. These documents were posted on the Department's website and a link was provided in the notification of public comment period. This public comment period generated 14 written comments.

In addition to the regulatory text first proposed on May 28, 2021, and subsequently revised on December 3, 2021 and June 10, 2022, this Final Statement of Reasons reflects nonsubstantial and sufficiently related changes made to the regulations following the Second 15-day public

review and comment period. These changes are summarized below in the section entitled “Changes to the Second Modified Text.”

Updates to STD 399 and Attachment

Final economic and fiscal cost estimates reported on STD 399 and Attachment have been updated since regulations were noticed on May 28, 2021. The Department adjusted costs for a California Consumer Price Index Urban Consumers cumulative inflation rate of 11.37% that has occurred since July 2020, when the Standardized Regulatory Impact Assessment, as required for all major regulations, was performed, and submitted to Department of Finance. In recent months, inflation has been notably higher and uncertain, and the estimates on STD 399 and Attachment reflect the estimated impacts of Proposition 12 and proposed regulations using inputs from 2019-2020 with the addition of current inflationary trends for 2021-2022.

1.2. Local Mandate

The proposed regulations do not impose any mandate on local agencies or school districts however, local agencies or school districts may incur costs. Fiscal impact on local agencies or school districts will begin when the statutory deadline of animal confinement minimum standards went into effect January 1, 2022 for whole pork meat, shell eggs, and liquid eggs due to the increase in the cost of these foods for local agencies and schools. As further described in the Standardized Regulatory Impact Assessment (SRIA), costs of covered products increased due to the minimum confinement standards directed by the Proposition 12, Farm Animal Confinement Initiative, 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). While some United States Department of Agriculture (USDA) food transactions are exempt from the definition of “sale” in the Act, if local agencies or school districts choose to continue purchasing compliant shell eggs, liquid eggs, and whole pork meat at the higher prices, then they will incur these costs. Whole veal meat is not included in this fiscal impact to local agencies because it is not purchased by the impacted local agencies. These costs to local agencies and school districts will not be reimbursed by the state.

Schools. Schools in California serve free or reduced-price meals to needy children with funding from the State Meal Program that includes state and federal dollars. In the 2018-2019 school year a total of 288 million breakfasts and 536 million lunches were provided to school children. Eggs and pork are components in these meals and the costs of these covered products increased after January 1, 2022 when the additional confinement standards of the Act went into effect. If schools continue to purchase covered eggs and pork meat and they are unable to purchase these foods at a discounted price from USDA Foods as they have historically done in the past, then costs for these school meals are expected to increase by \$2.35 million in the 2022-23 school year. (Adjusted for recent increase in inflation rates that occurred between 2020 and 2022)

Colleges and universities. The fiscal impact on the operating costs of California state colleges and universities is accounted for in meal plan fees to participating students living on campus. The costs to the colleges and universities from the increase in meal plan fees is the school’s

expenditure to fund meal plans for students on state-subsidized scholarships which include coverage of room and board fees. The estimated fiscal impact of the Act fulling going into effect after January 1, 2022 for meal plan student subsidy is about \$1.47 million during the 22/23 academic year due to an increase in covered egg and pork meat costs. (Adjusted for recent increase in inflation rates that occurred between 2020 and 2022)

County jails. California county jail population totaled around 73,000 inmates in 2018 and 2019. (California Board of State and Community Corrections August 25, 2020 report). Beginning in 2022, the total annual increase in food costs is \$3.29 million per year for meals served to its 73,000 inmates due to increase in cost of shell egg, liquid egg, and whole pork meat due to animal confinement standards as outlined in statutes. (Adjusted for recent increase in inflation rates that occurred between 2020 and 2022)

1.3. Alternatives Determination

Alternatives Considered and the Effect on Private Persons: The Department has determined that no reasonable alternative would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the proposed regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. In addition to the alternatives discussed in the SRIA, ISOR and the Notice of Proposed Action (NOPA), the Department's reasons for rejecting any new proposed alternatives are set forth in the responses to the comments.

Alternatives Considered and the Effect on Small Businesses: The Department has determined that no reasonable alternative would lessen the adverse economic impact on small businesses.

The SRIA considered two alternatives, lower-cost regulations, and higher-cost regulations, in addition to the proposed regulations.

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 alternative regulations considered and ultimately rejected include (1) lower-cost regulations and (2) higher-cost regulations:

Alternative 1: Under the lower-cost alternative, lifetime business costs are \$2.262 billion and lifetime consumer costs are \$15.9 billion, giving a total of \$18.2 billion in present value at a 5% discount rate. (Adjusted for recent increase in inflation rates that occurred between 2020 and 2022.)

The lower-cost regulations apply a stricter literal interpretation of which food products are covered and which businesses are subject to annual registration and certification requirements. Under the lower-cost alternative 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 (CFR), therefore excluding other forms of liquid eggs such as 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 processing facilities 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 alternative because the narrow definitions of shell eggs and liquid eggs does 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 the Proposition 12 initiative 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, lifetime business costs increase by \$2.431 billion and lifetime consumer costs increase by \$20.6 billion giving a total of \$23.0 billion in present value at a 5% discount rate. (Adjusted for recent increase in inflation rates that occurred between 2020 and 2022.)

Higher-cost regulations impose more stringent restrictions on covered products only moving through California and expand the definition of covered products; they imply larger negative economic consequences, including reduced California port activity. Perceived benefits by Californians may be larger under the higher-cost alternative if more covered animals are not confined 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 the Act’s 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 Act aims to protect California consumers and regulate sales of products in California only, and not where products merely pass-through California.

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 mandatory inspection of USDA, Food Safety Inspection Services (FSIS) and any labeling of those products would need to be approved by FSIS.

Benefits

The Department's proposed regulations 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 in accordance with these regulations would benefit the objectives of the Californians 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.

Although the Department cannot independently confirm, according to its usual scientific practices, that the specific minimum confinement standards outlined in HSC section 25991 reduce the risk of human food-borne illness, promote worker safety, other human or safety concerns, or the State's environment, the Department recognizes that the text of the Proposition 12 ballot initiative, as approved by voters, General Election (November 6, 2018), stated that the initiative's purpose was "to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers, and increase the risk of foodborne illness and associated negative fiscal impacts on the State of California." The Department does not suggest that it was unreasonable for California's voters to pass the Proposition 12 initiative as a precautionary measure to address any potential threats to the health and safety of California consumers while such health and safety impacts remain a subject of scientific scrutiny. For example, the scientific literature supporting the potential public health benefits related to egg-laying hens that are provided additional space and the opportunity to express natural behavior continues to increase well after an earlier standard on confining hens (Proposition 2, 2008) went into effect.

1.4. Documents Incorporated by Reference

These regulations Incorporate by Reference the following documents:

- United Egg Producers, Animal Husbandry Guidelines for U.S. Egg-Laying Flocks, Guidelines for Cage-Free Housing, 2017 Edition
- 9 Code of Federal Regulations parts 2.31, 317.2(l), 381.125(b), and 424.21(c) (2021)

- 21 Code of Federal Regulations parts 101.3, 160.105, 160.110, 160.115, 160.140, 160.145, 160.150, 160.180, 160.185, 160.190, 172.510, 172.515(b), 182.10, 182.20, 182.40, 183.50, 184, and 530.3(i) (2021)
- USDA, Institutional Meat Purchase Specifications: Fresh Veal Series 300 (November 2014)
- 2014 Uniform Retail Meat Identity Standards
- USDA, Institutional Meat Purchase Specifications: Fresh Pork Series 400 (November 2014)

The above documents incorporated by reference in this rulemaking consist of existing industry and federal definitions and standards used by regulated stakeholders. Because many of these documents are lengthy, and are readily available to the public online, publishing the entirety of the incorporated by reference documents in the California Code of Regulations (CCR) would be cumbersome, unduly expensive, or otherwise impractical. The Department made these documents available to the public during the applicable public comment periods for the proposed regulations, and in addition, the CFR references are and were available online to the public via the Federal Register website.

1.5. Non-Duplication of Federal Law

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3). The Department chose to use existing terms and standards from federal law for the ease of regulated stakeholders to understand and comply with these regulations by using familiar, common, or similar established industry terms.

Part II. Update to the Initial Statement of Reasons

2.1. Modifications Provided for in the 15-day Comment Period

Article 1. Egg-laying Hens.

Section 1320. Definitions.

1320(a) made a punctuation edit.

1320(e) struck “offer for sale”, “expose for sale”, “possess for sale”, added “title or”, struck “otherwise”, and added “conditional or otherwise” which is necessary to clarify the intent of and accurately describe the meaning of a commercial sale in the context of the proposed regulations and the statute. Offering, exposing, and possessing shell eggs or liquid eggs does not constitute a commercial sale under this proposal therefore it is necessary to remove this language from the definition. The Department additionally revised the definition to include the exclusion as stated in subsection (4) for organizational purposes and added “commercial” for consistency in the regulatory text when referring to the sale of shell eggs or liquid eggs.

1320(e)(1) struck “for human consumption” which is necessary to describe and clearly state that any shell eggs or liquid eggs produced outside of the state, not only those intended for human consumption as currently stated, entering and exiting California, without additional processing or repacking and exported outside of the state are not included in the definitions of shells eggs or liquid eggs and therefore are not included in commercial sale pursuant to the regulations.

1320(e)(2) struck “Egg Products” for consistency in the regulatory text when referencing an establishment number issued by USDA, FSIS. The subsection also adds clarification to those transactions or transfers of possession of covered product to federal agencies or taking place on federal lands are excluded from the definition of commercial sale. This new language is necessary to add clarification that sales to the federal government or made on federal lands are exempt from the definition of a commercial sale. This change is in response to stakeholder and commenter questions about sales to the federal government and on federal lands.

1320(e)(3) added a new subsection to clarify transactions or transfers of possession of covered product taking place on tribal lands in California are not considered a commercial sale, and therefore excluded from the Act and regulations. This change is in response to stakeholder and commenter questions about sales on tribal lands.

1320(e)(3) revised the subsection numbering to read 1320(e)(4).

1320(e)(4) struck “religious, charitable, scientific, educational, or other”. This change is in response to stakeholder and commenter requests for the Department to clarify the exclusion from the definition of a commercial sale for non-profits donating covered products. Deleting these specific types of donations is necessary to clarify that all nonprofit organizations which meet the definition of a 501(c)(3) are included in the exemption of “commercial sale” if the covered product is donated to the nonprofit.

1320(e)(4) struck the subsection and revised the text for inclusion in subsection (e) for organizational purposes.

1320(f) struck “family” and added “personal” because “personal” rather than “family” accurately describes how use or consumption of shell eggs or liquid eggs occurs by a consumer pursuant to the proposal.

1320(j) made a grammatical edit and added “but are not limited to” with punctuation edits, to clarify that the provided list of examples of the documents constituting a document of title is not exhaustive.

1320(l) struck “pursuant to section 25991 of the Health and Safety Code” as the reference is unnecessary.

1320(m) added text to accurately define “egg producer” which is necessary for consistency

with the term as used in the HSC. The subsection also revised language for consistency throughout the regulatory text when referencing federal processing plants under the authority of the USDA, FSIS, and made a grammatical edit.

1320(o)(2) struck text to better describe the intent of the definition of an end-user in the context of a retailer. This change is necessary to clearly describe that an end-user is a retailer whether or not the shell eggs or liquid eggs they sell to a consumer are purchased or received from an egg distributor.

1320(p) struck the definition of “enforcement officer” because only the Department will implement the requirements of this proposal and therefore a general term which includes the Department, and the Department of Public Health (DPH) is unnecessary.

1320(q) revised the subsection number to read 1320(p).

1320(p) added text which is necessary to clarify and narrow the scope of the reference to Part 184 of Title 21 of the Code of Federal Regulations to substances with a use described as a flavoring, flavoring agent, or flavoring enhancer. This change came at the request of stakeholders and commenters.

1320(r) revised the subsection number to read 1320(q).

1320(s) revised the subsection number to read 1320(r).

1320(t) revised the subsection number to read 1320(s).

1320(u) revised the subsection number to read 1320(t).

1320(t) added text which is necessary to clarify the definition applies to liquid eggs “intended for use as human food”. This change aligns the definition consistent with the HSC.

1320(v) revised the subsection number to read 1320(u).

1320(u) struck text to correctly name the USDA.

1320(w) revised the subsection number to read 1320(v).

1320(x) struck the entire term and definition because the term is not used in the proposed modified regulation text.

1320(w) added a new term which is necessary to make the proposed recordkeeping requirements specific by defining in what form or type of information the Department considers “records”. This change is in response to stakeholder and commenter concerns that the Department’s record requirements should be more specific and allow for electronic records. This is the same definition of “records” that was already defined in Article 5 of the originally

proposed regulations. Due to the great variety of producers and distributors supplying covered products to the state, making recordkeeping and audit trail requirements more specific would limit an operation's ability to utilize existing recordkeeping and traceability systems and their ability to adopt new technologies to fulfill these requirements.

1320(y) revised the subsection number to read 1320(x).

1320(z) revised the subsection number to read 1320(y).

1320(aa) revised the subsection number to read 1320(z).

1320(z) struck text as the reference to the HSC is unnecessary.

1320(aa) added a definition for "takes physical possession" in response to stakeholder and commenter concerns. Adding this definition is necessary to clarify what "takes physical possession" means for the regulated industry to understand that when a covered product is delivered to a buyer in California, this is considered a sale under the Act and the proposal, regardless of any title changes or sales contract specifics negotiated for possession to take place prior to delivery of a covered product to a buyer within the state.

1320(bb) relocated to this section, a term used and defined in section 1320.1(a)(3). This change is in response to stakeholder and commenter concerns that the Department did not include a definition for the term. Relocating the definition to the definitions section is necessary to make it easier for stakeholders to locate when referring to the definition.

Section 1320.1. Egg-laying Hen Confinement.

1320.1(a) struck "egg producer or egg distributor" and added "person" which is necessary to correctly state that the subsection applies to any person engaged in a commercial sale, not only egg producers or egg distributors. The subsection also deletes "sell or contract to sell" and adds "engage in a commercial sale" which is consistent with HSC section 25990(b) and necessary to clarify the subsection applies to both commercial sellers and commercial buyers when the sale occurs within the State. The subsection also struck "consumption" and added "food" to clarify the use of shell eggs or liquid eggs is for human food and made other grammatical edits as necessary. These changes were made in response to stakeholder and commenter concerns that the text was confusing and not consistent with HSC.

1320.1(a)(1) struck the egg-laying hen confinement requirement prior to January 1, 2022, because the timeline for implementing the regulations before January 1, 2022 has past and is therefore obsolete. The Department added text to include the mandate of the Act requiring that "The enclosure shall allow the egg-laying hen to lie down, stand up, fully extend limbs, and turn around freely". The later change is necessary as it addresses stakeholder and commenter concerns that the Department did not include in the regulations the "turn around/turning around freely" requirements of the Act. The Department's addition of the requirement in the regulatory text also makes it convenient for stakeholders, so they do not need to reference the HSC when

determining confinement compliance standards.

1320.1(a)(2) struck “Commencing January 1, 2022” and added “After December 31, 2021” which is necessary for consistency with the requirements as stated in the Act.

1320.1(a)(3) relocated the definition of “usable floorspace” to section 1320(bb) for organizational purposes.

1320.1(a)(4) revised the subsection number to read 1320.1(a)(3).

1320.1(a)(3) restated the text for organizational purposes.

1320.1(b) revised the text to state the requirements for egg producer third-party certification begins January 1, 2024, which is in response to stakeholder and commenter requests for the Department to delay the requirement for third-party certification of egg producers. This change is necessary to provide adequate time for outreach and education, third-party certifiers to become accredited, and third-party certification of producers. The subsection also made a grammatical change and added “for commercial sale” to further clarify the intent of the subsection which is to apply to commercial sales in California.

Section 1320.2. Egg Distributor Registration.

1320.2(a) added text to include an implementation date of January 1, 2023 for egg distributor registration in response to stakeholder and commenter requests for the Department to delay the requirement for egg distributor registration. This change is necessary to notify the affected industries that egg distributors must be registered with the Department by this future date to allow time for egg distributors to register with the Department before the deadline of January 1, 2023. The subsection text was also reordered to clarify the intent of the subsection, which is to require that any “in-state or out-of-state” person engaged in “a commercial sale into or within” the state as an egg distributor shall hold a valid registration with the Department, and made other grammatical edits as necessary.

1320.2(b) revised the text for grammatical purposes.

1320.2(b)(2) revised the text for consistency of terms used throughout the Chapter.

1320.2(f) revised the text to state “calendar” days rather than business days for the timeframe within which a distributor must notify the Department of a change to their registration. This change is necessary to make the 30-day timeframe to report changes to the Department easier for the affected industries to determine.

1320.2(k) rearranged the text to clearly state when an egg distributor submits an application for egg distributor initial or renewal registration, a self-certification in lieu of the valid third-party certification required of subsection (j) will be accepted by the Department. The Department also extended acceptance of self-certifications by one year which is necessary to allow for

adequate time for third-party certifiers to become accredited and provide the Department time to conduct outreach and training related to registration, and certification by an accredited third-party certifier. These changes are in response to stakeholder and commenter requests for the Department to delay the requirement for egg distributor third-party certification and for organizational purposes.

1320.2(l) rearranged the text to state and clarify the exclusion from required distributor registration for official plants under mandatory federal inspection. These changes are in response to stakeholder and commenter requests for clarity regarding sales at USDA, FSIS establishments and for organizational purposes.

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

1320.3(a) struck obsolete text for organizational purposes.

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

The Department struck “and Labeling” from the section heading which is necessary because subsection (b) removed the egg carton labeling requirements from the proposal.

1320.4(a)(1) struck the entire subsection which is necessary because regulations were not implemented before January 1, 2022 thereby making the subsection obsolete.

1320.4(a)(2) revised the subsection number to read 1320.4(a)(1).

1320.4(a)(1) struck “Commencing January 1, 2022,” which is necessary because regulations will not be implemented prior to this date. The subsection struck “shipping invoices” and “bills of lading” which is necessary because the definition of documents of title includes these documents, therefore repeating them is redundant. The subsection additionally struck text requiring specified verbiage on shell egg or liquid egg shipping documents and added new shipping document verbiage. These changes come in response to stakeholder and commenter concerns that the originally proposed shipping document statements may imply that the shell eggs or liquid eggs were produced in California. Therefore, the Department finds it necessary to make a change to the shipping document wording to clarify the shell eggs or liquid eggs represented were produced in compliance with California Proposition 12 by instead requiring “Egg CA Prop 12 Compliant” as stated. Lastly, the subsection added a statement to require the markings on shipping documents shall be legible and plainly printed or stamped, which is necessary to ensure marking requirements on shipping documents are applied consistently pursuant to the regulations.

1320.4(a)(3) revised the subsection number to read 1320.4(a)(2).

1320.4(a)(2) added to the regulatory text to clarify the requirement for noncompliant shell eggs or liquid eggs entering California for sale to federal agencies or on tribal lands and therefore not destined for commercial sale in California, that they too shall maintain specified marking

requirements on shipping documents. This change is necessary as it is in response to stakeholder and commenter requests for the Department to clarify whether the sale of shell eggs or liquid eggs to federal agencies or on tribal lands fall under the definition of commercial sale. The subsection also revised the marking statements required on shipping documents to identify the product as intended for export, transport, donation, or that it is not compliant, as specified. These changes are necessary in response to stakeholder and commenter concerns that the originally proposed wording on shipping documents may be disparaging or otherwise prejudice export products and may cause refusal for acceptance by other countries and for consumer assurance established by the proposed regulations that implement the Act. Lastly, the subsection added a statement to require the markings on shipping documents shall be legible and plainly printed or stamped, which is necessary to ensure marking requirements on shipping documents are applied consistently pursuant to the regulations.

1320.4(a)(4) revised the subsection numbering to read 1320.4(a)(3).

1320.4(a)(3) made an organizational edit and revised language for consistency in the regulatory text when referencing federal processing plants under the authority of the USDA, FSIS.

1320.4(b) struck the entire subsection as the regulations will not require specified egg carton labeling. This change is necessary as it comes in response to stakeholder and commenter concerns that the proposed egg carton labeling may be confusing to consumers by implying the shell eggs were produced in California when many shell eggs sold in the state are imported from other states, regraded, repackaged, and sold to California consumers.

California and several other states have or soon will implement cage-free labeling of shell egg cartons, therefore having the requirement to identify the eggs as “CA” cage-free shell eggs would cause unnecessary burdens on the industry. Additionally, some egg carton claims include requirements that go beyond the proposed “cage free”, (like “Organic” and “Free Range”) and have other third-party verifications, and as explained above, including “CA” could mislead consumers.

The Department, however, went beyond these recommendations and struck all shell egg carton labeling requirements for purposes of implementing the requirements of the Act and this proposal because compliance documentation of liquid eggs, whole veal meat, and whole pork meat are relying on shipping documents. In addition, existing regulations and the FAC require truth in labeling for the Department’s Shell Egg Food Safety Program.

1320.4(c) revised the subsection numbering to read 1320.4(b).

1320.4(b) made a punctuation edit and struck “and (b)” because it is an obsolete reference.

1320.4(d) revised the subsection numbering to read 1320.4(c).

1320.4(c) struck the obsolete “Commencing January 1, 2022,” because regulations will not be

implemented prior to this date and therefore, a specific date is not necessary. The requirements of this subsection will become effective upon implementation of the regulations.

Section 1320.5. Egg Distributor Recordkeeping.

1320.5(c) revised the text for consistency of terms used throughout the Chapter.

1320.5(d) revised the text for consistency of terms used throughout the Chapter.

1320.5(f) struck the entire subsection for organizational purposes because it is unnecessary since subsection 1320.2(l) excludes official plants under mandatory inspection under the federal Egg Products Inspection Act from the requirement for registration as an egg distributor. If an official plant under mandatory inspection chooses to register with the Department as an egg distributor voluntarily, then this section would apply because it is a requirement of all registered egg distributors.

Section 1320.6. Inspection of Conveyances.

1320.6(a) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1320 of this Article. This clarification is necessary because the inspection of conveyances is under the authority and direction of the Department.

1320.6(b) struck text referring to an “enforcement officer” and added “the Department” to clarify every person shall stop at the request of the Department because the definition of “enforcement officer” was removed from section 1320 of this Article. This clarification is necessary because the inspection of conveyances is under the authority and direction of the Department.

1320.6(c) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1320 of this Article. This clarification is necessary because the inspection of conveyances is under the authority and direction of the Department.

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

1320.7(a) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1320 of this Article. This clarification is necessary because the tagging and seizure of shell eggs or liquid eggs is under the authority and direction of the Department.

1320.7(b) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1320 of this Article. This clarification is necessary because the tagging and seizure of shell eggs or liquid eggs is under the authority and direction of the Department.

1320.7(c) struck text referring to an “enforcement officer” two times and added “The Department” to clarify the Department may seize and hold containers, sub-containers, lots, or

loads of shell eggs or liquid eggs because the definition of “enforcement officer” was deleted from section 1320 of this Article. These clarifications are necessary because the tagging and seizure of shell eggs or liquid eggs is under the authority and direction of the Department.

1320.7(d) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was removed from section 1320 of this Article. The definition of “enforcement officer” was removed because the tagging and seizure of shell eggs or liquid eggs is under the authority and direction of the Department.

Section 1320.8. Written Certification.

The Department is adding to the statement of purpose and necessity for stakeholder clarity that this proposed section would establish specific requirements to strengthen the basis of written attestations to ensure they are accurate, truthful, and auditable. A business owner or operator may rely on written certification because HSC section 25993.1 provides 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 shell eggs or liquid eggs were not derived from an egg-laying hen who was confined in a cruel manner.

1320.8(b) added “physical” which is necessary for consistency with new subsection 1320(aa) which defines “takes physical possession”. The subsection made changes for consistency of terms used throughout the Chapter and struck “Egg Products” when referencing an establishment number of the USDA, FSIS. Lastly, this subsection added “which does not hold a current egg distributor registration” to clarify who needs to follow the requirements of the subsection. An official plant at which mandatory inspection is maintained under the federal Egg Products Inspection Act may register with the Department as an egg distributor, but it is not a requirement. This is necessary to give official plants under mandatory inspection under the Egg Products Inspection Act the option to register with the Department, if that registration then eases the burden of an audit trail on their end-user customers. If a retailer or food processor end-user takes physical possession of shell eggs or liquid eggs from a registered egg distributor, then this section does not apply. Changes to this subsection are for organizational purposes to clarify the intent as proposed.

1320.8(b)(3) struck “and other state or local health agencies” which is necessary because implementation of the requirements will take place under the authority and direction of the Department.

1320.8(c) struck “Egg Products” for consistency of the regulatory text when referencing an establishment number of the USDA, FSIS.

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

1320.9(b) added a new subsection to describe the procedures taken by the Department for a proposed suspension or revocation of an egg distributor registration, which is necessary to provide notice of the proposed action and to inform the distributor of the: (1) date the proposed

suspension or revocation is issued; (2) reason for the proposed suspension or revocation; (3) effective date of the proposed suspension or revocation, including a statement that the effective date is 30 calendar days after the date issued; (4) future eligibility for registration including conditions for reinstatement; and (5) right to request a formal hearing which must be requested within 30 calendar days of the date the proposed suspension or revocation was issued. The subsection also informs the distributor that their registration shall remain in effect pending the outcome of a formal hearing which is necessary, so the distributor understands the status of their registration during this time.

1320.9(b) revised the subsection numbering to read 1320.9(c).

1320.9(c) deleted obsolete text and clarified that a person may appeal the Department's decision to deny a registration or a renewal of a registration and struck "certificate" because it was redundant. The Department replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceedings specified in section 1327.2 of these regulations and added "within 30 calendar days of date of the notice of denial" to inform the distributor of the timeframe for appealing a notice of denial. These changes are necessary because they clarify that a person may appeal the Department's decision for a denial of an application or renewal of a registration and references the affected stakeholders to a new subsection in proposed regulations dedicated to detailing the procedures for such action.

1320.9(c) struck the entire subsection because the proposed requirements are revised and included in modified subsection (b)(5).

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

1320.10 struck the entire section to avoid confusion because stakeholders will need to comply with all other applicable laws and regulations outside of this proposal, not only those laws and regulations with the Department of Public Health.

Article 2. Veal Calves.

The Department struck "Veal" from the section heading because use of both "veal" and "calves" is redundant and unnecessary. This change is made throughout the Chapter for consistency.

Section 1321. Definitions.

1321(a) made a punctuation edit.

1321(b) struck "veal" for consistency of terms used throughout the Chapter.

1321(c) added a new subsection to define "calf" as used in the article, which is necessary

because the term “calf” is used throughout this Article in reference to this specific definition under the Act and this proposal. Stakeholders need to understand the definition of “calf” in order for them to confine the correct calves in accordance with HSC and this proposal.

1321(c) revised the subsection numbering to read 1321(d).

1321(d) revised the subsection numbering to read 1321(e).

1321(e) revised the subsection numbering to read 1321(f).

1321(f) struck “offer for sale”, “expose for sale”, “possess for sale”, added “title or”, corrected a typographical error, struck “otherwise”, and added “conditional or otherwise” which is necessary to clarify the intent of and accurately describe the meaning of a commercial sale in the context of the proposed regulations and the statute. Offering, exposing, and possessing whole veal meat does not constitute a commercial sale under this proposal therefore it is necessary to remove this language from the definition. The Department additionally revised the definition to include the exclusion as stated in subsection (4) for organizational purposes and added “commercial” for consistency in the regulatory text when referring to the sale of whole veal meat.

1321(f)(1) struck “for human consumption” which is necessary to describe and clearly state that any whole veal meat produced outside of the state, not only whole veal meat intended for human consumption as currently stated, entering, and exiting California, without additional processing or repacking and exported outside of the state is not included in the definition of whole veal meat and therefore is not included in commercial sale pursuant to the regulations.

1321(f)(2) added clarification to those transactions or transfers of possession of covered product to federal agencies or taking place on federal lands are excluded from the definition of commercial sale. This added language is necessary to add clarification that sales to the federal government or made on federal lands are exempt from the definition of a commercial sale. This change is in response to stakeholder and commenter questions about sales to the federal government and on federal lands.

1321(f)(3) added a new subsection to clarify transactions or transfers of possession of covered product taking place on tribal lands in California are not considered a commercial sale, and therefore excluded from the Act and regulations. This change is in response to stakeholder and commenter questions about sales on tribal lands.

1321(f)(3) revised the subsection numbering to read 1321(f)(4).

1321(f)(4) struck “religious, charitable, scientific, educational, or other”. This change is in response to stakeholder and commenter requests for the Department to clarify the exclusion from the definition of a commercial sale for non-profits donating covered products. Deleting these specific types of donations is necessary to clarify that all nonprofit organizations which meet the definition of a 501(c)(3) are included in the exemption of “commercial sale” if the

covered product is donated to the nonprofit.

1321(f)(4) struck the entire subsection and revised the text for inclusion in subsection (f) for organizational purposes.

1321(f) revised the subsection number to read 1321(g).

1321(g) struck “uncooked” for consistency of terms used throughout the Chapter. The subsection also struck “family” and added “personal” because “personal” rather than “family” accurately describes how use or consumption of whole veal meat occurs by a consumer pursuant to the proposal.

1321(g) revised the subsection number to read 1321(h).

1321(h) revised the subsection number to read 1321(i).

1321(i) revised the subsection number to read 1321(j).

1321(j) revised the subsection number to read 1321(k).

1321(k) revised the subsection number to read 1321(l).

1321(l) revised the subsection number to read 1321(m).

1321(m) made a grammatical edit and added “but are not limited to” with punctuation edits, to clarify that the provided list of examples of documents constituting a document of title is not exhaustive.

1321(m) revised the subsection number to read 1321(n).

1321(n) revised the subsection number to read 1321(o).

1321(o)(2) struck text to define an end-user accurately and clearly in the context of a retailer. This change is necessary to clearly describe that an end-user is a retailer whether or not the whole veal meat they sell to a consumer is purchased or received from a veal distributor.

1321(o) struck the definition of “enforcement officer” because only the Department will implement the requirements of this proposal and therefore a general term which includes the Department and the DPH is unnecessary.

1321(p) added text which is necessary to clarify and narrow the scope of the reference to Part 184 of Title 21 of the Code of Federal Regulations to substances with a use described as a flavoring, flavoring agent, or flavoring enhancer. This change came at the request of stakeholders and commenters.

1321(v) added a new term which is necessary to make the proposed recordkeeping requirements specific by defining what forms or type of information the Department considers “records”. This change is in response to stakeholder and commenter concerns that the Department’s record requirements should be more specific and allow for electronic records. This is the same definition of “records” that was already defined in Article 5 of the originally proposed regulations. Due to the great variety of producers and distributors supplying covered products to the state, making recordkeeping and audit trail requirements more specific would limit an operation’s ability to utilize existing recordkeeping and traceability systems and their ability to adopt new technologies to fulfill these requirements.

1321(v) revised the subsection number to read 1321(w).

1321(w) revised the subsection number to read 1321(x).

1321(x) revised the subsection number to read 1321(y).

1321(z) added a definition for “takes physical possession” in response to stakeholder and commenter concerns. Adding this definition is necessary to clarify what “takes physical possession” means for the regulated industry to understand that when a covered product is delivered to a buyer in California, this considered a sale under the Act and the proposal, regardless of any title changes or sales contract specifics negotiated for possession to take place prior to delivery of a covered product to a buyer within the state.

1321(y) revised the subsection number to read 1321(aa).

1321(bb) relocated to this section, a term used and defined in section 1321.1(a)(2). This change is in response to stakeholder and commenter concerns that the Department did not include a definition for the term. Relocating the definition to the definitions section is necessary to make it easier for stakeholders to locate when referring to the definition.

1321(z) revised the subsection number to read 1321(cc).

1321(aa) revised the subsection number to read 1321(dd).

1321(bb) revised the subsection number to read 1321(ee).

1321(ee) struck text as the reference to the HSC is unnecessary.

Section 1321.1. Veal Calf Confinement.

The Department struck “Veal” from the section heading for consistency of terms used throughout the Chapter.

1321.1(a) struck “veal producer or veal distributor” and added “person” which is necessary to correctly state that the subsection applies to any person engaged in a commercial sale, not

only veal producers or veal distributors. The subsection also deletes “sell or contract to sell” and adds “engage in a commercial sale” which is consistent with HSC section 25990(b) and necessary to clarify the subsection applies to both commercial sellers and commercial buyers when the sale occurs within the State. The subsection also struck “consumption” and added “food” to clarify the use is for human food, and made other grammatical edits as necessary. These changes were made in response to stakeholder and commenter concerns that the text was confusing and not consistent with HSC

1321.1(a)(1) added a new subsection to include the mandate of the Act requiring that “An enclosure shall allow the calf to lie down, stand up, fully extend limbs, and turn around freely.” This change is necessary as it addresses stakeholder and commenter concerns that the Department did not include in the regulations the “turn around/turning around freely” requirements of the Act. The Department’s addition of the requirement in the regulatory text also makes it convenient for stakeholders, so they do not have to reference to the HSC when determining compliance standards.

1321.1(a)(1) struck the subsection numbering to read 1321.1(a)(2).

1321.1(a)(2) relocated the definition of “useable floorspace” to section 1321(bb) for organizational purposes.

1321.1(a)(3) restated the text for organizational purposes.

1321.1(b) revised the text to state the requirements for veal producer third-party certification begins January 1, 2024 which is in response to stakeholder and commenter requests for the Department to delay the requirement for third-party certification of veal producers. This change is necessary to provide adequate time for outreach and education, third-party certifiers to become accredited, and third-party certification of producers. The subsection also made a grammatical change and added “for commercial sale” to further clarify the intent of the subsection which is to apply to commercial sales in California.

Section 1321.2. Veal Distributor Registration.

1321.2(a) added text to include an implementation date of January 1, 2023 for veal distributor registration in response to stakeholder and commenter requests for the Department to delay the requirement for veal distributor registration. This change is necessary to notify the affected industries that veal distributors must be registered with the Department by this future date to allow time for veal distributors to register with the Department before the deadline of January 1, 2023. The subsection text was also reordered to clarify the intent of the subsection, which is to require that any “in-state or out-of-state” person engaged in “a commercial sale into or within” the state as a veal distributor shall hold a valid registration with the Department and made other grammatical edits as necessary.

1321.2(b) revised the text for grammatical purposes.

1321.2(f) revised the text to state “calendar” days rather than business days for the timeframe within which a distributor must notify the Department of a change to their registration. This change is necessary to make the 30-day timeframe to report changes to the Department easier for the affected industries to determine.

1321.2(k) rearranged the text to clearly state when a veal distributor submits an application for veal distributor initial or renewal registration, a self-certification in lieu of the valid third-party certification required of subsection (j) will be accepted by the Department. The Department also extended acceptance of self-certifications by one year which is necessary to allow for adequate time for third-party certifiers to become accredited and provide the Department time to conduct outreach and training related to registration, and certification by an accredited third-party certifier. These changes are in response to stakeholder and commenter requests for the Department to delay the requirement for veal distributor third-party certification and for organizational purposes.

1321.2(l) rearranged the text to restate and clarify the exclusion from required distributor registration for official plants under mandatory federal inspection. These changes are in response to stakeholder and commenter requests for clarity regarding sales at USDA, FSIS establishments and for organizational purposes.

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

1321.3(a) struck obsolete text for organizational purposes.

Section 1321.4. Whole Veal Meat Shipping Document Requirements.

1321.4(a)(1) struck “shipping invoices” and “bills of lading” which is necessary because the definition of documents of title includes these documents, therefore repeating them was redundant. The subsection additionally struck text requiring specified verbiage on whole veal meat shipping documents and added new shipping document verbiage. This latter change comes in response to stakeholder and commenter concerns that the originally proposed shipping document statements may imply that the whole veal meat was produced in California. Therefore, the Department finds it necessary to make a change to the shipping document wording to clarify the whole veal meat represented was produced in compliance with California Proposition 12 by instead requiring “Veal CA Prop 12 Compliant” as stated.

1321.4(a)(2) added to the regulatory text to clarify the requirement for noncompliant whole veal meat entering California for sale to federal agencies or on tribal lands and therefore not destined for commercial sale in California, that they too maintain specified marking requirements on shipping documents. This change is necessary as it is in response to stakeholder and commenter requests for the Department to clarify whether the sale of whole veal meat to federal agencies or on tribal lands falls under the definition of commercial sale. The subsection also revised the marking statements required on shipping documents to identify the product as intended for export, transport, donation, or that it is not compliant, as specified. These changes are necessary in response to stakeholder and commenter concerns

that the originally proposed wording on shipping documents may be disparaging or otherwise prejudice export products and may cause refusal for acceptance by other countries and for consumer assurance established by the proposed regulations that implement the Act. The subsection additionally made an organizational and punctuation edit and added a statement to require the markings on shipping documents shall be legible and plainly printed or stamped, which is necessary to ensure marking requirements on shipping documents are applied consistently pursuant to the regulations.

1321.4(a)(3) revised language for consistency when referencing federal processing plants under the authority of the USDA, FSIS.

1321.4(b) added “whole” to read “whole veal meat” for consistency of terms used throughout the Chapter.

Section 1321.5. Veal Distributor Recordkeeping.

1321.5(f) struck the entire subsection for organizational purposes because it is unnecessary since section 1321.2(l) excludes official plants under mandatory inspection under the Federal Meat Inspection Act from the requirement for registration as a veal distributor. If an official plant under mandatory inspection chooses to register with the Department as a veal distributor voluntarily, then this section would apply because it is a requirement of all registered veal distributors.

Section 1321.6. Inspection of Conveyances.

1321.6(a) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1321 of this Article. This clarification is necessary because the inspection of conveyances under the authority and direction of the Department.

1321.6(b) struck text referring to an “enforcement officer” and added “the Department” to clarify every person shall stop at the request of the Department because the definition of “enforcement officer” was removed from section 1321 of this Article. This clarification is necessary because the inspection of conveyances is under the authority and direction of the Department.

1321.6(c) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1321 of this Article. This clarification is necessary because the inspection of conveyances is under the authority and direction of the Department.

Section 1321.7. Tagging and Seizure of Whole Veal Meat.

1321.7(a) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1321 of this Article. This clarification is necessary because the tagging and seizure of whole veal meat is under the authority and direction of the Department.

1321.7(b) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1321 of this Article. This clarification is necessary because the tagging and seizure of whole veal meat is under the authority and direction of the Department.

1321.7(c) struck text referring to an “enforcement officer” and added “The Department” to clarify the Department may seize and hold containers, sub-containers, lots, or loads of whole veal meat because the definition of “enforcement officer” was deleted from section 1321 of this Article. This clarification is necessary because the tagging and seizure of whole veal meat is under the authority and direction of the Department. The subsection also struck a second “enforcement officer” reference and added “whole” to read “whole veal meat” two times for consistency.

1321.7(d) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was removed from section 1320 of this Article. The definition of “enforcement officer” was removed because the tagging and seizure of whole veal meat is under the authority and direction of the Department.

Section 1321.8. Written Certification.

The Department is adding to the statement of purpose and necessity for stakeholder clarity that this proposed section would establish specific requirements to strengthen the basis of written attestations to ensure they are accurate, truthful, and auditable. A business owner or operator may rely on written certification because HSC section 25993.1 provides 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 was not derived from a calf who was confined in a cruel manner.

1321.8(b) added “physical” which is necessary for consistency with new subsection 1321(z) which defines “takes physical possession”. The subsection made grammatical changes as necessary for clarity and added “which does not hold a valid veal distributor registration” to clarify who needs to follow the requirements of the subsection. An official plant at which mandatory inspection is maintained under the Federal Meat Inspection Act may register with the Department as a veal distributor, but it is not a requirement. This is necessary to give official plants under mandatory inspection under the Federal Meat Inspection Act the option to register with the Department, if that registration then eases the burden of an audit trail on their end-user customers. If a retailer or food processor end-user takes physical possession of whole veal meat from a registered veal distributor, then this section does not apply. Changes to this subsection are for consistency and organizational purposes to further clarify the intent as proposed.

1321.8(b)(3) struck “state or local health agencies” which is necessary because implementation of the requirements will take place under the authority and direction of the Department.

1321.8(c) revised language for consistency when referencing federal processing plants under the authority of the USDA, FSIS.

Section 1321.9. Denial, Suspension, or Revocation of Egg Distributor Registration

1321.9(b) added a new subsection to describe the procedures taken by the Department for a proposed suspension or revocation of a veal distributor registration, which is necessary to provide notice of the proposed action and to inform the distributor of the: (1) date the proposed suspension or revocation is issued; (2) reason for the proposed suspension or revocation; (3) effective date of the proposed suspension or revocation, including a statement that the effective date is 30 calendar days after the date issued; (4) future eligibility for registration including conditions for reinstatement; and (5) right to request a formal hearing which must be requested within 30 calendar days of the date the proposed suspension or revocation was issued. The subsection also informs the distributor that their registration shall remain in effect pending the outcome of a formal hearing which is necessary, so the distributor understands the status of their registration during this time.

1321.9(b) revised the subsection numbering to read 1321.9(c).

1321.9(c) deleted obsolete text and clarified that a person may appeal the Department's decision to deny a registration or a renewal of a registration and struck "certificate" because it was redundant. The Department replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceedings specified in section 1327.2 of these regulations and added "within 30 calendar days of date of the notice of denial" to inform the distributor of the timeframe for appealing a notice of denial. These changes are necessary because they clarify that a person may appeal the Department's decision for a denial of an application or renewal of a registration and reference the affected stakeholders to a new subsection in the regulations dedicated to detailing the procedures for such action.

1321.9(c) struck the entire subsection because the proposed requirements are revised and included in modified subsection (b)(5).

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

1321.10 struck the entire section to avoid confusion because stakeholders will need to comply with all other applicable laws and regulations outside of this proposal, not only those laws and regulations with the Department of Public Health.

Article 3. Breeding Pigs.

Section 1322. Definitions.

1322(a) made a punctuation edit.

1322(b) added language to clarify that the records consisting of an audit trail are applicable to the breeding pig, as well as the immediate offspring of a breeding pig, which is necessary for

consistency with the HSC.

1322(c) struck reference to the HSC because it is unnecessary.

1322(f) struck “offer for sale”, “expose for sale”, “possess for sale”, added “title or”, struck “otherwise”, and added “conditional or otherwise” which is necessary to clarify the intent of and accurately describe the meaning of a commercial sale in the context of the proposed regulations and the statute. Offering, exposing, and possessing whole pork meat does not constitute a commercial sale under this proposal therefore it is necessary to remove this language from the definition. The Department additionally revised the definition to include the exclusion as stated in subsection (4) for organizational purposes and added “commercial” for consistency in the regulatory text when referring to the sale of whole pork meat.

1322(f)(1) struck “for human consumption” which is necessary to describe and clearly state that any whole pork meat produced outside of the state, not only whole pork meat intended for human consumption as currently stated, entering, and exiting California, without additional processing or repacking and exported outside of the state is not included in the definition of whole pork meat and therefore is not included in commercial sale pursuant to the regulations.

1322(f)(2) struck “official” for consistency when referencing federal processing plants under the authority of the USDA, FSIS. The subsection also added clarification to those transactions or transfers of possession of covered product to federal agencies or taking place on federal lands are excluded from the definition of commercial sale. This added language is necessary to add clarification that sales to the federal government or made on federal lands are exempt from the definition of a commercial sale and is in response to stakeholder and commenter questions about sales to federal agencies and on federal lands.

1322(f)(3) added a new subsection to clarify transactions or transfers of possession of covered product taking place on tribal lands in California are not considered a commercial sale, and therefore excluded from the Act and regulations. This change is in response to stakeholder and commenter questions about sales on tribal lands and is necessary to clearly exclude sales taking place on tribal lands from the definition of commercial sale.

1322(f)(3) revised the subsection numbering to read 1322(f)(4).

1322(f)(4) struck “religious, charitable, scientific, educational, or other”. This change is in response to stakeholder and commenter requests for the Department to clarify the exclusion from definition of a commercial sale for non-profits donating covered products. Deleting these specific types of donations is necessary to clarify that all nonprofit organizations which meet the definition of a 501(c)(3) are included in the exemption of “commercial sale” if the covered product is donated to the nonprofit.

1322(f)(4) struck the entire subsection and revised the text for inclusion in subsection (f) for organizational purposes.

1322(g) struck “uncooked” for consistency of terms used throughout the Chapter. The subsection also struck “family” and added “personal” because “personal” rather than “family” accurately describes how use or consumption of whole pork meat occurs by a consumer pursuant to the proposal.

1322(m) made a grammatical edit and added “but are not limited to” with punctuation edits, to clarify that the provided list of examples of the documents constituting a document of title is not exhaustive.

1322(o)(2) struck text to define an end-user accurately and clearly in the context of a retailer. This change is necessary to clearly describe that an end-user is a retailer whether or not the whole pork meat they sell to a consumer is purchased or received from a pork distributor.

1322(p) struck the definition of “enforcement officer” because only the Department will implement the requirements of this proposal and therefore a general term which includes the Department and the DPH is unnecessary.

1322(q) revised the subsection number to read 1322(p).

1322(q) added text which is necessary to clarify and narrow the scope of the reference to Part 184 of Title 21 of the Code of Federal Regulations to substances with a use described as a flavoring, flavoring agent, or flavoring enhancer. This change came at the request of stakeholders and commenters.

1322(r) revised the subsection number to read 1322(q).

1322(s) revised the subsection number to read 1322(r).

1322(t) revised the subsection number to read 1322(s).

1322(u) revised the subsection number to read 1322(t).

1322(v) revised the subsection number to read 1322(u).

1322(u) added text to the definition of “pork producer” to clarify the source of the whole pork meat as “from a breeding pig or her immediate offspring”, which is consistent with the HSC section 25990(b)(2) which is necessary for stakeholders to know who would be considered a pork producer under the Act and this proposal. The Department also revised the text to clarify the purpose of the pork meat is for “human” consumption” to be consistent with the definition of “pork meat” in HSC section 25991(n).

1322(v) added “production cycle” to clarify the meaning of the term as used throughout the Article. This change is in response to stakeholder and commenter concerns that the regulations lacked clarity regarding life stages of a breeding pig in relation to the regulations and the Act. This definition is necessary for stakeholders to understand that a breeding pig

must be confined according to the Act for the duration of her “production cycle” for the piglets from that production cycle to be considered compliant for California. In addition, this definition allows a breeding pig to produce compliant immediate offspring without having to be in compliant housing since the breeding pig was a young gilt. This will allow pork producers to move adult sows into compliant housing as barn construction is completed.

1322(x) added a new term which is necessary to make the proposed recordkeeping requirements specific by defining what forms or type of information the Department considers “records”. This change is in response to stakeholder and commenter concerns that the Department’s record requirements should be more specific and allow for electronic records. This is the same definition of “records” that was already defined in Article 5 of the originally proposed regulations. Due to the great variety of producers and distributors supplying covered products to the state, making recordkeeping and audit trail requirements more specific would limit an operation’s ability to utilize existing recordkeeping and traceability systems and their ability to adopt new technologies to fulfill these requirements.

1322(x) revised the subsection number to read 1322(y).

1322(y) revised the subsection number to read 1322(z).

1322(z) revised the subsection number to read 1322(aa).

1322(bb) added a definition for “takes physical possession” in response to stakeholder and commenter concerns. Adding this definition is necessary to clarify what “takes physical possession” means for the regulated industry to understand that when a covered product is delivered to a buyer in California, this considered a sale under the Act and the proposal, regardless of any title changes or sales contract specifics negotiated for possession to take place prior to delivery of a covered product to a buyer within the state.

1322(aa) revised the subsection number to read 1322(cc).

1322(dd) relocated to this section, a term used and defined in section 1322.1(a)(2). This change is in response to stakeholder and commenter concerns that the Department did not include a definition for the term. Relocating the definition to the definitions section is necessary to make it easier for stakeholders to locate when referring to the definition.

1322(bb) revised the subsection number to read 1322(ee).

1322(ee) struck text as the reference to the HSC is unnecessary.

Section 1322.1. Breeding Pig Confinement.

1322.1(a) struck “pork producer or pork distributor” and added “person” which is necessary to correctly state that the subsection applies to any person engaged in a commercial sale, not only pork producers or pork distributors. The subsection also deletes “sell or contract to sell”

and adds “engage in a commercial sale” which is consistent with HSC section 25990(b) and necessary to clarify the subsection applies to both commercial sellers and commercial buyers when the sale occurs within the State. The subsection struck “consumption” and added “food” to clarify the use is for human food. The subsection also added text to clarify compliance with the confinement standards for a breeding pig, or the product of the immediate offspring of a breeding pig, is required “at any time during the production cycle” for said product, which is consistent with the definition of “production cycle” and it necessary for tracing product back to sows housed in compliance with the Act. These changes were made in response to stakeholder and commenter concerns that the text was confusing and not consistent with HSC. Lastly, the subsection made grammatical edits as necessary.

1322.1(a)(1) added a new subsection to include the mandate of the Act requiring that “An enclosure shall allow the breeding pig to lie down, stand up, fully extend limbs, and turn around freely”. This change is necessary as it addresses stakeholder and commenter concerns that the Department did not include in the regulations the “turn around/turning around freely” requirements of the Act. The Department’s addition of the requirement in the regulatory text also makes it convenient for stakeholders, so they do not have to reference to the HSC when determining compliance standards.

1322.1(a)(1) struck the subsection numbering to read 1322.1(a)(2).

1322.1(a)(2) struck “Commencing January 1, 2022” and added “After December 31, 2021” for consistency with the requirements as stated in the Act.

1322.1(a)(2) relocated the definition of “useable floorspace” to subsection 1322(dd) for organizational purposes.

1322.1(a)(3) restated the text for organizational purposes.

1322.1(b) revised the text to state the requirements for pork producer third-party certification begins January 1, 2024 which is in response to stakeholder and commenter requests for the Department to delay the requirement for third-party certification of pork producers. This change is necessary to provide adequate time for outreach and education, third-party certifiers to become accredited, and third-party certification of producers. The subsection also made a grammatical change and added “for commercial sale” to further clarify the intent of the subsection is to apply to commercial sales in California.

Section 1322.2. Pork Distributor Registration.

1322.2(a) added text to include an implementation date of January 1, 2023 for pork distributor registration in response to stakeholder and commenter requests for the Department to delay the requirement for pork distributor registration. This change is necessary to notify the affected industries that pork distributors must be registered with the Department by this future date to allow time for pork distributors to register with the Department before the deadline of January 1, 2023. The subsection text was also reordered to clarify the intent of the subsection, which is

to require that any “in-state or out-of-state” person engaged in “a commercial sale into or within” the state as a pork distributor shall hold a valid registration with the Department and made other grammatical edits as necessary.

1322.2(b) revised the text for grammatical purposes.

1322.2(f) revised the text to state “calendar” days rather than business days for the timeframe within which a distributor must notify the Department of a change to their registration. This change is necessary to make the 30-day timeframe to report changes to the Department easier for the affected to determine.

1322.2(k) rearranged the text to clearly state when a pork distributor submits an application for pork distributor initial or renewal registration, a self-certification in lieu of the valid third-party certification required of subsection (j) will be accepted by the Department. The Department also extended acceptance of self-certifications by one year which is necessary to allow for adequate time for third-party certifiers to become accredited and provide the Department time to conduct outreach and training related to registration, and certification by an accredited third-party certifier. These changes are in response to stakeholder and commenter requests for the Department to delay the requirement for pork distributor third-party certification and for organizational purposes.

1322.2(l) rearranged the text to restate and clarify the exclusion from required distributor registration for official plants under mandatory federal inspection. These changes are in response to stakeholder and commenter requests for clarity regarding sales at USDA, FSIS establishments and for organizational purposes.

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

1322.3(a) struck obsolete text for organizational purposes.

Section 1322.4. Whole Pork Meat Shipping Document Requirements.

1322.4(a)(1) struck “Commencing January 1, 2022,” because regulations will not be implemented by this date therefore, this language is obsolete. The subsection struck “shipping invoices” and “bills of lading” which is necessary because the definition of documents of title includes these documents, therefore repeating them was redundant. The subsection additionally struck text requiring specified verbiage on whole pork meat shipping documents and added new shipping document verbiage. These changes come in response to stakeholder and commenter concerns that the originally proposed shipping document statements may imply that the whole pork meat was produced in California. Therefore, the Department finds it necessary to make a change to the shipping document wording to clarify the whole pork meat represented was produced in compliance with California Proposition 12 by instead requiring “Pork CA Prop 12 Compliant” as stated.

1322.4(a)(2) added to the regulatory text to clarify the requirement for noncompliant whole pork meat entering California for sale to federal agencies or on tribal lands and therefore not destined for commercial sale in California, that they too must maintain specified marking requirements on shipping documents. This change is necessary as it is in response to stakeholder and commenter requests for the Department to clarify whether the sale of whole pork meat to federal facilities or on tribal lands falls under the definition of commercial sale. The subsection also revised the marking statements required on shipping documents to identify the product as intended for export, transport, donation, or that it is not compliant, as specified. These changes are necessary in response to stakeholder and commenter concerns that the originally proposed wording on shipping documents may be disparaging or otherwise prejudice export products and may cause refusal for acceptance by other countries and for consumer assurance established by the proposed regulations that implement the Act. Lastly, the subsection added a statement to require the markings on shipping documents shall be legible and plainly printed or stamped, which is necessary to ensure marking requirements on shipping documents are applied consistently pursuant to the regulations.

1322.4(a)(3) revised language for consistency when referencing federal processing plants under the authority of the USDA, FSIS.

Section 1322.5. Pork Distributor Recordkeeping.

1322.5(f) struck the entire subsection for organizational purposes because it is unnecessary since section 1322.2(l) excludes official plants under mandatory inspection under the Federal Meat Inspection Act from the requirement for registration as a pork distributor. If an official plant under mandatory inspection chooses to register with the Department as a pork distributor voluntarily, then this section would apply because it is a requirement of all registered pork distributors.

Section 1322.6. Inspection of Conveyances.

1322.6(a) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1322 of this Article. This clarification is necessary because the inspection of conveyances under the authority and direction of the Department.

1322.6(b) struck text referring to an “enforcement officer” and added “the Department” to clarify every person shall stop at the request of the Department because the definition of “enforcement officer” was removed from section 1322 of this Article. This clarification is necessary because the inspection of conveyances is under the authority and direction of the Department.

1322.6(c) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1322 of this Article. This clarification is necessary because the inspection of conveyances is under the authority and direction of the Department.

Section 1322.7. Tagging and Seizure of Whole Pork Meat.

1322.7(a) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1322 of this Article. This clarification is necessary because the tagging and seizure of whole pork meat is under the authority and direction of the Department. The subsection also added “whole” to read “whole pork meat” two times for consistency with terms used throughout the Chapter.

1322.7(b) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was deleted from section 1322 of this Article. This clarification is necessary because the tagging and seizure of whole pork meat is under the authority and direction of the Department.

1322.7(c) struck text referring to an “enforcement officer” and added “The Department” to clarify the Department may seize and hold containers, sub-containers, lots, or loads of whole pork meat because definition of “enforcement officer” was deleted from section 1322 of this Article. This clarification is necessary because the tagging and seizure of whole pork meat is under the authority and direction of the Department. The subsection also struck a second “enforcement officer” reference and added “whole” to read “whole pork meat” three times for consistency with terms used throughout the Chapter.

1322.7(d) struck text referring to an “enforcement officer” because the definition of “enforcement officer” was removed from section 1322 of this Article. The definition of “enforcement officer” was removed because the tagging and seizure of whole pork meat is under the authority and direction of the Department.

Section 1322.8. Written Certification.

The Department is adding to the statement of purpose and necessity for stakeholder clarity that this proposed section would establish specific requirements to strengthen the basis of written attestations to ensure they are accurate, truthful, and auditable. A business owner or operator may rely on written certification because HSC section 25993.1 provides 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 pork meat was not derived from a breeding pig who was confined in a cruel manner.

1322.8(b) added “physical” which is necessary for consistency with new subsection 1322(bb) which defines “takes physical possession”. The subsection made grammatical changes for consistency of terms used throughout the Chapter and added “which does not hold a valid pork distributor registration” to clarify who needs to follow the requirements of the subsection. An official plant at which mandatory inspection is maintained under the Federal Meat Inspection Act may register with the Department as a pork distributor, but it is not a requirement. This is necessary to give official plants under mandatory inspection under the Federal Meat Inspection Act the option to register with the Department, if that registration then eases the burden of an audit trail on their end-user customers. If a retailer or food processor end-user takes physical possession of whole pork meat from a registered pork distributor, then this section does not apply. Changes to this subsection are for organizational purposes to clarify the intent as proposed.

1322.8(b)(3) struck “state or local health agencies” which is necessary because implementation of the requirements will take place under the authority and direction of the Department.

1322.8(c) revised the text for consistency when referencing federal processing plants under the authority of the USDA, FSIS.

Section 1322.9. Denial, Suspension, or Revocation of Pork distributor Registration.

1322.9(b) added a new subsection to describe the procedures taken by the Department for a proposed suspension or revocation of a pork distributor registration, which is necessary to provide notice of the proposed action and to inform the distributor of the: (1) date the proposed suspension or revocation is issued; (2) reason for the proposed suspension or revocation; (3) effective date of the proposed suspension or revocation, including a statement that the effective date is 30 calendar days after the date issued; (4) future eligibility for registration including conditions for reinstatement; and (5) right to request a formal hearing which must be requested within 30 calendar days of the date the proposed suspension or revocation was issued. The subsection also informs the distributor that their registration shall remain in effect pending the outcome of a formal hearing which is necessary, so the distributor understands the status of their registration during this time.

1322.9(b) revised the subsection numbering to read 1322.9(c).

1322.9(c) deleted obsolete text and clarified that a person may appeal the Department's decision to deny a registration or a renewal of a registration and struck “certificate” because it was redundant. The Department replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceedings specified in section 1327.2 of these regulations and added “within 30 calendar days of date of the notice of denial” to inform the distributor of the timeframe for appealing a notice of denial. These changes are necessary because they clarify that a person may appeal the Department's decision for a denial of an application or renewal of a registration and reference the affected stakeholders to a new subsection in proposed regulations dedicated to detailing the procedures for such action.

1322.9(c) struck the entire subsection because the proposed requirements are revised and included in modified subsection (b)(5).

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

1322.10 struck the entire section to avoid confusion because stakeholders will need to comply with all other applicable laws and regulations outside of this proposal, not only those laws and regulations with the Department of Public Health.

Article 4. Exceptions.

Section 1324. Definitions.

The subsection added an introductory statement for consistency with the definition sections in all articles of this proposal.

1324(a) added a definition for “breeding pig” to define the term as used in the Article, which is consistent with the term defined in Article 3. Breeding Pigs.

1324(a) revised the subsection number to read 1324(b).

1324(b) revised the subsection number to read 1324(c).

1324(c) added to the definition of “medical research” to additionally include medical research conducted at a facility accredited by the American Association for Accreditation of Laboratory Animal Care (AAALAC). This change is in response to stakeholder and commenter comments that the definition as originally proposed may limit funding sources for legitimate medical research and recommendation the definition should be expanded to provide for medical research funded privately or through other mechanisms. The Department agreed and added the reference to the definition.

Section 1324.1. Confinement Standards Exceptions.

The Department added a new section heading and section 1324.1(a)(1) through (7) which is necessary to inform the regulated industry of exceptions to the confinement standards as a part of the regulatory text as they are stated in the Act. This change is in response to stakeholder and commenter concerns that the Department should include all relevant exceptions to the confinement standards as stated in the Act for egg-laying hens, calves, and breeding pigs, rather than referencing the HSC in the confinement section of each article. The Department recognizes repeating exact wording of statute into regulatory text is uncommon, however the Department’s addition of the exceptions as stated in the Act into the proposed modified regulatory text as subsections 1324.1(a)(1) through (7) in this case, makes it less confusing and convenient for stakeholders, so they do not have to reference to the HSC when determining applicable exceptions to the Act’s compliance standards. The Department also added the required authority and reference citations.

Article 5. Certification and Accredited Certifiers.

Section 1326. Definitions.

1326.(b) made a punctuation edit.

1326(c) revised the text which is necessary to add clarity to the specific areas and items that a certifying agent may certify pursuant to the Chapter and made other changes for consistency of terms used throughout the Chapter.

1326(h) added subsections necessary to ensure the details provided by definitions in the HSC for a breeding pig, calf, and an egg-laying hen are also considered in the definition of “covered animal.”

1326(i)(1) revised the reference to the definition of shell eggs and made a grammatical edit.

1326(i)(2) made an edit for grammatical purposes.

1326(i)(3) revised the reference to the definition of whole veal meat and made grammatical edits.

1326(i)(4) revised the reference to the definition of whole pork meat.

1326(k) revised the references to the definitions of veal distributor and pork distributor.

1326(p) added “area of” to clarify that “inspection” is limited to the area being certified, not the entire operation.

1326(v) revised the references to the definitions of veal producer and pork producer.

Section 1326.1. General Requirements for Certification.

1326.1(d) added “in California”, necessary to add clarity the intent of the subsection.

1326.1(e) added “in California”, necessary to clarify the intent of the subsection.

Section 1326.3. Application for Certification.

1326.3(a)(4) added “and” for grammatical purposes.

1326.3(a)(5) made a punctuation edit and struck “and” for grammatical purposes.

Section 1326.4. Review of Application for Certification.

1326.4(a)(3) made a punctuation edit, added “or” and struck “or revocation” to resolve potentially conflicting language and clarify revocation of certification is not applicable to this subsection. Revocation and suspension are addressed in section 1326.20.

1326.4(c) made a grammatical change to read “withdraws” two times.

1326.4(d) replaced “verification” with “inspection” because inspection is the appropriate term and is included in the definitions in section 1326, and “verification is not defined.

Section 1326.5. On-site Inspections.

The section heading added “Certification” which is necessary to differentiate between the certifying agent on-site inspections as proposed in section 1326.16.

1326.5(b)(2) added text to clarify when a certifying agent schedules an on-site inspection, the authorized representative of the operation who is knowledgeable about the operation must have access to operation records and struck the text exempting the requirement for an authorized representative to be present during unannounced inspections. For efficiency and to minimize inspection burdens, scheduling inspections when a representative can access required records is necessary. The requirement for an authorized representative to be present during all on-site inspections is necessary to ensure biosecurity protocols of the farm are followed and to provide access to locations and paperwork related to covered animals and covered product only. The Department, however, retains the right to unannounced visits at the location of covered animals and covered product to verify compliance to ensure program integrity, but will not enter the facility unless an authorized representative as described is present.

1326.5(d) revised the text for correct and consistent use of the word “certifying agent”, rather than “inspector”, two times in the subsection.

Section 1326.6. Granting Certification.

1326.6(a) added “certifying” to read “certifying agent” for clarity.

1326.6(c) replaced “verification” with “inspection” as inspection is the appropriate term for purposes of these regulations.

Section 1326.7. Denial of Certification.

1326.7(a) replaced “notification” with “notice” twice for consistency of terms used throughout the Chapter and made a grammatical edit.

1326.7(d) added “within 30 calendar days of the date issued” which is necessary to clarify the timeframe within which the affected industry must respond to the notice of noncompliance and to ensure noncompliance is resolved within a reasonable period of time.

1326.7(e)(2) revised the reference to read “section 1327.3” for clarity and added “within 30 calendar days of date of notice or denial” which is necessary to clarify the timeframe within which the affected industry must request mediation.

1326.7(e)(3) revised the text to correctly state an applicant’s right to “request” a formal hearing and for clarity and ease of reference and replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceeding specified in section 1327.2 of the regulations.

1326.7(f) added “certifying” which was omitted in error.

1326.7(g) made a punctuation edit, added “or” and struck “or revocation” to clarify revocation of certification is not applicable to this subsection.

1326.7(h) replaced “reason to believe” with “evidence” and struck “willfully” and “purposefully” for consistency of terms used throughout the Chapter and necessary to accurately state the intent of the subsection.

Section 1326.8. Continuation of Certification.

1326.8(a)(2) struck “minor” and added “any” to require a certified operation to update the correction of “any” noncompliances previously identified by a certifying agent when submitting renewal information as a part of continued certification. This change comes in response to stakeholder and commenter concerns and is necessary to prevent application of inconsistent standards when determining a continued certification.

1326.8(e) added “calendar” for clarity and grammatical purposes.

1326.8(f) replaced “verification” with “inspection” as inspection is the more appropriate term, made a punctuation edit, and added “to determine” for clarity.

Section 1326.10. General Requirements for Accredited Certifying Agents.

1326.10(a)(7) added “that was” for grammatical purposes.

1326.10(a)(10)(A) added “calendar” which is necessary to provide clarity to the timeframe for submitting documents as stated and replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.10(c) added text to fully describe possible reasons for discrimination as described in the California Fair Employment Practices Act.

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

1326.12(a) made a punctuation edit.

1326.12(c) struck “veal” for consistency when referring to calves and made an organizational edit.

Section 1326.13. Evidence of Expertise and Ability.

1326.13(a)(1) deleted “and evaluation” which is necessary because the Department does not anticipate use of an evaluation committee as described.

1326.13(a)(3) added “including biosecurity training” to the required documents and information a prospective certifying agent must submit to the Department to demonstrate personnel

conducting inspections have sufficient expertise to successfully perform on-site inspections of producer operations while maintaining animal health. This added text is in response to stakeholder and commenter concerns and is necessary because accredited certifying agents coming on farm for inspections must be able to follow the farm's biosecurity protocols.

1326.13(b)(1) replaced "certification" with "certificates" for clarity.

Section 1326.14. Granting Accreditation.

1326.14(a)(2) replaced "evaluation" with "inspection" for consistency of terms used throughout the Chapter.

Section 1326.15. Denial of Accreditation.

1326.15(a) replaced "reason to believe" with "evidence" and "evaluation" with "inspection" which is necessary to accurately describe criteria that may be used by the Department for determining accreditation status and for consistency of terms used throughout the Chapter.

1326.15(c) replaced "notification" with "notice" twice for consistency of terminology used throughout this Article and struck the Government Code reference to formal hearing proceedings. The subsection added a reference to section 1327.2 describing the formal hearing proceedings pursuant to these regulations which is necessary to clarify that a person may appeal the Department's decision to deny an application for accreditation and directs stakeholders to a new subsection in proposed regulations dedicated to detailing the procedures to follow for such action. The subsection also added "within 30 calendar days of the notice of denial" which is necessary to inform the applicant of the timeframe for requesting a formal hearing.

1326.15(d) replaced "evaluation" with "inspection" twice for consistency of terms used throughout the Chapter.

Section 1326.16. On-site Evaluations.

Added "Certifying Agent" to the section heading which is necessary to differentiate between the certification on-site inspections proposed in section 1326.5 and replaced "Evaluations" with "Inspections" and for consistency of terms used throughout the Chapter.

1326.16(a) replaced "evaluation" with "inspection" three times for consistency of terms used throughout the Chapter. The subsection also added "records to" which is necessary to clearly describe the actions (evaluation of records) that may take place during an on-site inspection and made a grammatical edit to allow for the review of records held by a certifying agent during an on-site visit which is needed to receive and maintain accreditation.

1326.16(b) replaced "evaluation" with "inspection" three times and replaced "notification" with "notice" for consistency of terms used throughout the Chapter.

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

1326.17(b)(3) struck text excluding specified recordkeeping which is necessary because it no longer applies to the proposed text.

1326.17(c)(1) replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.17(c)(2) replaced “evaluation” with “inspection” for consistency of terms used throughout the Chapter.

1326.17(e) replaced the Government Code reference to formal hearing proceedings with a reference to section 1327.2 describing the formal hearing proceedings pursuant to these regulations which is necessary to clarify that a person may appeal the Department’s decision to deny a renewal for accreditation and directs stakeholders to a new subsection in proposed regulations dedicated to detailing the procedures to follow for such action. The subsection also added “within 30 calendar days of the notice of denial” to inform the applicant of the timeframe for requesting a formal hearing.

1326.17(h) added “calendar” which is necessary to clarify the timeframe within which an accredited certifier must report changes as specified.

Section 1326.18. General Compliance.

1326.18(b)(2) added specified text to clarify the Department may initiate suspension or revocation proceedings when the certifying agent is not the Department. This is necessary because the Department is the agency designated to ensure the Act is implemented and therefore when a certifying agent that is not the Department fails to take required actions, it is the Department that may do so.

1326.18(d) revised the text to clarify notification by the Department to a certifying agent and responses to that notification as specified, must be sent “in writing” to ensure there is no misunderstanding and there is a record of communication, and struck requirements stating the location and method of such notification to provide for more flexibility and recognize other efficient and reliable methods of written notification.

Section 1326.20. Noncompliance Procedure for Certified Operations.

1326.20(a)(1) added a new subsection stating “The date issued” to require the notification of noncompliance to include this information for clarity. The date issued must be included to establish an accurate record of communication.

1326.2(a)(1) revised the subsection number to read 1326.20(a)(2).

1326.2(a)(2) revised the subsection number to read 1326.20(a)(3).

1326.2(a)(3) revised the subsection number to read 1326.20(a)(4).

1326.20(c) replaced “notification” with “notice” two times for consistency of terms used throughout the Chapter, added “notice of” for clarity, and struck “in one notification” because the text is obsolete.

1326.20(c)(1) added a new subsection to state “The date the proposed suspension or revocation was issued” requiring the notice of proposed suspension or revocation of certification to include this information for clarity.

1326.20(c)(1) revised the subsection number to read 1326.20(c)(2).

1326.20(c)(2) revised the subsection number to read 1326.20(c)(3).

1326.20(c)(3) relocated “proposed” to make it clear that it is the action that is proposed and will not be effective until the date specified.

1326.20(c)(3)(A) struck “maximum” to remove the possibility of arbitrary timeframes that are less than 30 days before a proposed action as specified becomes final and replaced “notification” with “the notice” for consistency of terms used throughout the Chapter.

1326.20(c)(3) revised the subsection number to read 1326.20(c)(4).

1326.20(c)(4) revised the subsection number to read 1326.20(c)(5).

1326.20(c)(5) revised the reference to read section 1327.3 which describes the mediation proceedings pursuant to these regulations, replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing procedures specified in section 1327.2 of these regulations for clarity and ease of reference, and added “within 30 calendar days of the date the proposed suspension or revocation was issued” for clarity and to ensure expedient resolution consistent with the timeframe before the proposed action takes effect. These changes describe content of the notice of proposed suspension or revocation of certification which is necessary to inform a certified operation of the options they have when a certifying agent is proposing a suspension or revocation of their certification and the timeframe for requesting mediation or a formal hearing. The subsection additionally deleted language describing the pending outcome of an appeal. This deleted text is revised and restated in new subsection (6) below.

1326.20(c)(6) added a new subsection restating from subsection (5) above that the certifying agent and the Department will not issue a notice of suspension or revocation while the outcome from mediation or a formal hearing is pending which was necessary to clearly describe the

intent of the subsection and provide the opportunity for an entity to appeal the action specified before the action becomes effective.

1326.20(d) replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.20(e)(1) replaced “file an appeal” with “request a formal hearing”, added “the”, struck obsolete text “according to the notice of proposed suspension or revocation”, and replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.20(e)(2) replaced “notification” with “notice” for consistency of terms used throughout the Chapter, revised the reference to read section 1327.3 which describes the mediation proceedings pursuant to these regulations, and replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceedings specified in section 1327.2 of these regulations for clarity and ease of reference.

1326.20(f)(1) replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.20(f)(3) struck the entire subsection because the proposed requirements are revised and included in modified subsections (e)(1) and (e)(2).

Section 1326.21. Noncompliance Procedure for Accredited Certifying Agents.

1326.21(c) replaced “notification” with “notice” two times and added “notice of” for consistency of terms used throughout the Chapter to correctly refer to the notice of proposed suspension or revocation of accreditation. The subsection additionally struck obsolete and potentially confusing text explaining the notification would state whether the certifying agent’s accreditation or specified areas of accreditation are to be suspended or revoked because the notice is “proposed” and is for suspension or revocation.

1326.21(c)(1) added a new subsection stating “the date the proposed suspension or revocation was issued” to require the notice of proposed suspension or revocation of accreditation to include this information to establish an accurate record of communication and make clear the period of time available to appeal the proposed action.

1326.21(c)(1) revised the subsection to read 1326.21(c)(2).

1326.21(c)(2) revised the subsection to read 1326.21(c)(3).

1326.21(c)(3) relocated “proposed” to make it clear that it is the action that is proposed and will not be effective until the date specified.

1326.21(c)(3)(A) struck “maximum” to remove the possibility of arbitrary timeframes that are less than 30 days before a proposed action as specified becomes final and replaced “notification” with “the notice” for consistency of terms used throughout the Chapter.

1326.21(c)(3) revised the subsection to read 1326.21(c)(4).

1326.21(c)(4) revised the subsection to read 1326.21(c)(5).

1326.21(c)(5) replaced “file” with “request” with respect to the formal hearing for consistency of terminology, replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceedings specified in section 1327.2 of these regulations for clarity and ease of reference, and added “within 30 calendar days of the date the proposed suspension or revocation was issued” for clarity and to ensure expedient resolution consistent with the timeframe before the proposed action takes effect. These changes describe content of the notice of proposed suspension or revocation of accreditation which is necessary to inform an accredited certifying agent of the options they have when the Department is proposing a suspension or revocation of their accreditation and the timeframe for requesting mediation or a formal hearing. The subsection additionally deleted language describing the pending outcome of an appeal. This deleted text is revised and restated in new subsection (6) below.

1326.21(c)(6) added a new subsection restating from subsection (5) above that the Department will not issue a notice of suspension or revocation while the outcome from a formal hearing is pending which was necessary to clearly describe the intent of the subsection and provide the opportunity for an entity to appeal the action specified before the action becomes effective.

1326.21(d) replaced “reason to believe” with “evidence” to provide assurance that described compliance actions by the Department will not be taken without a basis for doing so and replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.21(e) replaced “file” with “request” and deleted “appeal” for consistency of terms used throughout the Chapter. The subsection additionally added “30 calendar days from the date the proposed suspension or revocation was issued” to inform the accredited certifying agent of the timeframe to request the formal hearing and to ensure expedient resolution consistent with the timeframe before the proposed action takes effect.

1326.21(g)(1) replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.21(g)(3) struck the entire subsection because the proposed requirements are revised and included in modified subsection (c)(5).

Section 1326.22. Government Entity Providing Certification.

1326.22(a)(2) replaced “notification” with “notice” for consistency of terms used throughout the Chapter.

1326.22(a)(3) replaced “or” with “and” for consistency of terms used throughout the Chapter and because a list of new as well as continuing certifications is necessary to ensure all operations are included.

1326.22(b) replaced “certifier” with “certifying agent” for consistency of terms used throughout the Chapter.

Article 6. Informal Hearing and Mediation.

The Department struck “Informal” from the section heading for clarity and made a grammatical edit.

Section 1327.2. Formal Hearing Procedures.

For ease of reference and to add specificity that provides clear direction, the Department added a new subsection to inform the regulated industry of the procedures required when requesting a formal hearing to contest a notice of adverse determination issued by the Department.

1327.2(a) informs a respondent that they may contest a notice of adverse determination pursuant to the sections as specified. This subsection is necessary to identify the sections in the Chapter where a formal hearing may be used to contest the notice of adverse determination.

1327.2(b) informs the respondent that the request for a formal hearing must be in writing and sent to the Department as specified. This section is necessary to establish a clear record of communication.

1327.2(c) informs the respondent the conduct of the formal hearing which is pursuant to the Government Code authorizing use of formal hearings.

1327.2(d) informs a respondent that the adverse determination shall remain in effect pending the outcome of a formal hearing which adds clarity that “proposed” actions being appealed will remain in place as “proposed”, and adverse actions taken will remain in effect until the hearing is complete.

The subsection added the applicable authority and reference citations pertaining to the regulation section.

Section 1327.3. Mediation.

The Department revised the section numbering to read Section 1327.3. Mediation.

1327.3(a) revised the text to clearly state mediation may be requested for “adverse actions that include” for clarity.

1327.3(c) added “of an adverse action” to clarify the intent of the subsection.

1327.3(c)(1) added “of the proposed adverse action” to clarify the intent of the subsection, replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceedings specified in section 1327.2, and added “calendar” to clarify the timeframe as stated.

1327.3(e) added “calendar” two times to clarify the timeframe as stated, added “to deny, suspend, or revoke certification” to accurately state the intent of the subsection, and replaced the reference to the formal hearing proceedings specified in Government Code with the formal hearing proceedings specified in section 1327.2 of these regulations for clarity and ease of reference.

2.2. Modifications Provided for in the Second 15-day Comment Period

Article 1. Egg-laying Hens.

Section 1320. Definitions.

1320(l) added “egg-laying” in the definition of “egg-laying hen” to clarify which kind of hens the definition is describing and for consistency of how “hen” is used throughout the Chapter.

1320(p) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1320(s) added a comma to correct the punctuation.

1320(t)(1) through (9), and (12) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1320(y) added language to clarify the referenced CFR section(s) are part of the proposed regulations and are incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1320(bb) corrected the misspelling of “usable”.

1320. Authority and Reference citations. The Department deleted the reference citations for federal laws which were listed here in error because federal laws are incorporated by reference.

Section 1320.1. Egg-laying Hen Confinement.

1320.1(a)(2) deleted the date after which producers are required to maintain a cage-free housing system for egg-laying hens pursuant to the regulations. This date is now obsolete and should be removed. The Department also made punctuation edits.

1320.1(a)(2)(D) corrected the title of the referenced document to match the exact title of the referenced document as listed in HSC 25991(e)(5) and incorporated by reference. This document was made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

Section 1320.2. Egg Distributor Registration.

1320.2(b) amended the text to clarify that an application for registration “contains” specified information that the applicant must provide. This amendment is necessary to inform the regulated public of the required unique information that an application must contain when applying for a distributor registration with the Department.

1320.2(g) revised the subsection referenced to read (l).

1320.2(h) added a new subsection to inform applicants of the process and criteria that the Department will use when evaluating an application for an initial or renewal of a registration and for the subsequent granting of a registration. This addition is necessary because it clarifies the actions taken by the Department after receiving an application for registration.

1320.2(h) revised the subsection to read 1320.2(i).

1320.2(i) revised the subsection to read 1320.2(j).

1320.2(j) deleted “12 months” and added “registration period” which is necessary to accurately state the duration of time that a facility applying for a renewal of a registration must have conducted business in accordance with the requirements as specified. Additionally, “registration period” will accommodate a registrant’s first year review period which could be less than 12 months.

1320.2(k) added a new subsection to explain that when an applicant applies for renewal of an existing registration, the current registration remains in effect, pending the approval of the renewal application, provided the renewal application is received by the Department prior to the expiration of the current registration. The addition of this subsection is necessary to inform the

applicant of the process used by the Department and the status of an applicant's existing registration when the applicant applies for a renewal of their registration.

1320.2(j) revised the subsection to read 1320.2(l).

1320.2(k) revised the subsection to read 1320.2(m).

1320.2(m) revised the subsection referenced to read (l).

1320.2(l) revised the subsection to read 1320.2(n).

1320.2. Authority and Reference citations. The Department deleted the reference citations for federal law which was listed here in error.

Section 1320.4. Shell Egg and Liquid Egg Shipping Document Requirements.

1320.4(a)(2) amended the word "transport" to read as "transshipment" for consistency with the text in sections 1321.4(a)(2) and 1322.4(a)(2).

1320.4. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1320.5. Egg Distributor Recordkeeping.

1320.5. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

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

1320.7(a) made a punctuation edit to make two sentences out of one very long sentence. The Department added text in the second sentence in relation to the first sentence specifying the Department will give a written notice when a warning tag or notice is issued for shell eggs or liquid eggs in violation of the requirements. These changes are necessary to accurately state the Department's intent of the subsection.

1320.7(c) added "written" which is necessary to clarify the type of hold notice issued.

Section 1320.8. Written Certification.

1320.8. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

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

1320.9(a)(2) amended the text by deleting “Repetitive failure to comply” and adding “Demonstrated pattern of violations” to clarify the Department’s intent of the subsection. This change is necessary because “Demonstrated pattern of violations” more accurately describes criteria the Department will use when determining if a distributor’s registration is denied, suspended, or revoked when the registered distributor has received previous violations.

1320.9(b)(4) added text to clarify what criteria the Department will use when determining when a distributor is eligible to have their registration reinstated when a notice of proposed suspension or revocation is issued.

Article 2. Calves.

Section 1321. Definitions.

1321(j) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1321(k) added language to clarify the referenced document is part of the proposed regulations and therefore incorporated by reference. This document was made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1321(p) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1321(u) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1321(y) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1321(bb) corrected the misspelling of “usable”.

1321. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1321.2. Veal Distributor Registration.

1321.2(b) amended the text to clarify that an application for registration “contains” specified information that the applicant must provide. This amendment is necessary to inform the regulated public of the required unique information that an application must contain when applying for a distributor registration with the Department.

1321.2(g) revised the subsection referenced to read (l).

1321.2(h) added a new subsection to inform applicants of the process and criteria that the Department will use when evaluating an application for an initial or renewal of a registration and for the subsequent granting of a registration. This addition is necessary because it clarifies the actions taken by the Department after receiving an application for registration.

1321.2(h) revised the subsection to read 1321.2(i).

1321.2(i) revised the subsection to read 1321.2(j).

1321.2(j) deleted “12 months” and added “registration period” which is necessary to accurately state the duration of time that a facility applying for a renewal of a registration must have conducted business in accordance with the requirements as specified. Additionally, “registration period” will accommodate a registrant’s first year review period which could be less than 12 months.

1321.2(k) added a new subsection to explain that when an applicant applies for renewal of an existing registration, the current registration remains in effect, pending the approval of the renewal application, provided the renewal application is received by the Department prior to the expiration of the current registration. The addition of this subsection is necessary to inform the applicant of the process used by the Department and the status of an applicant’s existing registration when the applicant applies for a renewal of their registration.

1321.2(j) revised the subsection to read 1321.2(l).

1321.2(k) revised the subsection to read 1321.2(m).

1321.2(m) revised the subsection referenced to read (l).

1321.2(l) revised the subsection to read 1321.2(n).

1321.2. Authority and Reference citations. The Department deleted the reference citations for federal law which was listed here in error.

Section 1321.4 Whole Veal Meat Shipping Document Requirements.

1321.4. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1321.5. Veal Distributor Recordkeeping.

1321.5. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1321.7. Tagging and Seizure of Whole Veal Meat.

1321.7(a) made a punctuation edit to make two sentences out of one very long sentence. The Department added text in the second sentence in relation to the first sentence specifying the Department will give a written notice when a warning tag or notice is issued for whole veal meat in violation of the requirements. These changes are necessary to accurately state the Department's intent of the subsection.

1321.7(c) added "written" which is necessary to clarify the type of hold notice issued.

Section 1321.8. Written Certification.

1321.8. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

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

1321.9(a)(2) amended the text by deleting "Repetitive failure to comply" and adding "Demonstrated pattern of violations" to clarify the Department's intent of the subsection. This change is necessary because "Demonstrated pattern of violations" more accurately describes criteria the Department will use when determining if a distributor's registration is denied, suspended, or revoked when the registered distributor has received previous violations.

1321.9(b)(4) added text to clarify what criteria the Department will use when determining when a distributor is eligible to have their registration reinstated when a notice of proposed suspension or revocation is issued.

Article 3. Breeding Pigs.

Section 1322. Definitions.

1322(j) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28,

2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1322(k) added language to clarify the referenced document is part of the proposed regulations and therefore incorporated by reference. This document was made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1322(p) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1322(w) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1322(aa) added language to clarify the referenced CFR section(s) are part of the proposed regulations and therefore incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1322. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1322.1. Breeding Pig Confinement.

1322.1(a)(2) deleted the date after which producers are required to provide a minimum of 24 square feet of usable floorspace per breeding pig pursuant to the regulations. This date is now obsolete and should be removed. The Department also made punctuation edits.

Section 1322.2. Pork Distributor Registration.

1322.2(b) amended the text to clarify that an application for registration “contains” specified information that the applicant must provide. This amendment is necessary to inform the regulated public of the required unique information that an application must contain when applying for a distributor registration with the Department.

1322.2(g) revised the referenced subsection to read (l).

1322.2(h) added a new subsection to inform applicants of the process and criteria that the Department will use when evaluating an application for an initial or renewal of a registration and for the subsequent granting of a registration. This addition is necessary because it clarifies the actions taken by the Department after receiving an application for registration.

1322.2(h) revised the subsection to read 1322.2(i).

1322.2(i) revised the subsection to read 1322.2(j).

1322.2(j) deleted “12 months” and added “registration period” which is necessary to accurately state the duration of time that a facility applying for a renewal of a registration must have conducted business in accordance with the requirements as specified. Additionally, “registration period” will accommodate a registrant’s first year review period which could be less than 12 months.

1322.2(k) added a new subsection to explain that when an applicant applies for renewal of an existing registration, the current registration remains in effect, pending the approval of the renewal application, provided the renewal application is received by the Department prior to the expiration of the current registration. The addition of this subsection is necessary to inform the applicant of the process used by the Department and the status of an applicant’s existing registration when the applicant applies for a renewal of their registration.

1322.2(j) revised the subsection to read 1322.2(l).

1322.2(k) revised the subsection to read 1322.2(m).

1322.2(l) revised the subsection to read 1322.2(n).

1322.2. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1322.4. Whole Pork Meat Shipping Document Requirements.

1322.4. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1322.5. Pork Distributor Recordkeeping.

1322.5. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

Section 1322.7. Tagging and Seizure of Whole Pork Meat

1322.7(a) made a punctuation edit to make two sentences out of one very long sentence. The Department added text in the second sentence in relation to the first sentence specifying the

Department will give a written notice when a warning tag or notice is issued for whole pork meat in violation of the requirements. These changes are necessary to accurately state the Department's intent of the subsection.

1322.7(c) added "written" which is necessary to clarify the type of hold notice issued.

Section 1322.8. Written Certification.

1322.8. Authority and Reference citations. The Department deleted the reference citation for federal law which was listed here in error.

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

1322.9(a)(2) amended the text by deleting "Repetitive failure to comply" and adding "Demonstrated pattern of violations" to clarify the Department's intent of the subsection. This change is necessary because "Demonstrated pattern of violations" more accurately describes criteria the Department will use when determining if a distributor's registration is denied, suspended, or revoked when the registered distributor has received previous violations.

1322.9(b)(4) added text to clarify what criteria the Department will use when determining when a distributor is eligible to have their registration reinstated when a notice of proposed suspension or revocation is issued.

Article 4. Exceptions.

Section 1324. Definitions.

1324(b) added language to clarify the referenced CFR section(s) are part of the proposed regulations and are incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1324(c) added language to clarify the referenced CFR section(s) are part of the proposed regulations and are incorporated by reference. The referenced documents were made available to the public upon request as part of the original Notice of Proposed Action on May 28, 2021. Due to the voluminous nature of these documents, it would be cumbersome, unduly expensive, or otherwise impracticable to print these referenced documents in the CCR.

1324. Authority and Reference citations. The Department deleted the reference citations for federal laws which was listed here error.

Article 5. Certification and Accredited Certifiers.

Section 1326.1. General Requirements for Certification.

1326.1(a) through (a)(7) amended the outline formatting which is necessary because in the original text the Department omitted the subsection designation (letter (a)) in the first line of text.

Section 1326.3. Application for Certification.

1326.3(a)(4) deleted “including but not limited to” and added “such as” which is necessary because the added text allows for flexibility when the applicant is providing information to describe the covered animal confinement system.

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

1326.12(a) through (a)(5) amended the outline formatting which is necessary because in the original text the Department omitted the subsection designation (letter (a)) for the first line of text.

1326.12(a)(4) deleted “membership” from the description of the type of not-for-profit organization applying for accreditation with the Department because certifying agents applying for accreditation with the Department are not limited to only “membership” not-for-profit organizations.

Section 1326.13. Evidence of Expertise and Ability.

1326.13(a) through (a)(4) amended the outline formatting which is necessary because the Department omitted the subsection designation (letter (a)) for the first line of text.

Section 1326.15. Denial of Accreditation.

1326.15(a)(3)(A) added a new subsection to explain the process used by the Department when determining the date by which an applicant must rebut or correct each noncompliance identified and a reasonable time for the applicant to come into compliance when the applicant is facing a denial of accreditation. Addition of this subsection is necessary to inform the applicant how the Department determines these dates and timelines.

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

1326.17(c)(1) relocated the last sentence to a new subsection (c)(4) identified below. This change is necessary because the statement should be identified as a separate subsection.

1326.17(c)(3) added a new subsection to explain that when an applicant applies for renewal of an existing accreditation, the current accreditation remains in effect, pending the approval of the renewal application, provided the renewal application is received by the Department in accordance with (c)(1) of the subsection as stated. The addition of this subsection is necessary to inform the applicant of the process used by the Department and the status of an applicant's existing accreditation when the applicant applies for a renewal of their accreditation.

1326.17(c)(4) added a new subsection to accommodate the relocation of the last sentence of subsection (c)(1). This change is necessary because the statement should be identified as a separate subsection.

Section 1326.21. Noncompliance Procedure for Accredited Certifying Agents.

1326.21(a)(3)(A) added a new subsection to explain the process used by the Department when determining the date by which a certifying agent must rebut or correct each noncompliance identified and submit supporting documentation of each correction when a correction is possible when the certifying agent is facing a noncompliance. Addition of this subsection is necessary to inform certifying agents how the Department determines these dates and timelines.

1326.21(g)(2) added “reapply to”, “two”, and punctuation. These changes are necessary to bring clarity to the intent of the subsection and to make punctuation and editorial corrections. The Department deleted “a period of not less than” when referring to the two (2) years following the date of revocation which is necessary because this phrase erroneously implies that a period of time less than two (2) years may apply. This was not the Department’s intent of the subsection therefore deleting the text is necessary.

2.3. Changes to the Second Modified Text

Following the second re-notice period, which ended on June 24, 2022, the Department made non-substantial and sufficiently related changes to the text of the proposed regulations. They are as follows:

- Section 1320.2(b) added “(a) of” for consistency with section 1321.2(b) and 1322.2(b).
- Section 1320.2(b) added “provided” for consistency with sections 1321.1 and 1322.1. The Modified Text and Second Modified Text, in error, proposed to delete the term.
- Sections 1320.2(b)(2), 1326(z), 1326.12(a)(5), 1326.21(f)(1) corrected the punctuation of “State” to read as “state”.
- Sections 1322(v) added “(6)”.
- Section 1326.17(c)(1) added “(, “), and “six”.
- Section 1326(c) deleted “veal” when referring to “calves” for consistent use of the term.
- Sections 1326.3(a)(1), 1326.6(b)(5), 1326.10(a)(10)(B), 1326.12(a)(1) and (a)(2), 1326.22(a)(3), and 1327.1(b) changed “telephone” to read “phone” for consistent use of the term.
- Section 1326.5(b)(1) added “(, “), and “three”.
- Section 1326.22 added the authority and reference citations that were inadvertently omitted.

- Section 1327.2 added to the authority and reference citations.

III. Comment Summaries and Responses - 45-day Comment Period

3.1. List of Commenters - 45-day Comment Period

Written comments received during the 45-day comment period are included in the rulemaking file in Binder I.

Members of the public submitting written comments during the 45-day comment period, May 28, 2021 – July 12, 2021, identified in numbered order of receipt by the Department (numbered 1-88):

Written Commenter #	Name of Commenter	Affiliation	Date Received
1	Peter Sonstegard		05/28/2021
2	Rose Stark, SNS Nutrition Services Director	Apple Valley Unified School District	06/01/2021
3	Sebastiano Brancoli	SBDC Consulting, LLC	06/01/2021
4	Ken Klippen President	National Association of Egg Farmers	06/02/2021
5	Jeanne Raede Director Food Safety and Quality	Porky Products, Inc.	06/04/2021
6	Diana Sparks	CCF Brands	06/08/2021
7	Kristin Tupa Sustainability Manager	Cargill Protein	06/09/2021
8	Charles Leftwich Director, Quality Assurance Regulatory and Technical Services	Sysco Corporation	06/10/2021
9	Thea Kirkebaek Larsen Animal Welfare Specialist	Baltic Control Certification	06/11/2021
10	Peter Brandt Managing Attorney, Farm Animals, Animal Protection Litigation	The Humane Society of the United States	06/11/2021
11	Leticia Garcia Director, State Government Relations	California Grocers Association	06/17/2021
12	Bart Slaugh	Eggland	06/18/2021
13	Susan Seligman		06/21/2021
14	Nycole Pederson Amazon and Internet Specialist	Jay Robb Enterprises, Inc.	06/22/2021
15	Steve Koch Director of Business Development	NuCal Foods, Inc.	06/22/2021

16	Tiffany Moffatt Senior Counselor	California Restaurant Association/Food Equity Alliance	06/23/2021
17	Faith Bautista CEO	National Diversity Coalition/Food Equity Alliance/National Asian American Coalition	06/23/2021
18	Scott Kilburg Financial Analyst	Michael Foods, Inc.	06/23/2021
19	Jim Riva VP Global Alliances	Where Food Comes From, Inc.	06/24/2021
20	Russell Wadleigh Logistics Manager	Danish Crown USA, Inc.	06/24/2021
21	Alicia Laporte Communications Director	Niman Ranch	06/29/2021
22	Jeanne Raede Director of Food Safety and Quality	Porky Products, Inc.	06/30/2021
23	Bill Andreetta President/CEO	Sunnyvalley Smoked Meats, Inc.	06/30/2021
24	Sherrie Webb, MSc Director, Animal Welfare	American Association of Swine Veterinarians	07/02/2021
25	Kanwal Kochhar A/Director General, Market Access Secretariat	Agriculture and Agri-Food Canada	07/02/2021
26	Nick Sterling Associate Director of Sustainability	The Cheesecake Factory, Inc.	07/07/2021
27	Steve Koch Director of Business Development	NuCal Foods, Inc.	07/07/2021
28	Robert Zeysing	Advanced Pork Systems	07/08/2021
29	Oscar Garrison Sr. VP of Food Safety Regulatory Affairs	United Egg Association	07/08/2021
30	Aaron Ott President	Country View Family Farms	07/08/2021
31	Katy Fendrich-Turner		07/08/2021
32	Daniela Castillo, DVM, CEO	Castillo Animal Veterinary	07/09/2021
33	Sebastiano Brancoli	SBDC Consulting, LLC	07/09/2021
34	Kay Johnson Smith President and CEO	Animal Agriculture Alliance	07/09/2021
35	Bob Wynands, President Kim O'Neil, Director of Regulatory Affairs	Canadian Veal Association Canadian Meat Council	07/09/2021
36	Steven Kruse	Kruse & Son, Inc.	07/09/2021
37	Matthew Smith Executive Director	Global Affairs Canada	07/09/2021

	Technical Barriers and Regulations Division		
38	John Schwartz	Schwartz Farms, Inc.	07/09/2021
39	Daniel Leibowitz General Counsel	Luberski, Inc. Db a Hidden Villa Ranch	07/09/2021
40	Jennifer Armstrong VP of School Sales	Don Lee Farms	07/09/2021
41	Nicole Meschi President	California School Nutrition Association	07/09/2021
42	Mark Meirick		07/10/2021
43	Maisie Ganzler Chief Strategy & Brand Officer	Bon Appetit Management Company	07/11/2021
44	Chelsea McGuire Director of Government Relations	Arizona Farm Bureau Federation Arizona Pork Council	07/12/2021
45	Mel Coleman	Coleman Natural Foods	07/12/2021
46	Aaron and Patricia Cook		07/12/2021
47	Pat Bane		07/12/2021
48	Robert Kelly	Hen Haven	07/12/2021
49	Patrick Hord	Hord Farms	07/12/2021
50	Jen Sorenson President	National Pork Producers Council	07/12/2021
51	Matt Davis	Hord Livestock	07/12/2021
52	Reginald Strickland	Strickland Farming Group	07/12/2021
53	Glenn Hickman President and CEO	Hickman's Family Farms	07/12/2021
54	Stefanie Smallhouse President	Arizona Farm Bureau Federation	07/12/2021
55	Dan Halstrom President and CEO	U.S. Meat Export Federation	07/12/2021
56	Kelsey Eberly Sr. Staff Attorney	Animal Legal Defense Fund	07/12/2021
57	Randall Pflum		07/12/2021
58	Mark Dopp Sr. VP, Regulatory & Scientific Affairs and General Counsel	North American Meat Institute	07/12/2021
59	Stephanie Harris Chief Regulatory Officer & General Counsel Dana Graber Sr. Counsel, Legal and Regulatory Affairs	The Food Industry Association	07/12/2021
60	Paul Willis Founding Farmer	Niman Ranch	07/12/2021
61	AJ Albrecht, Esq. Director of Government Affairs	Mercy for Animals	07/12/2021

62	Eric Sauer Sr. VP of Government Affairs	CA Trucking Association/ Agricultural and Food Transporters Conference	07/12/2021
63	Brian Kuehl Executive Director	Farmers for Free Trade	07/12/2021
64	Rebecca Cary Peter Brandt Kelsey Eberly Sarah Hanneken Hannah Truxell Emily Von Klemperer Ben Williamson Will Lowrey Cameron Harsh AJ Albrecht	The Humane Society of the United States Animal Legal Defense Fund Animal Equality The Humane League Farm Sanctuary Compassion in World Farming, Inc. Animal Outlook World Animal Protection Mercy for Animals	07/12/2021
65	Katie Almand Little Policy Advocate	California Farm Bureau Federation	07/12/2021
66	Josh Rogers, SNS Director of Nutrition Services	Greenfield Union School District	07/12/2021
67	Peter B. Brown President and CEO	Seaboard Foods, LLC	07/12/2021
68	Dave Preisler CEO	Minnesota Pork Producers Association	07/12/2021
69	Jill Damskey	California Pork Producers Association	07/12/2021
70	Mike Williams		07/12/2021
71	Jeannie Kim Owner, Founder	Sam's American Eatery/The Fermentation Lab	07/12/2021
72	Eldon McAfee Brick Gentry, P.C. Attorney	Iowa Pork Producers Association Linn Valley Pigs, LLP Twin Prairie Pork, LLC New Generation Pork, Inc.	07/12/2021
73	Rachel Michelin President	California Retailers Association	07/12/2021
74	Jeanne Raede Director Food Safety & Quality	Porky Products, Inc.	07/12/2021
75	Julian Cañete President	California Hispanic Chambers of Commerce	07/12/2021

	Pat Fong Kushida President & CEO	California Asian Pacific Chamber of Commerce	
	Eric Chin President	Chinese Chamber of Commerce of Los Angeles Latin Business Association	
76	CalAsian Chamber of Commerce California Farm Bureau California Grocers Association California Hispanic Chambers of Commerce California Pork Producers Association California Restaurant Association California Retailers Association Golden Gate Restaurant Association Independent Meat Co. Kruse & Son, Inc. Latino Restaurant Association National Asian American Coalition National Diversity Coalition Sunnyvalley Smoked Meats Yosemite Foods	Food Equity Alliance	07/12/2021
77	Kelly Ash Vice President	California Grocers Association	07/12/2021
78	Debra J. Murdock Executive Director	Pacific Egg and Poultry Association Association of California Egg Farmers	07/12/2021
79	Roy Lee Lindsey, Jr. CEO	North Carolina Pork Council	07/12/2021
80	Kara Shannon Director of Farm Animal Welfare Policy Policy, Response and Engagement	The American Society for the Prevention of Cruelty to Animals	07/12/2021
81	Carmen M. Rottenberg President	Affordable Food for All	07/12/2021
82	Dale Bakke President	American Veal Association	07/12/2021
83	Mala Parker VP, Government Relations	International Foodservice Distributors Association	07/12/2021
84	Cynthia Cordes	Triumph Foods, LLC	07/12/2021

	General Counsel Husch Blackwell, LLP		
85	Tim Cohen President	Eggs Unlimited	07/12/2021
86	Christopher Nichols Sr. Vice President	C.B. Nichols Egg Ranch Chino Valley Ranchers M.C.M. Poultry Farm	07/12/2021
87	Steve Mahrt	Petaluma Farms	07/12/2021
88	Benjamin Cantu Mayor	City of Manteca	07/20/2021

Members of the public requesting the Department conduct a public hearing:

Name	Affiliation	Date Received
Mark Dopp Sr. VP Regulatory & Scientific Affairs and General Counsel	North American Meat Institute	June 25, 2021
Michael Formica AVP and General Counsel	National Pork Producers Council	June 25, 2021
Cynthia Cordes General Counsel Emily Lyons Sr. Associate Husch Blackwell, LLP	Triumph Foods, LLC	June 25, 2021
Tanner Kelly/Tiffany Moffatt Elevate Public Affairs	Food Equity Alliance	June 25, 2021

Public Hearing

A copy of the public hearing transcript (Binder H) and written comments received (Binder I) are included in the rulemaking file.

Members of the public providing testimony during the public hearing and/or submitting a written comment on the day of the public hearing on August 27, 2021 identified in numbered order of testimony given and email received (numbered 1H through 83H):

Commenter #	Name of Commenter	Affiliation	Page # in Transcript
1H	Ryan Allain	California Retailers Association	10
2H	Katie Little Policy Advocate	California Farm Bureau Federation	12
3H	Oscar Garrison Sr. VP of Food Safety Regulatory Affairs	United Egg Association	14
4H	Dominic Marquez Controller	Sunnyvalley Smoked Meats	15

5H	Jacob Malsom Sales Manager	Sunnyvalley Smoked Meats	16
6H	Milan Turk, Jr.	Provenance Chain network	17
7H	Emily Lyons Sr. Associate Husch Blackwell, LLP	Triumph Foods, LLC	18
8H	Mandi Kruse		20
9H	Prachi Kohli	National Diversity Coalition National Asian American Coalition	21
10H	Mark Dopp Sr. VP Regulatory & Scientific Affairs and General Counsel	North American Meat Institute	22
11H	Michael Leslie Partner King & Spalding, LLP	King & Spalding, LLP	24
12H	Marie Camino Policy Advisor Government Affairs and Public Policy	Mercy for Animals	25
13H	Allison Soloman		28
14H	Dan Timmerman	Independent Food Brokers & Pork Traders	28
15H	Dr. Hyatt Frobose USA Commercial Director, Nutritionist	JYGA Technologies Gestal	29
16H	Michael Formica AVP and General Counsel	National Pork Producers Council	31
17H	John Fukushima	ABCO Laboratories	33
18H	Leticia Garcia Director, State Government Relations	California Grocers Association	34
19H	Matt Sutton	California Restaurant Association	36
20H	Rick Wineman Director of Supply Chain Initiatives	Stone Fire Grill	38
21H	Adam Knapp	Country Butcher California Association of Meat Processors	41
22H	Jill Damskey	California Pork Producers Association	42
23H	Steve Needham Vice President	Porky Products, Inc.	45

24H	Bill Andreetta President	Sunnyvalley Smoked Meats	47
25H	Carmen Rottenberg President	Affordable Food for All	49
26H	Roy Lee Lindsey, Jr. CEO	North Carolina Pork Council	53
27H	Leslie Shanley		54
28H	Chance Reeder Plant Superintendent	Yosemite Foods	55
29H	Katherine Fenrich		58
30H	Alicia Soledad		59
31H	Renae Donus	Global Animal Partnership	61
32H	Andy Hoffer		63
33H	Patrick Florence	Salmon Creek Farms	65
34H	Travis Dixon Owner and Operator	Meat and Potato Company	68
35H	Matt Patton Executive Director	California Agricultural Teachers' Association California FFA	71
36H	David Hoffer		72
37H	Michael Schneider		73
38H	Robert McLain		76
39H	David Will	Chino Valley Ranchers	77
40H	Ken Klippen President	National Association of Egg Farmers	Email
41H	Tracey Thomas		Email
42H	Michael Leslie, Partner	King & Spalding, LLP	Email
43H	Cynthia Cordes, Partner Emily Lyons, Sr. Associate Attorney Husch Blackwell, LLP	Triumph Foods, LLC	Email
44H	Linda Bellavia		Email
45H	Karen Emanuel		Email
46H	Rebecca Cary Sr. Staff Attorney, Farm Animals Peter Brandt Kelsey Eberly Sarah Hanneken Hannah Truxell Emily Von Klemperer Ben Williamson	The Humane Society of the United States Animal Legal Defense Fund Animal Equality The Humane League Farm Sanctuary	Email

	Will Lowrey Cameron Harsh AJ Albrecht	Compassion in World Farming, Inc. Animal Outlook World Animal Protection Mercy for Animals	
47H	Amy McDougall	The Provenance Chain	Email
48H	Mark Reback		Email
49H	Joe Miller General Counsel	Rose Acre Farms	Email
50H	Allison Solomon	Salmon Creek Farms Independent Meat	Email
51H	Allison Brink, Executive Director	Michigan Allied Poultry Industries	Email
52H	Leslie Shanley		Email
53H	Marie Denison		Email
54H	Russell Wadleigh Logistics Manager	Danish Crown, USA, Inc.	Email
55H	Joe Miller General Counsel	Rose Acre Farms	Email
56H	Dr. Hyatt Frobose Commercial Director, Nutritionist	JYGA Tech USA Gestal	Email
57H	Oscar Garrison Sr. VP Food Safety Regulatory Affairs	United Egg Producers	Email
58H	Laurie Fringer 4-H Program Coordinator UC-ANR Madera County CA 4-H Animal Science Coordinator	.	Email
59H	Marie Camino Policy Advisor	Mercy for Animals	Email
60H	Dr. Frances Valentine Farm Animal Welfare Program Manager	Global Animal Partnership	Email
61H	Heather Thomas	Thomas Hay and Livestock	Email
62H	Kaliko Orian	Kaliko Farms	Email
63H	Chance Reeder Plant Superintendent	Yosemite Foods	Email
64H	Sarah Cummings President & CEO	Western Fairs Association California Fairs Alliance Blue Ribbon Foundation	Email
65H	Matt Patton Executive Director	California Agricultural Teachers' Association, Inc	Email

66H	Priyadip Ray		Email
67H	Steven Kruse	Kruse & Son, Inc.	Email
68H	Matt Davis	Hord Livestock	Email
69H	Laurie Giannini CEO-Fair Manager	Calaveras County Fairgrounds	Email
70H	Steve Tyler		Email
71H	Margarita Perez		Email
72H	Ted Hume Family and Murphy Family		Email
73H	Kevin Eisley Quality Systems Manager	Clemens Food Group	Email
74H	Chancey Pink		Email
75H	Diana Zimmerman		Email
76H	Natalie Richardson		Email
77H	Jessica Dardarian		Email
78H	Mohan Gurunathan		Email
79H	Don Dudan		Email
80H	Ella Grigorian		Email
81H	S. Rocha		Email
82H	Anonymous		Email
83H	Terry Paulette Hagio		Email

3.2. Comment Summaries and Responses - 45-day Comment Period

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to all objections and recommendations directed at the proposed regulations or the process by which the regulations were proposed.

Many of the comments received during this rulemaking overlapped and asserted the same points and were therefore grouped together for the Department to provide a uniform and concise response. Despite this effort, some duplication in the responses to comments was inevitable.

Summaries of comments and corresponding responses for the proposed regulatory text as originally noticed are organized by topic and then subcategorized accordingly.

The specific comments that are represented in the comment summary statement are listed after each comment summary by the commenter number as identified above followed by a dash and numbered comment when a commenter submitted more than one comment. Each individual comment number for a given commenter highlighted and numbered on the comment received which is included in the rulemaking file in Binder I. For oral comments received during the Public Hearing the transcript of the hearing is highlighted and numbered to indicate each of the comments addressed by the Department and is included in the rulemaking file in Binder H.

Additionally, the Department has included an Index of all numbered comments for each commenter in Part V. of this document. A commenter can look up their assigned commenter

number from the table above and then refer to the Index to determine where all of their individual comments are addressed in the comment summaries and responses.

A. Confinement

1. **Comment:** Regarding sections 1320.1, 1321.1, and 1322.1, clarity is requested for whether the minimum standards for covered animals also include “turn around freely” and “fully extending limbs” as described in HSC section 25991(e)(1) in addition to the specific square footage requirements listed in proposed regulations, and clarity on when those requirements went into effect. (5-2, 50-5, 50-6, 67-1, 79-8, 79-9, 84-21, 84-38, 7H-2, 16H-2, 43H-4, 68H-4)

Response: Accept. As stated in the Addendum to the ISOR, a new subsection in each of the applicable sections (1320.1, 1321.1, 1322.1) was added to clarify that the “turn around freely” requirement of the Act, HSC section 25991(e)(1), which states that “An enclosure shall allow the covered animal to lie down, stand up, fully extend limbs, and turn around freely” is required. The addition of this language makes it clear that enclosures must meet both the “turning around freely” requirement and the square footage requirement. Effective dates of these confinement requirements, including HSC section 25991(e)(1) which became effective on December 19, 2018, are set in statute and therefore, cannot be changed via regulation. To the extent the comment objects to the Act, and not to the proposed regulations, the Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope.

2. **Comment:** Regulations are not clear as to how a pork producer can comply with HSC section 25991(e)(1) and 25991(e)(3) in order to not have a breeding pig touch the sides of an enclosure or another animal given natural behavior and other concerns. (79-9, 84-3)

Response: No change has been made in response to this comment. To the extent the comment objects to the Act, and not to the proposed regulations, the Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope. “Turn around freely” is a statutory requirement defined in the Act (HSC sections 25991(e) and (q)). The statute states that an enclosure cannot “prevent” a covered animal from turning around freely and must also provide the minimum square footage requirement of usable floorspace. A breeding pig willfully touching another animal or side of an enclosure is not a violation.

3. **Comment:** The term “usable floorspace” is not defined in the regulations and producers need this term defined in order to comply with confinement minimum standards, including if outdoor space is included. (20-1, 49-6)

Response: Partially accept. Clarity that outdoor space is included for calculations for “usable floorspace” was provided in the originally proposed section 1320.1(a)(2)(A) “the enclosure shall be indoor or outdoor,” and in sections 1321.1(a)(2)) and 1322.1(a)(2) by including “shall also include ground space for enclosures that are outdoor pens or pastures...” when addressing “usable floorspace” of square footage requirements. To make the “usable floorspace” definition and method for calculating easier to locate in the amended regulations, as stated in the Addendum to the ISOR, the definition was relocated from sections 1320.1, 1321.1, and 1322.1, to the applicable subsections in the list of definitions at the beginning of Articles 1-3. No further amendments were made because, given the vast number of various covered animal confinement configurations, the proposed language

provides the best method for calculating usable floorspace per covered animal, while allowing for adequate facility variation. Finally, to the extent the comment objects to the Act, and not to the proposed regulations, the Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope.

4. **Comment:** Section 1322.1 is not clear if “free-access stalls” and group housed “electronic sow feeding” systems would be allowed. (49-4, 67-3)

Response: No change has been made in response to this comment. The regulations are reasonably clear. The regulations explicitly define the minimum confinement standards that must be met for breeding pigs to be housed in compliance with the Act. There are too many specific housing options that pork producers use for confining breeding pigs to address each one of these options in proposed regulations. To the extent that the comment raises specific legal questions and seeks legal advice regarding the law, the commenter should consult with an attorney who is aware of all pertinent facts and relevant compliance concerns.

5. **Comment:** Proposed regulations do not address day-to-day variations on stocking density of covered animals based on several biological and management factors such as mortality, production, available transport, weather, scheduling, and the ebb and flow of breeding. Stakeholders suggest a rolling average or average of square footage per covered animal for a whole facility as opposed to maintaining a square footage requirement for every individual enclosure. (28-6, 38-6, 47-1, 49-7, 50-13, 51-1, 15H-1, 26H-4, 56H-1, 68H-1)

Response: No change has been made in response to this comment. The Act is explicit with regard to how usable floor space should be calculated. HSC section 25991(e) includes specific useable floorspace standards and HSC section 25991(s) describes the method to calculate space per covered animal. The Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope.

6. **Comment:** The definition of “usable floorspace” in sections 1320.1(a), 1321.1(a), and 1322.1(a) should not include outdoor access space. (61-5, 12H-4, 53H-4, 59H-5)

Response: No change has been made in response to this comment. Including outdoor space that is a part of a covered animal’s enclosure when calculating usable floorspace is consistent with the Act’s language and intent. HSC section 25991(s) specifically uses the term “enclosure” when describing usable floorspace. HSC section 25991(f) defines “enclosure” as a “structure used to confine” but does not limit the type of structure. The statute only requires a structure to result in “confinement” and therefore a structure can include a fence or other outdoor means of confining covered animals. Further, while the Act places other limitations on types of space that can be considered as “usable floorspace”, for example the HSC section 25991(s) exclusion of “ramps”, no such exclusion is made for outdoor areas.

7. **Comment:** Section 1320.1(a)(2) needs to include the publication date of the United Egg Producers Cage-Free guidelines. (78-4, 87-3)

Response: No change has been made in response to this comment. The substance of this comment has already been addressed. To reduce confusion related to which revision of the United Egg Producer Cage Free standards is referenced by Proposition 12 (2018) and HSC section 25991(e)(5), the minimum useable floorspace specifics from the correct 2017 UEP document are included in section 1320.1(a)(2)(D).

8. **Comment:** Section 1320.1(a)(2)(B) should not include the word “minimum” when describing required enrichments. (87-5)

Response: No change has been made in response to this comment. The regulation as written is consistent with the statute. “Minimum” is used in HSC section 25991(c) when describing required enrichments for egg-laying hens.

B. Exceptions to Confinement

1. **Comment:** Article 4 should list all exceptions to minimum confinement standards from HSC section 25992 to avoid stakeholder confusion. (5-1, 84-4, 84-7)

Response: Accept. As stated in the Addendum to the ISOR, a new section heading and sections 1324.1(a)(1) through (7) were added to the proposed regulations to inform the regulated industry and all stakeholders of exceptions to the confinement standards as stated in the Act. While repeating exact statutory language in regulatory text is uncommon, expressly listing the statutory language in the regulations at sections 1324.1(a)(1) through (7) is convenient for the regulated industry and all stakeholders, so they do not have to reference the HSC when determining applicable exceptions to the Act’s compliance standards.

2. **Comment:** Article 4 does not adequately address concerns about confinement needed for efficient and safe management and breeding of sows just after weaning, especially given that the exception to confinement for animal husbandry purposes is only for 6 hours in a 24-hour period and a total of 24 hours in a 30-day period. Possible resolutions include defining a “breeding pig” as “mated and presumed pregnant” rather than using age, or adding clarity that other exceptions like for veterinary care can be used for safe breeding. (28-4, 38-4, 49-5)

Response: No change has been made in response to this comment. The exception timeframe that a breeding pig does not need to be housed in compliance with the Act is defined in statute (HSC section 25992). To the extent the comment objects to the Act, and not to the proposed regulations, the Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope. Further, HSC section 25991(a) defines a breeding pig as “any female pig of the porcine species kept for the purpose of commercial breeding who is six months or older or pregnant”. Because this definition uses the phrase “kept for the purposes of commercial breeding,” any female pig kept for commercial breeding after farrowing and weaning of piglets would be considered a “breeding pig” if the whole pork meat from her and her immediate offspring was to be sold in California. Regulations must conform to statute and the proposed regulations cannot be amended to limit the definition of a “breeding pig” to “bred”, “presumed pregnant”, or “pregnant”.

3. **Comment:** A definition of “expected farrowing date” with respect to HSC section 25992(f) is needed for pork producers to comply with the exception to minimum confinement standards particularly in pasture breeding situations. (28-4, 38-4, 50-28)

Response: No change has been made in response to this comment. No amendment is necessary because the term “expected” in reference to the date of giving birth in HSC section 25992(f), which is now repeated in amended regulation section 1324.1(a)(6), provides allowance for appropriate estimates based on husbandry practices.

4. **Comment:** Section 1324(a) definition of “individual treatment” will allow use of antibiotics on a herd-wide level for an indefinite period. (56-1)

Response: No change has been made in response to this comment. Section 1324(b) uses language consistent with the federal standards for the practice of veterinary medicine, which is the minimum standard of practice nationally. As stated in the ISOR, section 1324(a) specifies that for purposes of HSC section 25992(b), “individual treatment” 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)28. 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.

5. **Comment:** Section 1324(a) definition of “individual treatment” is too narrow for the exception to minimum confinement standards of breeding pigs as described in HSC section 25992(b). (84-5, 84-6)

Response: No change has been made in response to this comment. The exception to confinement standards in the Act and regulations for “animal husbandry purposes” (HSC section 25992(g)) is time-limited, but also broad. The definition of “individual treatment” in section 1324(b) of the modified proposed regulations is applicable to the exception for “examination, testing, individual treatment, or operation for veterinary purposes” (HSC section 25992(b)), which is not time constrained. The definition of “individual treatment” in the proposed regulations uses language consistent with the federal standards for the practice of veterinary medicine, which is the minimum standard of practice nationally. As stated in the ISOR, section 1324(a) specifies that, for purposes of HSC section 25992(b), “individual treatment” (in first noticed regulations) 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)28. 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.

6. **Comment:** Section 1324(b) definition of “medical research” should be broadened to include privately funded research that would not be subject to the review of an Institutional Animal Care and Use Committee operating in accordance with section 2.31 of Title 9 of the Code of Federal Regulations. (58-20)

Response: Partially accept. As stated in the Addendum to the ISOR, amended section 1324(c) revised the definition of “medical research” to additionally include medical research conducted at a facility accredited by the American Association for Accreditation of Laboratory Animal Care (AAALAC). AAALAC is an international organization whose primary purpose is to improve the welfare of animals produced for or used in research, teaching and testing, and to enhance the quality of these activities through accreditation of the animal care and use program. In support of this addition to the definition, the Department added the AAALAC International Bylaws (May 2, 2019) to the rulemaking file for inclusion in the list of Materials Relied Upon (Document Added – 1).

C. Covered Products and Covered Animals

1. **Comment:** Section 1320(u) definition of “liquid egg” should be limited to the language in HSC 25991(l). (83-25)

Response: No change has been made in response to this comment. As stated in the ISOR, the definition of “liquid eggs” (section 1320(u) amended to (t)) has the same meaning as defined in HSC section 25991(l). The proposed regulation further clarifies that liquid eggs include, but are not limited to, liquid eggs co-packaged with other food products, 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 proposed regulations adopt the standardized definitions of liquid, dried, and frozen eggs under 21 CFR, Part 160.1 through 160.190 *Requirements for specific standardized eggs and egg products*, and any separate component of those products, and any mixture of those products. 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 *Identity labeling of food in packaged form*. 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. The definitions are consistent with “egg” and only reflect eliminating water or changing state from liquid to solid, reasonably consistent with voter intent. Unlike the HSC sections related to the definition of covered veal and pork (HSC section 25991(u) and (v)), HSC section 25991(l) specifically does not limit the definition of “liquid egg” to raw product, making further definition necessary for clarity.

2. **Comment:** The definitions of “cut” in sections 1321(j) and 1322(k) should exclude diced and sliced veal and pork meat. (50-11, 79-6)

Response: No change has been made in response to this comment. Sliced and diced uncooked veal and pork meat are included under the definitions of “whole veal meat” and “whole pork meat” as defined in the Act. Specifically, the HSC section 25991(u) definition of “whole pork meat” means any cut of pork meat, and specifically includes bacon, which is a sliced cut of pork. Therefore, excluding sliced or diced uncooked pork meat would be contrary to the language and intent of the Act. As stated in the ISOR, the Department relied on previously defined industry identity standards described in the USDA’s Institutional Meat Purchase Specifications: Fresh Veal Series 300 and Fresh Pork Series 400 (November 2014 Editions) and the 2014 Uniform Retail Meat Identity Standards developed by the Industry-Wide Cooperative Meat Identification Standards Committee.

3. **Comment:** Sections 1322(k) and 1322(bb) describe exclusions to the definition of “cut” and “whole pork meat”, and these exclusions should also include “sausage” and “trim”. The Department should clarify if the list of exclusions is exhaustive. (81-7)

Response: No change has been made in response to this comment. The regulations are reasonably clear. No change to the regulation is needed because the proposed text already addresses this comment. “Trim” cuts of veal and pork meat are covered product based on the provided definitions of “cut” in sections 1321(k) and 1322(k). The regulations are also clear that ground and comminuted products are excluded in the definition of “cut” (1321(k) and 1322(k)). Casings are not “meat” based on the definition of “meat” in the Act (HSC section 25991(n) and (t)) that reference Section 900 of Title 3 of the California Code of Regulations). Sausage is ground or comminuted and while the section uses “not limited to”, when referring to names of cuts of veal and pork meat, the casings are not meat, therefore sausage is already defined as not being a covered product.

4. **Comment:** Section 1322(bb) definition of “whole pork meat” should also include cooked pork meat, ready-to-eat (RTE) pork meat, and sausage made with pork. The definition of “liquid eggs” in section 1320(u) appears to have been expanded compared to HSC section 25991(l) definition of “liquid eggs”, while “whole pork meat” definition has been narrowed compared to HSC section 25991(u). (61-6, 8H-2, 12H-5, 53H-5, 59H-6, 67H-2)

Response: No change has been made in response to this comment. The proposed regulations are consistent with the statute. The definitions of covered veal and pork meat in the regulations exclude cooked products because HSC sections 25991(u) and (v) explicitly use the term “uncooked”. HSC sections 25991(u) and (v) exclude ground and comminuted by explicitly using the term “whole” when describing “whole pork meat” and “whole veal meat” and providing product examples that are not ground and comminuted. Further, examples of comminuted meat, such as “hotdogs” are excluded. If the intent of the Act was to include comminuted veal and pork meat, those products could have been listed and comminuted products like hotdogs would not have been excluded.

The proposed regulations do not expand the definition of liquid eggs in section 1320(u). Rather, HSC section 25991(l) does not limit the definition of “liquid egg” to raw product, making further definition necessary for clarity.

5. **Comment:** Section 1322(bb) definition of “whole pork meat” is not clear if processed or prepared pork products, including “dry-cured”, are included under the definition. The definition appears to be contradictory because “ham” is listed in the definition, but a cured ham is ready-to-eat, which would then be excluded. (3-1, 33-1, 50-12, 79-7, 83-26, 13H-1, 50H-1)

Response: No change has been made in response to this comment. The regulations are reasonably clear. A change in the proposed regulation is not needed to address this comment because section 1322 defines “whole pork meat”, “uncooked”, “requiring cooking”, and “ready to eat”; providing explicit clarity that products not requiring further preparation for food safety purposes (like a cured ham and dry cured products like prosciutto) are excluded while whole or sliced uncooked pork meat cuts requiring cooking are included under the definition of “whole pork meat”.

6. **Comment:** Add clarity that sections 1321(bb) and 1322(bb) definitions of “whole veal meat” and “whole pork meat” do not include offal, fat, and bones. (83-26, 10H-1, 13H-2, 50H-2)

Response: No change has been made in response to this comment. No amendment is needed because the definition of “meat” as specified in the Act (HSC section 25991(n) and (t)) references Section 900 of Title 3 of the California Code of Regulations and these regulations clearly define what is included under the definition of veal and pork “meat” beyond traditional whole muscle cuts.

7. **Comment:** Section 1320(l) definition of “egg-laying hen” should be removed from the regulation because voters did not consider the exclusion of chicks (younger than 18 weeks of age) and the Act does not support their exclusion from the definition of egg-laying hens. (61-2, 12H-1, 53H-1, 59H-2)

Response: No change has been made in response to this comment. The proposed regulation definition of “egg-laying hen” is consistent with the statute. HSC section 25991(g) specifically defines “egg-laying hen” as any female domesticated chicken, turkey, duck,

goose, or guineafowl kept for the purpose of egg production. Chicks and other immature poultry younger than 18 weeks of age do not lay eggs and begin life as tiny animals incapable of regulating heat and therefore require small enclosures for survival. Excluding immature poultry is consistent with voter intent for animal welfare and the language of the Act.

8. **Comment:** Section 1321(s) definition of “kept for the purposes of producing” exempts “bob veal” (calves under three weeks of age and less than 150 pounds) and “bob veal” should be included under Proposition 12 (2018). (58-9, 61-3, 12H-2, 53H-2, 59H-3)

Response: No change has been made in response to this comment. HSC section 25991(d) when defining covered calves, specifically states “kept for the purpose of producing the food product known as veal”, making clear the intent to specifically include only calves raised and slaughtered for veal meat. Young calves under three weeks of age and under 150 pounds are not slaughtered for “whole veal meat” for the purposes of human food because these young calves have not developed characteristics necessary to be sold as veal.

9. **Comment:** Section 1321(s) definition of “kept for the purpose of producing” discriminates against out of state veal producers because “bob veal” are not included and California enjoys logistical advantages in supplying “bob” veal. (58-9)

Response: No change has been made in response to this comment. HSC section 25991(d) when defining covered calves, specifically states “kept for the purpose of producing the food product known as veal”, making clear the intent to specifically include only calves raised and slaughtered for veal meat. The definition in section 1321(s) of modified regulations is necessary to differentiate calves in intensive care, neonatal calf housing that will be moved into facilities for milk or beef production from those that remain confined for veal production. Young calves under three weeks of age and under 150 pounds are not slaughtered for “whole veal meat” for the purposes of human food because these young calves have not developed characteristics necessary to be sold as “veal”. The definition of “kept for the purposes of producing” applies equally to all covered products in California commerce, regardless of origin.

10. **Comment:** Add clarity to the section 1322(c) definition of “breeding pig” related to when a sow fits the definition of a covered animal for purposes of product sales in California commerce; and add clarity related to different life stages in a breeding pig’s life cycle, including limiting the definition to the time the pig is mated and excluding sows that are not pregnant and destined to be culled. (28-1, 38-1, 50-9, 79-5)

Response: Partially accept. While the statutory timeframe of when a breeding pig must be housed in the minimum standards described in the Act is specific, there is a lack of clarity related to commercial breeding pigs that are newly entering or re-entering a production facility for the purposes of producing immediate offspring for whole pork meat destined for the California market. As stated in the Addendum to the ISOR, section 1322(v) “production cycle” in the modified regulations was added to clarify when section 1322.1(a) use of the term “breeding pig” applies. Section 1322.1(a) was modified to clarify that compliance with the confinement standards for a breeding pig, or the product of the immediate offspring of a breeding pig, is required “at any time during the production cycle” for said product. While all California farms must be compliant regardless of the ultimate destination of products, this definition allows out-of-state producers the option to move sows into newly compliant

housing and sell covered meat from immediate offspring in California commerce. The definition of “production cycle” could not limit the definition of commercial breeding sows to those that are bred or pregnant because the definition in HSC section 25991(a) of a breeding sow, by including animals over 6 months of age, includes more than bred or pregnant animals, and regulations must conform to the Act.

11. **Comment:** Section 1322.1(a) is not clear if the immediate offspring from a breeding pig is considered compliant if the breeding pig dam was confined only part of her life in compliant housing or if the breeding pig needs be confined in compliant housing for her entire life in order for the pork meat from her immediate offspring to be sold in California. (67-2, 84-8)

Response: Accept. The definition of “production cycle” in section 1322(v) of the modified regulations was added to clarify that the breeding pig needs to be in compliant housing for the duration of a “production cycle” in order for the immediate offspring of that production cycle to be considered compliant with the Act and these regulations. This will allow pork producers to fully utilize newly acquired compliant housing based on a “production cycle” to produce pork meat if they choose to sell whole pork meat in the California market.

12. **Comment:** The definition of “flavoring” in sections 1320(q), 1321(p), and 1322(q) should add “when used for flavoring purposes” at the end of the definition to clarify that substances referenced in the definition of “flavoring” are only to be used for that stated purpose. (59-15, 77-6, 83-23, 18H-4)

Response: Partially accept. As described in the Addendum to the ISOR, 1320(p), 1321(p) and 1322(q) were revised with the addition of “substances with a use described as a flavoring, flavoring agent, or flavoring enhancer” to clarify and narrow the scope of the reference to Part 184 of Title 21 of the Code of Federal Regulations to be more consistent with the Act.

13. **Comment:** Definitions of “in its shell form” and “liquid eggs” in sections 1320(t) and 1320(u), respectively, should clarify what “co-packaged” means. (83-24)

Response: No change has been made in response to this comment. The definitions of “liquid egg” (1320(t)) and “in its shell form” (1320(s)), in modified regulations, specifically include cooked and co-packaged products. The term “co-packaged” as used in the proposed regulation text is reasonably clear.

D. Commercial Sale

1. **Comment:** The definition of “commercial sale” in sections 1320(e), 1321(e), and 1322(f) should specifically exclude sales and donations of covered products to schools and universities. (2-2, 40-1, 40-2, 41-1, 58-7, 66-1)

Response: Partially accept. While the definition of “commercial sale” in articles 1, 2 and 3 as originally proposed clarified that donations were not considered commercial sales, the definition was amended to add clarity that sales to the federal government were also excluded. Further exemptions for sales to schools and universities were not made because HSC section 25990(b) prohibits a business owner or operator from knowingly engaging in a sale as described, meaning that if a business is *selling* product to a non-profit or government agency other than the federal government, a commercial transaction has occurred, and regulations must conform to statute.

2. **Comment:** Sections 1320(e)(3), 1321(e)(3), and 1322(f)(3) need to clarify if schools and food banks are considered nonprofit organizations. (29-4)

Response: Accept. As stated in the Addendum to the ISOR, 1320(e), 1321(f), and 1322(f) subsections were amended to strike “religious, charitable, scientific, educational, or other”. This amendment clarifies that all nonprofit organizations which meet the definition of a 501(c)(3) are included in the exemption of “commercial sale” if the covered product is donated to the nonprofit.

3. **Comment:** Section 1322(f) definition of “commercial sale” should exclude donations of USDA pork between processors. (40-1, 40-2)

Response: No change has been made in response to this comment. The Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope. As proposed, only donations to a non-profit organization are exempt from being considered a “commercial” sale because the noncommercial interpretation is established by their tax status. Some transfers of product between processors under mandatory federal inspection are also exempt as provided for by HSC section 25991(o) and by proposed regulation definitions of “commercial sale” in sections 1320(e), 1321(f), and 1322(f) of modified regulations. For consistency with the Act and consumer expectations, other transfers denote an exchange of value and if not specifically excluded from the definition of a commercial sale, regardless of what term the entities use to describe the transfer, if “physical possession” is taken in California, it is considered a commercial sale under the proposed regulations.

4. **Comment:** Sections 1320(e), 1321(e), and 1322(f) should clarify if donations by the federal government and sales of covered products to the federal government are included under the definition of “commercial sale”. (29-5)

Response: Accept. To add clarity that sales to the federal government are not governed by the Act and are therefore excluded from the definition of “commercial sale”, sections 1320(e), 1321(f), and 1322(f), of modified regulations, were amended to clearly exclude sales to the federal government or made on federal land. Donations to nonprofit organizations as described in the definition of “commercial sale” in the proposed regulations are not considered commercial sales, regardless of the donor.

5. **Comment:** Sections 1320(e), 1321(e), and 1322(f) definitions of “commercial sale” should clarify that sales to federal prisons and military bases are exempt from commercial sales. (29-6, 58-7, 74-1, 10H-1)

Response: Accept. As stated in the Addendum to the ISOR, sections 1320(e)(2), 1321(f)(2), and 1322(f)(2) were modified to add clarification that sales of covered product to federal agencies or taking place on federal lands are excluded from the definition of “commercial sale”.

6. **Comment:** Sections 1320(e), 1321(e), and 1322(f) definitions of “commercial sale” should not include sales of covered products that are not eventually consumed in California. For example, covered product that enters the state for processing and then leaves for distribution and sale outside of California. (50-10, 58-3, 58-4, 84-19)

Response: No change has been made in response to this comment. The proposed regulations already exclude products entering California only for purposes of transshipment or export and commercial sales are limited to transactions where “physical possession”, as defined, is taken in California. Additional exemptions for sales of covered products to California food processors, where the processed product may not be consumed in California, cannot be made because the regulations must conform to HSC section 25990(b) which prohibits “sale” of covered product in California, not “consumption” of covered product in California.

7. **Comment:** A “sale” of a covered product should only occur where the buyer takes physical possession of the covered product, so enforcement should not occur at the state line or while in transit. (50-10, 50-26)

Response: No change has been made in response to this comment. Sections 1320.6, 1321.6, and 1322.6 for *Inspection of Conveyances* in the proposed regulations do not amend the definition of “sale,” but rather implement conditions for sale. Monitoring shipments into California at Border Protection Stations is a proven method for assuring compliance with numerous laws. HSC section 25993(a) provides broad authority to implement the Act by promulgating regulations. All components of the proposed regulations are required to assure consumers that covered products sold in California are compliant. A condition of selling covered products in California commerce is permitting inspection and a condition for a distributor selling covered product in California is registration with the Department which allows for inspection of conveyances.

8. **Comment:** Section 1322(f) definition of “commercial sale” should include sales that occur at facilities under voluntary inspection by FSIS in the list of exemptions. (58-6)

Response: No change has been made in response to this comment. The proposed change does not fall within any enumerated exception provided for by the Act. Instead, regulations must conform to HSC sections 25991(i) and (o), which clearly use the term “mandatory” inspection and include references to the federal laws which maintain this “mandatory” inspection; Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq). To provide additional clarity, 1320(m), 1320.2(l), 1320.4(a)(3), 1321.4(a)(3), 1321.8(c), 1322.4(a)(3), 1322.8(c) were amended to include the term “mandatory” making the language consistent with statute.

9. **Comment:** Article 4 should include an exemption for 4-H, FFA, Grange, and similar youth projects from the Act and the proposed regulations because the requirements are burdensome and will result in non-participation of youth in these types of programs. (28H-2, 61H-1, 69H-1)

Response: Partially accept. The exceptions to the Act specified in HSC section 25992(d) “during rodeo exhibitions, state and county fair exhibitions, 4-H programs and similar exhibitions”, was added to the regulations in amended section 1324.1(a)(4) to make it clear that during youth programs and while at exhibitions, covered animals are exempt from housing standards. Consistent with the Act, regulations do not provide an exemption from required confinement standards for *commercial* breeding operations selling covered animals, where products eventually enter California commerce. Subsequent sales of whole pork meat from a retailer to a consumer of covered products are included as a “commercial sale” if the sales are not occurring “during” these types of youth programs and exhibitions.

10. **Comment:** Article 4 should include an exemption to HSC sections 25990-25994 and the proposed regulations for 4-H, FFA, Grange, and similar youth projects, sales of those animals, and subsequent sales of products from those covered animals because these programs are not commercial producers. (35H-1, 58H-1, 63H-1, 64H-1, 65H-1)

Response: Partially accept. The proposed regulations were amended to include HSC section 25992(d) exceptions for youth programs and exhibitions verbatim by adding section 1324.1(a)(4), making the exceptions to confinement standards described in the proposed regulations consistent with those provided in statute. The use of the phrase “and similar exhibitions” extends the exemption during other youth programs without the need for the Department to provide an exhaustive list. The Act does not include sales of live animals (only sales of covered products), and therefore the sales of animals as part of a 4-H or similar youth project are not included in the Act or these regulations. Subsequent sales of whole pork meat from a retailer to a consumer of covered products are included as a “commercial sale” if the sales are not occurring “during” these types of youth programs and exhibitions.

11. **Comment:** Covered products that are from 4-H, FFA, Grange, and similar youth programs covered animals should be exempt from the definition of “commercial sale”. (35H-1, 63H-1, 64H-1)

Response: No change has been made in response to this comment. The exceptions added to amended section 1324.1(a)(4) of the proposed regulations repeat those specified in HSC section 25992(d) verbatim. Thus, the exceptions to confinement standards described in the proposed regulations are consistent with those provided in statute. The use of the phrase “and similar exhibitions” extends the exemption during other youth programs without the need for the Department to provide an exhaustive list. The use of the term “during” limits the exception to the timeframe the covered animal or covered product is part of an exempt exhibition or program, and subsequent sales of whole pork meat from a retailer to a consumer of covered products are included as a “commercial sale” if the sales are not occurring “during” these types of youth programs and exhibitions.

12. **Comment:** In sections 1321(e)(2) and 1322(e)(2), “M” should not be used to identify the establishments exempt from the definition of “commercial sale” because often an establishment’s mark of inspection does not include an “M”. (58-5)

Response: No change has been made in response to this comment. The proposed regulations do not refer to a “mark of inspection,” like is found on products for food safety, but rather adopt clear facility identifiers familiar to the regulated industry associated with all facilities with mandatory inspection described in HSC section 25991(o). Establishments under mandatory inspection by USDA, FSIS are all assigned an establishment number with an alpha prefix based on the specific federal law regulating that facility or process. The inclusion of this alpha prefix is necessary because it eliminates uncertainty. For example, if a facility does not have the referenced alpha prefix, the product is not at a location under mandatory federal inspection for that product, and if possession was taken at that location, it would not be exempt from the definition of a “sale” included in the Act and these proposed regulations.

E. Registration

1. **Comment:** Add clarity that internal distribution centers that only distribute covered products to locations in California under the same ownership do not have to register with the Department as described in sections 1320.2, 1321.2, and 1322.2. (59-12, 59-13)

Response: No change has been made in response to this comment. For internal distribution centers to be exempt from registration, the definition of “end-user” in sections 1320(o), 1321(o), and 1322(o), in modified regulations, would need to be changed to include internal distribution centers that do not further distribute outside of the parent company as “end-users”. This amendment was not made because distribution centers serve as central points for transactions in the broader California marketplace. Identifying distribution locations through registration with the Department is needed to ensure compliance with the Act in an efficient manner. Registering internal distribution centers is less burdensome on a company than the alternative of registering all retail store locations.

2. **Comment:** Add clarity that “distributor” in sections 1320(k), 1321(z), and 1322(u) and related requirements for third-party certification under section 1326.1 only applies to facilities, parts of facilities, and covered products intended for sale or distribution in California. (50-31, 84-19)

Response: Accept. Only distributors selling covered product in California should be required to be certified and register with the Department. The proposed regulations were not intended to require registration of out-of-state distribution centers that are not selling into California commerce. The Department added “in California” to section 1326.1(d) and (e) to make the intent clear in modified regulations. Further amendment is not necessary because proposed sections 1326(e) and (y) allow operations to register as a “split operation” if only a portion of the facility is certified as compliant. When registering, companies can provide certification only for the part of the facility supplying covered products into California and would not be required to allow access to facilities or locations within the facility not supplying the California market.

3. **Comment:** Annual registration of distributors with the Department as described in sections 1320.2, 1321.2, and 1322.2 is excessive and unnecessary. Alternative registration frequencies of every 24 months or one-time until registration is cancelled, updated, or revoked are suggested. (50-19, 59-3, 83-12, 84-25)

Response: No change has been made in response to this comment. Annual registration is the norm for most Department regulatory programs because the Department has determined that annual registration results in more accurate business inventories and more consistent levels of compliance with the conditions for registration than less frequent registrations.

4. **Comment:** Regarding distributor registration in Articles 1, 2, and 3 and sections 1326.5 and 1326.6 describing the third-party certification process for distributors, clarify how certification, on-site inspection and registration timeframes interrelate. Clarify when a distributor is required to register, how a distributor could register before their suppliers are certified, and clarify what certifications are required prior to registration and if certification can be granted prior to an on-site inspection. (59-7, 59-10, 83-9, 83-11)

Response: Partially accept. An implementation date of January 1, 2023, for distributor registration was added to sections 1320.2(a), 1321.2(a), and 1322.2(a) of modified regulations. In amended sections 1320.2(k), 1321.2(k) and 1322.2(k), the allowance for self-

certification by distributors was extended through December 31, 2023 to allow adequate time for third-party certifiers to become accredited. The delay in implementation dates of registration and certification also provide the Department time to conduct outreach and training related to registration, self-certification, and certification by and accredited certifier. Further clarification was not added because section 1326.6(a) states that certification from a certifying agent is granted *after* an on-site inspection, and section 1326(d) includes a definition of the term “certification.”

5. **Comment:** Registration of distributors as described in sections 1320.2, 1321.2, and 1322.2 should be centralized for companies that have multiple distribution locations. (59-9, 83-15)

Response: No change has been made in response to this comment. Registration can be centralized by an ownership entity (such as by a corporate office). A parent company can register all distribution locations, but each physical location will need a registration application bearing the necessary facility information. A unique registration will be issued to each physical location which is needed for trace-back purposes, to better ensure compliance with the law, and if there is an issue of noncompliance, it can be isolated to the specific distribution location(s). All registrations within a parent company could be generated and held in a central location. To make registration more efficient, the forms can be modified and can be electronic as long as all required information is supplied.

6. **Comment:** Registration of “egg distributor”, “veal distributor”, and “pork distributor” as described in sections 1320.2, 1321.2, and 1322.2 should be combined into one registration. (83-13)

Response: No change has been made in response to this comment. Each covered product requires registration because trace-back and compliance will be specific to each covered product. In addition, if there is an issue of noncompliance with only one covered product that is being distributed, but the other covered products being distributed are in compliance, then distribution of those products could continue. Distributor registration forms can be modified, and electronic applications will be accepted in order to facilitate more efficient multiple commodity registrations, as long as all of the required information is supplied.

7. **Comment:** Use of the word “person” in sections 1320.2(a), 1321.2(a), and 1322.2(a) needs to be clarified to ensure every individual working for a “distributor” does not need to register with the Department. (50-20)

Response: No change has been made in response to this comment. The uses of “person” in sections 1320.2(a), 1321.2(a), and 1322.2(a) refer to the definition of “person” in sections 1320(v), 1321(t), and 1322(s), of modified regulations, which incorporate the definition of “person” found in HSC section 25991(m) verbatim: “person means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate”. The use of the term “or” in this definition means that only one of these entities would have to register with the Department if more than one term is applicable.

8. **Comment:** Clarity is needed for what “reasonably could have resulted in” a violation in sections 1320.9(a)(1), 1321.9(a)(1), and 1322.9(a)(1) as grounds for denial, suspension, or revocation of registration and the denial, suspension, or revocation of registration should be reserved for when a violation has actually occurred. (58-19, 84-37)

Response: Partially accept. Sections 1320.9, 1321.9, and 1322.9 were amended to include instructions for requesting a formal appeal of the Department’s decision. Further amendments were not made because the regulations are reasonably clear. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. “Reasonably could have resulted in” is necessary language because, for example, advertising non-compliant product as compliant even before the product is purchased could provide an unfair business advantage. Further, in order to provide consumers adequate assurance that products they are about to purchase are compliant, the Department must be able to enforce requirements when products are offered for sale or stored for sale. This will also avoid damaging public announcements of noncompliant sales after the fact. Therefore, violations that reasonably could have resulted in a commercial sale of noncompliant covered product by a registered distributor are grounds for registration to be denied, suspended, or revoked. Refer to the Department’s previous statements of necessity and purpose in sections 1320.9, 1320.9(a)(1), 1321.9, 1321.9(a)(1), 1322.9, and 1322.9(a)(1) of the ISOR.

F. Certification and Certifiers

1. **Comment:** Sections 1320.1(b), 1321.1(b), and 1322.1(b) need to clarify if a producer can certify only a portion of their operation and how “partial-certification” can be achieved. (84-9)

Response: No change has been made in response to this comment. Further amendment is not necessary because the originally proposed regulations include the definition of a “split operation” in section 1326(y). A “split operation” is a production or distribution operation with only a portion of the facility providing covered products in California commerce, so only that portion must be certified. Section 1326.2(b)(7) of the proposed regulations explains records needed for split operations and section 1326.3(a)(5) provides instruction for applicants with split operations. Section 1326.5(a)(1) only requires an on-site inspection of the areas “for which certification is requested”.

2. **Comment:** Regarding sections 1320.1(b), 1321.1(b), and 1322.1(b) stating producer certification requirements and sections 1320.2(k), 1321.2(k), and 1322.2(k) providing an allowance for distributor self-certification, add clarity related to producer self-certification, distributor self-certification, and how the implementation date timing of these certifications can interrelate. (50-15, 81-9, 83-6, 83-7, 83-11)

Response: Accept. An implementation date of January 1, 2023, for distributor registration was added to sections 1320.2(a), 1321.2(a), and 1322.2(a), adding clarity that distributors must be certified, including self-certified by that date. To allow adequate time for third-party certifiers to become accredited, the producer certification implementation dates in sections 1320.1(b), 1321.1(b), and 1322.1(b) were extended to January 1, 2024. In amended sections 1320.2(k), 1321.2(k), and 1322.2(k), the allowance for self-certification by distributors was also extended through December 31, 2023. The delay in implementation of registration and third-party certification dates also provides the Department time to conduct outreach and training related to registration, self-certification, and certification by an accredited certifier.

3. **Comment:** Producer self-certification described in sections 1320.2(k), 1321.2(k), and 1322.2(k) should have legal protections if the self-certified producer is later determined to be noncompliant. (50-16)

Response: No change has been made in response to this comment. HSC section 25990(a) prohibits a farm owner or operator within the state from knowingly causing a covered animal to be confined in a cruel manner. HSC section 25990(b) prohibits a business owner or operator from knowingly engaging in the sale of a covered product that the owner or operator knows or should know does not comply with the Act's confinement standards. The proposed change is not equally effective in implementing the statutory policy.

4. **Comment:** Certification, as described in Article 5, of distributors (requirement in sections 1320.2(j), 1321.2(j), and 1322.2(j)) and producers (requirement in sections 1320.1(b), 1321.1(b), and 1322.1(b)) is onerous, burdensome, inconsistent, and excessive. The Department should work with other non-state organizations that have the trust of producers or the requirements should be eliminated. The Department should instead rely on an affidavit of understanding, similar type of written certification, or allow for automatic renewal or multiyear certification. (28-5, 38-5, 50-19, 50-29, 58-11, 58-21, 59-1, 59-6, 59-8, 83-2, 83-3, 83-14, 84-11, 84-33)

Response: No change has been made in response to this comment. Third-party certification of the operations by an accredited certifier provides equitable assurance that they are not engaging in prohibited acts, as defined by HSC section 25990, is an essential component of the regulatory framework proposed and is consistent with the Act. The Department has made every effort to limit the burden while implementing the Act. HSC section 25993(a) allows the Department and DPH to promulgate rules and regulations for the implementation of the Act. Please refer to the Statement of Factual Basis and Rationale in the ISOR for more details.

5. **Comment:** Certification of producer operations, as described in sections 1320.1(b), 1321.1(b), and 1322.1(b), should not be required at locations that do not routinely house covered animals. Alternatively, an affidavit of compliance or other self-written certification should be allowed for a farm temporarily housing covered animals that will produce covered products sold in California. (28-3, 38-3, 50-18)

Response: No change has been made in response to this comment. The Act provides no special provision for temporary or transitory use of facilities not in compliance with confinement standards housing covered animals, and regulations must conform with the Act. Further, an exception based on frequency of use would be difficult to implement because the determination of "routine use" would be challenging and verification of sporadic or transitory compliance would be infeasible.

6. **Comment:** The Department should allow for an equivalency arrangement for whole veal meat coming from Canada that complies with Canadian Code of Practice standards to be equivalent to compliance with the regulations. (25-9, 35-5, 37-9)

Response: No change has been made in response to this comment. The regulations as originally proposed allow for the Department to accept a foreign government entity as a certifying agent and as an accreditor of a third-party certifier provided the standards of such foreign government programs are equivalent to the Act and these proposed regulations. However, the Act contains specific language related to confinement standards for animals producing covered product sold in California, regardless of covered animal origin, so to be recognized as equivalent, the foreign standards would need to be equivalent to the

standards in the Act. The proposed regulations cannot introduce new standards because regulations must conform to the authorizing statute.

7. **Comment:** Section 1326.22, Government Entity Providing Certification, should clarify whether the section also applies to foreign governments, and should clarify that USDA, FSIS equivalency approved programs in foreign countries would be classified as certifying agents. (20-2, 54H-1)

Response: No change has been made in response to this comment. Related to foreign governments, no change is necessary as section 1326(n) defines “governmental entity” as any local, state, or federal domestic government, tribal government, or foreign governmental subdivision providing certification services. Other recognition of equivalency would rely on meeting the standards of the Act and proposed regulations.

8. **Comment:** Section 1326.4(d) should include uniform standards for all certifying agents, including other government entities as certifying agents as defined in 1326(n). The lack of uniform standards for government entities would result in different interpretations of compliance. (61-8, 59H-8)

Response: No change has been made in response to this comment. 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 to verify compliance with the Act and these regulations (section 1326.8(f)). 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.

9. **Comment:** Sections 1326.10(a)(1), 1326.10(a)(4), and 1326.13(a)(3) need to clarify what “sufficient expertise” means as a qualification for certifying agents. Recommendation for the Department to recognize and prioritize already established animal welfare auditor entities such as PAACO or FACTA as certifying agents because producers already have established and trusted relationships with these types of organizations. (19-1, 44-3, 44-4, 44-6, 44-9, 44-11, 47-5, 49-1, 50-40, 52-1, 54-3, 54-4, 58-29, 68-7, 79-13, 80-2, 26H-3)

Response: Partially accept. Animal production knowledge is described in sections 1326.13(a)(2) and (3) of the proposed regulations. Biosecurity expertise is an important part of this required knowledge. To add specificity, a biosecurity training requirement was added to section 1326.13(a)(3) of modified regulations. No change has been made to name any specific certifying agents or entities in order to provide a free market and allow producers and distributors to pick their certifying agent.

10. **Comment:** Section 1326.10 should include specific requirements that the certifying agents do not have ideological conflicts of interest such as involvement with animal rights organizations. (44-5, 44-10, 50-41, 54-5, 68-9)

Response: No change has been made in response to this comment. The proposed regulations have specific requirements for accredited certifying agents as described in sections 1326.10 and 1326.13 to demonstrate their knowledge and expertise in the area of accreditation they are seeking. Further, the proposed regulations place the authority to choose a certifying agent in the hands of producers and distributors and provide the option of switching to a different certifying agent if desired.

11. **Comment:** Certifying agent general requirements in section 1326.10 should require specific training in animal welfare instead of animal production and distribution auditing and prevent loopholes through certifying agent shopping. (61-11, 12H-7, 53H-7, 59H-11)

Response: No change has been made in response to this comment. The requirements for an accredited certifying agent are sufficiently outlined in sections 1326.10 and 1326.13 of the proposed regulations to ensure only qualified certifying agents are accredited for this specific compliance review. The role of a certifying agent is to provide a third-party review and certification of an operation only for compliance with the Act and proposed regulations.

12. **Comment:** The process describing certifying agent accreditation in sections 1326.10 through 1326.14 is onerous, excessively complex, and will discourage private third-party certifiers from applying to become accredited. The Department also does not have the staff to manage the accreditation process described in these sections, including out of state and foreign inspections. (58-30, 58-31, 58-32, 82-3, 16H-3)

Response: No change has been made in response to this comment. A proven regulatory framework of accrediting third-party certifying agents to effectively implement the Act and these regulations will be utilized. A rigorous accreditation process of these certifying agent applicants best assures uniform compliance of the Act. On-site visits to certifying agents by the Department are required twice in a five-year period, as proposed. The Department has the budget approved to perform these in-state, out-of-state, and out-of-country visits when required for program implementation and will have staff to accomplish accreditation within the regulatory timeframes. The Department has made every effort to limit the burden of the regulations while implementing the Act.

13. **Comment:** Sections 1320.8(b), 1321.8(b), and 1322.8(b) should be modified to remove the recordkeeping requirement for end-users purchasing covered product directly from an establishment under mandatory FSIS inspection. (59-14)

Response: Partially accept. Sections 1320.2(b) and (l), 1320.3(a), 1321.2(b) and (l), 1321.3(a), 1322.2(b) and (l), and 1322.3(a) were amended and 1320.5(f), 1321.5(f), and 1322.5(f) were deleted to make it clear that establishments under mandatory FSIS inspection could register with the Department as a distributor, voluntarily. This change will allow any distribution operation selling directly to an end-user to register with the Department and thereby relieve the recordkeeping burden on their customers (retailers). All covered products, except shell eggs, pass through an establishment under mandatory FSIS inspection during harvest or processing and all commercial sales, including those from a retailer to a consumer, are included in the Act. Therefore, the request to eliminate the recordkeeping requirement was denied because a demonstration of compliance will be needed for these types of retailers. Instead of eliminating the recordkeeping requirement, retailers, as customers of the establishment under mandatory FSIS inspection, can be

relieved of this recordkeeping burden if the FSIS establishment voluntarily registers as a distributor with the Department.

14. **Comment:** Sections 1320.8(b), 1321.8(b), and 1322.8(b) should be expanded to have end-user retailers and processors purchasing directly from establishments under mandatory FSIS inspection maintain the same “audit trail” as registered distributors purchasing covered products. (83-20)

Response: No change has been made in response to this comment. The proposed change is not as effective and less burdensome to affected private persons than the adopted regulation. Sections 1320.8, 1321.8, and 1322.8 in the originally proposed regulations require end-user retailers and processors taking physical possession of covered products directly from an establishment under mandatory FSIS inspection to maintain records demonstrating the products they sell are compliant, much like a registered distributor. However, the proposed regulatory framework primarily relies on distributor registration and record keeping for efficiency purposes.

15. **Comment:** The recordkeeping requirement of registered distributors as detailed in sections 1320.5, 1321.5, and 1322.5 is overly burdensome and the Act only requires a good faith written certification (HSC section 25993.1). (50-8, 58-1, 58-15, 58-18, 58-23, 59-4, 59-5, 77-2, 77-4, 83-2, 83-4, 83-19, 84-31)

Response: No change has been made in response to this comment. The Department has made every effort to limit the burden of the regulations while implementing the Act. The Department has proposed a regulatory framework that centers on transactions which occur within the state because the Act applies to commercial sales of covered products within California. HSC section 25993(a) allows the Department and DPH to promulgate rules and regulations for the implementation of the Act. It is necessary for the Department to verify compliance of commercial sales of covered products within California back to a certified farm of origin. Further, to relieve a cumulative implementation recordkeeping burden and for efficiency of verification, proposed regulations focus regulatory framework at the level of distribution (selling into or within California to an end-user) instead of at individual end-user locations, such as every retailer and restaurant in California. Proposed regulations provide latitude for each registered distributor to determine the best way to demonstrate the audit trail requirement, allowing for maximal use of existing tracking systems or new technologies.

16. **Comment:** Recordkeeping requirements described in sections 1320.5, 1320.8, 1321.5, 1321.8, 1322.5, and 1322.8 are not clear for how distributors or end-users can comply if the covered product moves through an establishment under mandatory FSIS inspection, that is exempt from the definition of sale, because those establishments do not have recordkeeping requirements in the proposed regulations. (81-3, 81-4, 81-5, 81-6, 83-5, 25H-2)

Response: No change has been made in response to this comment. The regulations are reasonably clear. It will be the responsibility of the registered distributor or end user that buys directly from an exempt location to request that the seller devise a way to demonstrate compliance to meet the recordkeeping requirements according to the Act and proposed regulations. When a civil or criminal action is taken against a registered distributor or a retailer doing business in California commerce, certification by the exempt seller is a defense (HSC section 25993.1). Similarly, when certification is established under the proposed regulations, registered distributors and end-users buying directly from an exempt

location for California commerce must request that the seller be capable of certifying product compliance, including traceability to a certified compliant farm, to avoid enforcement actions.

This responsibility placed on businesses purchasing covered product is important because the Act prohibits any business owner or operator from engaging in a sale of noncompliant covered product (HSC section 25990(b)) and specifically exempts from the definition of “sale” any sale where physical possession of covered product is taken at establishments under mandatory FSIS inspection (HSC section 25991(o)). Almost all covered products, except shell eggs, pass through an establishment under mandatory FSIS inspection during harvest or processing. The proposed regulations implementing the Act describe a framework of certification and a traceable audit trail to ensure all commercial sales of covered products are compliant. As stated in sections 1320(e), 1321(f), and 1322(f) of the modified regulations, the exemption from the definition of “sale” only applies to that one transaction and does not apply to any subsequent sales of covered product.

17. **Comment:** Recordkeeping requirements to fulfill “audit trail” definition in sections 1320(b), 1321(b), and 1322(b) for certified operations to comply with section 1326.2 are too vague. (28-5, 38-5, 50-33, 58-24, 59-11, 83-18, 84-16)

Response: Partially accept. A definition of “records” was added to sections 1320(w), 1321(v), and 1322(x) in the modified regulations clarifying that “records mean any information in written, visual, or electronic form that documents the activities undertaken by a producer, distributor, or certifying agent to comply with the Act and this Chapter”. This is the same definition of “records” that was already defined in Article 5 of the originally proposed regulations. Due to the great variety of producers and distributors supplying covered products to the state, making recordkeeping and audit trail requirements more specific would limit an operation’s ability to utilize existing recordkeeping and traceability systems and their ability to adopt new technologies to fulfill these requirements.

18. **Comment:** The recordkeeping requirements for certified operations described in section 1326.2 are too extensive, too detailed, should be limited to sales in California, and are not necessary to demonstrate compliance with the Act. (50-37, 52-4, 58-24, 77-5, 79-15, 79-17, 82-4, 18H-3)

Response: No change has been made in response to this comment. In drafting these regulations, the Department and DPH have considered the nature of the recordkeeping requirements. For the reasons set forth in the ISOR, it has been determined that the recordkeeping requirements for certified operations are necessary for the integrity of the proposed regulatory framework for implementation of the Act. Certification of producers and distributors depends heavily on the records needed to substantiate compliance to a certifying agent while also providing operation-specific flexibility and allowing for use of existing systems. For example, the activity to capture in the records is described, not a name or description of the specific document to use. Proposed regulations also include definitions for “area of operation” (1326(c)) and “split operations” (1326(y)) to make clear that records and audit trails are only needed for covered animals and covered products destined for commercial sale in California.

To the extent that the comment raises specific legal questions and seeks legal advice regarding the law, the commenter should consult with an attorney who is aware of all pertinent facts and relevant compliance concerns.

19. **Comment:** Sections 1320.5, 1321.5, and 1322.5 should allow for records to be maintained off-site at a central location as long as the records can be provided within 72 hours of a request. (83-36)

Response: No change has been made in response to this comment. In the proposed regulations, records are to be made available upon request, but a specific timeframe for this availability on-site is not included in order to allow registered distributors to readily comply. Record requirements do not exclude electronic records, and the Department recognizes that digital recordkeeping practices are normal for businesses.

20. **Comment:** Sections 1320(j), 1321(l), and 1322(m) should add “but not limited to” in the definitions of “document of title” for certifying agents to know the list of examples in the definition is not all inclusive. (58-8)

Response: Accept. The definitions of “document of title” in sections 1320(j), 1321(m), and 1322(m) were amended to clarify that the list of documents establishing title is not exhaustive.

21. **Comment:** The recordkeeping retention time of two years described in sections 1320.5(e), 1321.5(e), and 1322.5(e) is excessive and overly burdensome, and it is vague. Alternatives include harmonizing all record retentions included in the proposed regulation at one year and clarifying that the record requirement is for two years or the time an operation is compliant, whichever is shorter. (50-34, 58-15, 83-37, 84-17)

Response: No change has been made in response to this comment. The regulations are reasonably clear and the Department has made every effort to limit the burden of the regulations while implementing the Act. The record retention requirement in sections 1320.5(e), 1321.5(e), and 1322.5(e) required for distributor registration is limited to records needed for auditing covered products sold as compliant with the Act and these regulations. Section 1326.2(b)(4) further clarifies that for certification, records would be required for the “preceding two-year period.” Certification is required for registration (sections 1320.2(j), 1321.2(j), and 1322.2(j)), and part of that certification is demonstrating the company has adequate audit trail records for the prior two years. These records are only related to compliant covered products as described, which may have been handled or produced for less than a two-year period preceding initial certification of compliance and registration. Therefore, it is recognized that records related to covered products sold in California commerce may only exist for a preceding period that is less than two years. A two-year record retention rate is reasonable due to the lifecycle of covered products. For example, the time from mating a breeding pig to the sale of pork meat from her immediate offspring is a minimum of eleven months. Also, liquid eggs can be frozen or dried and stored for periods up to 18 months. Harvested pork and veal meat can also be frozen and stored for up to six months in cold storage while still maintaining the quality to be sold in the future.

22. **Comment:** Records developed and maintained for compliance with the Act and proposed regulations should be considered confidential and not be available for certifying agents to review or be subject to review by the public through a public records act request, or alternatively the Department should develop safeguards to protect the privacy of the records. (50-35, 50-36, 50-37, 79-17, 84-32)

Response: No change has been made in response to this comment. In drafting these regulations, the privacy issues raised were considered. For the reasons set forth in the

ISOR, the Department has included section 1326.10(a)(7) in the proposed regulations to ensure that proprietary business and personal identifying information that is protected under the California Public Records Act is not released. In addition, a producer or distributor is allowed to choose their certifying agent, which should mitigate other information release concerns with the certifying agent.

23. **Comment:** Section 1326.8(a)(2) should have the word “minor” struck because “minor noncompliance” is not defined in proposed regulations. (56-2)

Response: Accept. To prevent application of inconsistent standards when determining a continued certification, section 1326.8(a)(2) was amended to delete “minor” and replaced with “any”, thereby requiring a certified operation to update the correction of “any noncompliances” identified by a certifying agent when submitting a renewal application as a part of continued certification.

24. **Comment:** Section 1326.7(f) should be modified to prevent an operation from reapplying for certification with a different certifying agent if the previous certifying agent denied an application for certification. (61-9, 12H-9, 53H-9, 59H-9)

Response: No change has been made in response to this comment. In drafting these regulations, the Department has considered the issue of certification. For the reasons set forth in the ISOR, the Department has determined that all private certifying agents must be accredited by the Department to ensure each certifying agent applies similar standards when certifying an operation with compliance with the Act and these proposed regulations. The Department believes this step of accreditation is needed to ensure uniform implementation of statute. Free market efficiencies and any interpersonal conflict resolution is best served by allowing producers and distributors to choose their own certifying agent.

G. On-Site Inspections / Audits

1. **Comment:** Regarding sections 1326.1 and 1326.5, on-site inspections by certifying agents should not be unannounced due to a limited ability to make rapid changes to a facility, potential false claims by alleged inspectors, biosecurity concerns, dangers associated with untrained individuals, the unavailability or absence of an authorized representative from the facility or operation, interference with important production and daily distribution activities, the potential that central location audits of paperwork and electronic records could replace on-site visits, and the number of inspections that will be required. (24-1, 28-9, 28-10, 34-1, 34-2, 38-9, 38-10, 44-8, 50-39, 58-26, 67-8, 68-8, 68-9, 77-3, 79-19)

Response: Partially accept. No change has been made relative to the reserved authority to conduct “unannounced” visits in response to this comment. Unannounced on-site inspections by an operation’s certifying agent or the Department is vital to ensure compliance and uniform implementation of the Act and the proposed regulations. Based on comments related to the need for an authorized representative being present, section 1326.5(b)(2) was amended to include a requirement that an authorized representative be present for all on-site inspections, so consequently the norm will be to schedule inspections. An authorized representative can verify the inspector’s legitimacy and ensure that biosecurity and safety practices are followed. Verification of compliance cannot be performed entirely at a central corporate office or via a review of paperwork alone, although these activities could reduce the time on-site and reduce potential interference with daily

operations. The on-site inspection, including a scheduled visit with a reserved right to an unannounced visit, is needed for integrity of regulatory framework proposed.

2. **Comment:** Regarding sections 1326.1 and 1326.5, regulations should require that a qualified representative of the operation being inspected be present. (34-1, 50-39, 58-26, 67-9, 68-8)

Response: Accept. Section 1326.5(b)(2) has been amended to clarify that when a certifying agent conducts an on-site inspection, an authorized representative of the operation who is knowledgeable about the operation must be present. This employee will also be able to ensure biosecurity and safety protocols of the operation are followed, will provide access only to the portion of the operation being certified, and will provide access to appropriate records relative to certification. On-site inspections by a certifying agent or the Department may still be unannounced after determining that an authorized representative of the operation will be on-site.

3. **Comment:** In section 1326.5, annual “on-site” inspections, including by an accredited certifier, should not be required. Reasons include: biosecurity risks presented by an inspector potentially carrying disease onto the location; security risks; there is no health and safety basis so the activity is a per se regulatory taking; the burden imposed by audits, especially on an operation being certified and registered, which requires two audits; volume of certifications that will be logistically impossible to complete in required timeframes; the static nature of fixed structures such as barns and fencing that make annual on-site visits unnecessary; and the disadvantage to smaller producers of annual inspections. Suggested alternatives include reduced frequency of on-site inspections (every 15 month, every 3 years, or every 5-7 years), remote record review maximizing use of electronic records, a one-time visit for certification, annual audits only if there are material changes or change in ownership, no third-party certification, self-certification relying on documentation, use of a facility’s existing third-party auditor, and limiting access to only those areas being certified. (24-1, 28-7, 28-8, 34-2, 38-7, 38-8, 44-1, 44-2, 44-7, 47-3, 47-4, 49-2, 49-3, 50-20, 50-21, 50-31, 50-32, 50-38, 51-2, 52-2, 54-1, 54-2, 58-25, 58-26, 58-27, 59-6, 68-6, 79-16, 79-18, 82-2, 83-16, 83-17, 84-12, 84-15, 84-26, 31H-1, 60H-1, 68H-3)

Response: No change has been made relative to conducting on-site visits annually. To ensure the integrity of the proposed regulatory framework for implementation of the Act, on-site, third-party inspections of certified operations are necessary. This verification system has been proven to be effective when used by other consumer assurance programs, as stated in the ISOR. Conducting on-site inspections every twelve months is a common industry standard, and the list of certification programs confirming this inspection frequency was added to materials relied upon in this rulemaking file. As proposed, only one on-site visit for verification is required per year, which must occur within three months of when a facility is certified, providing logistical flexibility for the visit. Amended section 1326.5(b)(2) limits on-site inspections to when an authorized representative is present. An authorized representative can ensure that biosecurity and safety practices are followed, and ensure that inspection is limited to the areas being certified. As proposed, producer and distributor operations are allowed to choose their certifying agent. The time and number of on-site visits could be reduced by coordinating with an operation’s chosen certifier before the visit, maximizing use of electronic records, and combining with other certification programs. The burden of on-site inspection is scalable with size of operations and will not place a larger

burden on smaller producers and distributors. On-site inspections are necessary for the reasons stated in the ISOR and do not constitute a regulatory taking.

4. **Comment:** Regarding sections 1326.1 and 1326.5, on-site inspections of certified operations should be random and unannounced. (61-10, 59H-10)

Response: No change has been made in response to this comment. Section 1326.5(a)(2) allows for random and unannounced on-site inspections by the certifying agent or the Department.

5. **Comment:** Access to covered product by a certifying agent and the Department described in section 1326.1(d) poses a food safety risk. (84-27)

Response: No change has been made in response to this comment. The purpose of the on-site inspection of a distributor's covered product is not to unwrap and inspect a particular piece of pork meat which rightly might pose a food safety risk. The purpose of an on-site inspection of a distributor operation is to verify that processes, implementation of procedures, and recordkeeping claims are valid and truthful to provide assurance that covered products are traceable through an "audit trail" to a certified producer of origin.

6. **Comment:** Regarding sections 1326.1 and 1326.5, a certifying agent's review of sites and records must be limited to covered animals and/or products intended for sale in California. (50-31, 58-22, 79-14, 79-15)

Response: No change has been made in response to this comment because sections 1326.1 and 1326.5 in the initially proposed regulations make it clear that that on-site inspections of producers and distributors are limited to animals or products included in the Act and these regulations by specifically using the terms "covered animals" and "covered product" which are defined in sections 1326(h) and (i), respectively. Section 1326.5(a) only requires an on-site inspection of the areas "for which certification is requested." The definition of "split operation" in section 1326(y) describes production and distribution operations with only partially compliant housing or distributing compliant and noncompliant covered product. Section 1326.2(b)(7) explains the records needed for "split operations" and section 1326.3(a)(5) provides instructions for certification applications with "split operations".

7. **Comment:** Regarding sections 1326.1, 1326.5, and 1326.11 through 1326.21, proposed regulations should require that certifying agents follow the operation's biosecurity protocols. (44-6, 50-30, 50-41, 67-7, 79-11, 26H-2)

Response: Partially accept. In response to comments, section 1326.13(a)(3) was amended to include biosecurity training as a requirement for certifying agent accreditation. Further, following biosecurity practices is critical to entering production facilities and is a part of the described qualifications referred to in section 1326.13(a)(2) "experience, training and education in...covered animal production..." In addition, on-site inspections are limited to areas for which certification is being requested or reviewed for verification.

H. Labels and Shipping Documentation

1. **Comment:** Revise regulation sections 1320.4, 1321.4, and 1322.4 to allow for shipping document labeling flexibility during an emergency to ensure California has continued access to covered products. (83-33)

Response: No change has been made in response to this comment. HSC section 25992 provides specific exceptions to confinement standards for described events and periods of time, and “during an emergency” is not included. Therefore, the Department lacks authority to excuse covered products sold in California from compliance with the Act during times of emergency. These proposed markings on shipping documents are necessary for the integrity of the regulatory framework proposed to implement the Act.

2. **Comment:** The proposed language in section 1320.4(b) for shell egg carton labeling is problematic because the proposed language of “CA Cage-Free” may mislead consumers by implying that the eggs are from California hens; may contradict other animal care label claims such as “free range,” “organic,” or “pasture raised;” is inconsistent with other required compliance documentation for liquid eggs, veal and pork meat; takes up too much space on the carton; will require unique cartons and warehouse space for California-bound eggs when other states have similar cage-free requirements; and does not provide sufficient time to exhaust carton inventories and order new cartons. Also, shell egg carton labeling requirements are best considered under the Department’s Shell Egg Food Safety Program, not in the proposed regulations. (27-1, 39-1, 39-2, 59-16, 78-3, 83-29, 83-30, 83-31, 83-32, 86-1, 87-1, 3H-1, 39H-1, 49H-1, 51H-1, 57H-1, 62H-1)

Response: Accept. In consideration of comments received, section 1320.4(b) was removed from the proposed regulations and therefore the requirement for shell egg carton labeling was removed entirely. Assurance of compliance for shell eggs will be established as it is for the other covered products (liquid eggs, whole veal meat, and whole pork meat) through certification, shipping document marking, and the maintenance of information needed to establish an audit trail. This amendment is also consistent with the establishment of shell egg carton labeling requirements through the Department’s Shell Egg Food Safety Program based on the Food and Agricultural Code.

3. **Comment:** Add to section 1322.4 a way to identify pork meat and pork products that are not covered by the Act because, for example, they do not meet the definition of “whole pork meat”. (81-8, 73H-2)

Response: No change has been made in response to this comment. HSC section 25993(a) provides authority to implement the Act through promulgation of regulations, and this proposal is a regulatory framework for verification of compliance with HSC section 25990, which includes specific “covered animals” and specific products of covered animals, as defined. Labeling of pork meat and pork products that are not covered by the Act is beyond the scope of this proposal.

4. **Comment:** Regarding sections 1320.4(a) and 1322.4(a), modify the statement of compliance on shipping documents to a more abbreviated form, or, alternatively, provide that the Secretary may approve other text for the statement of compliance in the future, as may be beneficial if other states adopt similar requirements. (27-2, 59-16, 73H-4)

Response: No change has been made in response to this comment. The required text on shipping documents in sections 1320.4, 1321.4, and 1322.4 was amended, but for clarity purposes and not to reduce the number of characters used. The modified proposed markings on shipping documents of shell eggs, liquid eggs, veal meat, and pork meat are longer, but are clearer indications of compliance with the Act. The Department did remove the full word “California” and replaced it with “CA” in the modified statements. The new

proposed statements for shipping documents are “Egg CA Prop 12 Compliant,” “Veal CA Prop 12 Compliant,” and “Pork CA Prop 12 Compliant.” These revised statements more clearly communicate compliance with the Act and proposed regulations and do not disparage other animal welfare label claims such as “free range” or “organic.” With respect to covered products for transshipment, export, donation, sale to federal agencies, or sales on tribal lands, the required statement on shipping documents was modified to allow any of the following: “For Export,” “For Transshipment,” or “Not CA Prop 12 Compliant.”

Any modification of the labelling requirement in the future must be made via the rulemaking process.

5. **Comment:** Regarding section 1322.4(a), using “24+” on shipping documents is problematic because compliant whole pork meat that may not meet the confinement requirement of 24 square feet per breeding pig will still be legal to be sold in California if the immediate offspring piglet producing that whole pork meat is born prior to January 1, 2022. (58-14, 67-5, 84-23, 73H-1)

Response: Accept. The shipping document labeling of whole pork meat was revised to read “Pork CA Prop 12 Compliant” which is truthful for whole pork meat that is in the supply chain prior to January 1, 2022, and for whole pork meat from piglets born prior to January 1, 2022, even if housed with less than 24 square feet per breeding pig (section 1322.4). As noted previously, enclosures must also meet the “turning around freely” requirement of HSC section 25991(e)(1).

6. **Comment:** Regarding sections 1320.4, 1320.5, 1321.4, 1321.5, 1322.4, and 1322.5, recommend using SKUs or other tracking technologies, or self-certification programs, rather than statements on shipping documents and distributor records for demonstration of compliance with the Act and proposed regulations. (50-22, 50-23, 50-24, 62-1)

Response: No change has been made in response to this comment. Shipping document labeling with language that can be easily understood by a certifying agent, freight transporter, or employee of the distributor is necessary to ensure covered products sold in California are compliant with the Act and proposed regulations. SKUs, QR codes, or other e-tracking technology are not prohibited by the proposed regulations and can be used in addition to required shipping document labeling.

7. **Comment:** Eliminate or modify required shipping document statements from sections 1320.4(a)(2), 1321.4(a), and 1322.4(a) for noncompliant covered products that are not intended for sale in California, because they are unnecessary to distinguish from products intended for sale in California; they are duplicative of other record-keeping requirements in the regulations; and they impose burdens on providers of products intended for sale in states other than California. (50-24, 55-1, 58-12, 59-16, 67-4, 83-28, 84-28, 84-29, 16H-4)

Response: Partially accept. Sections 1320.4(a)(2), 1321.4(a)(2), and 1322.4(a)(2) were modified to have the required statement on shipping documents of noncompliant covered products transported through California to read “For Export,” “For Transshipment,” or “Not CA Prop 12 Compliant.” The requirement for marking of shipping documents of noncompliant covered products is necessary for consumer assurance established by the proposed regulations that implement the Act. Shipping documents of covered product are not under the authority of FSIS as part of a mandatory inspection program under Federal

Meat Inspection Act and Egg Products Inspection Act. The Department has made every effort to limit the burden of the regulations while implementing the Act.

8. **Comment:** In sections 1321.4(a)(3) and 1322.4(a)(3) the suggested language for labeling shipping documents of noncompliant covered product being transported directly to an establishment under mandatory inspection under the Federal Meat Inspection Act should be changed to “only for use at a federally inspected establishment” instead of “only for use at...(followed by specific establishment number where the covered product will be shipped)” because sometimes shipments of covered product are diverted to a different establishment under mandatory FSIS inspection. (58-13)

Response: No change has been made in response to this comment. The exemption from the definition of “sale” in HSC 25991(o) is specifically limited to establishments under *mandatory* inspection under Federal *Meat* Inspection Act or *Egg Products* Inspection Act. Establishments under mandatory inspection under the Federal Meat Inspection Act are assigned an establishment number with prefix of “M” by FSIS. Establishments under mandatory inspection under Egg Products Inspection Act are assigned an establishment number with prefix of “G” by FSIS. There are other FSIS inspected establishments (with prefixes of “P”, “V”, and “I” establishment numbers) that will engage in commercial sales of covered products and those sales are included in the Act’s definition of sale. Therefore, including the specific establishment number issued by FSIS on the shipping documents for noncompliant covered product destined for use at an establishment under mandatory FSIS inspection will facilitate verification if it is or is not a sale of covered product under the Act. Including the specific plant number allows for tracing product for investigative or audit purposes.

9. **Comment:** Section 1322.4 should not include labeling of whole pork meat or shipping documents because Federal Meat Inspection Act may preempt the proposed marking requirements. Labeling requirements are also beyond authority enabled by statute and are burdensome. (50-23, 50-24, 58-12, 79-10, 81-2, 82-5, 25H-3)

Response: No change has been made in response to this comment. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. Sections 1321.4 and 1322.4 do not propose product labeling of covered product under mandatory FSIS inspection. These sections only propose markings on shipping documents. These proposed markings on shipping documents are necessary for the integrity of the regulatory framework proposed to implement the Act. Shipping documents of covered product are not under the authority of FSIS as part of a mandatory inspection program under Federal Meat Inspection Act and Egg Products Inspection Act. The Department has made every effort to limit the burden of the regulations while implementing the Act.

10. **Comment:** Recommend the Department uses already established covered product labeling programs, like “USDA Organic,” to verify compliance with the Act. (74-4)

Response: No change has been made in response to this comment. A regulatory framework utilizing required labeling of covered product is not included in the proposed regulations due to federal laws regulating labels of product under mandatory FSIS inspection. Because the Act and proposed regulations are intended to provide consumer assurance when purchasing covered products within California, the proposed uniform

system relying on specific shipping document markings for verification of compliance with the Act is necessary.

I. Violations

1. **Comment:** Regarding damages caused by erroneous enforcement of the Act, add remedies such as provisions for compensation to inspected parties for losses such as loss of seized covered product, or other loss caused by on-site inspections, such as introduction of disease to a producer operation. (83-40, 84-14, 84-30)

Response: No change has been made in response to this comment. An expedited appeal process is described in section 1327.1 for an outcome to be determined in a timely manner if the Department's decision to hold or seize covered product is appealed. There is an existing process for any valid civil claims against the State (Gov. Code § 810 et seq.).

2. **Comment:** Add a remedy for inadvertent shipment of covered products into California, such as truck driver error or inclement weather, besides holding or seizure of covered product described in sections 1320.6 or 1320.7, 1321.6 or 1321.7, and 1322.6 or 1322.7. (84-28)

Response: No change has been made in response to this comment. The action of holding or seizure described in sections 1320.6, 1320.7, 1321.6, 1321.7, 1322.6, and 1322.7 will ensure noncompliant covered product does not enter the California market. Section 1327.1 provides for rapid resolution through an informal hearing held within three (3) business days of the request. The proposed regulations also allow the Department to order noncompliant shipments to leave the state. (Sections 1320.6(c), 1321.6(c), 1322.6(c).)

3. **Comment:** Add clarity to what is considered a violation subjecting a person to civil or criminal penalties (HSC 25993(b)), how that violation will be enforced, what kind of penalties will be applied for each violation, and if appeal and mediation remedies described in Article 6 must be exhausted before criminal or civil liability can be imposed. (84-34, 84-39, 84-40)

Response: No change has been made in response to this comment. Unfair competition claims may be brought by private parties or prosecutors. What constitutes a violation, how violations are enforced, and the kind of penalties available are reasonably clear from the provisions of the unfair competition law and HSC section 25990(b). Prosecutors may file misdemeanor charges against any person who violates any provision of the Act (HSC section 25993(b)). It is reasonably clear that the administrative appeal and mediation remedies described in Article 6 are independent from the potential civil or criminal actions a violator may face. However, one purpose of proposed regulations is to provide a uniform and transparent mechanism to assure Californians of covered product compliance, which may reduce the risk of criminal and civil penalties.

4. **Comment:** Provide additional clarity of what types of violations or number of violations could result in the prohibition of a producer or distributor of engaging in sales of covered products in California. (84-34, 84-35, 84-36)

Response: No change has been made in response to this comment. The proposed regulations are reasonably clear and notices of violations will be provided when administrative enforcement is initiated (sections 1320.9, 1321.9, 1322.9). The regulations provide flexibility for the parties to resolve violations at the lowest level.

J. Delay

1. **Comment:** Confinement standards implementation deadlines in sections 1320.1, 1321.1, and 1322.1, should be delayed for at least 12 to 28 months to allow for producers and distributors to comply, and to reflect the delay in final regulations. (16-1, 17-1, 23-1, 36-2, 62-4, 68-2, 69-1, 71-1, 73-2, 75-1, 76-1, 79-1, 81-1, 83-42, 84-2, 84-44, 84-47, 88-1, 1H-1, 4H-1, 8H-3, 9H-1, 14H-1, 16H-1, 17H-1, 18H-5, 19H-1, 20H-1, 21H-1, 23H-1, 24H-1, 25H-4, 26H-1, 32H-1, 33H-1, 37H-1, 38H-1, 43H-5, 49H-2, 50H-5, 50H-7, 67H-1, 68H-6)

Response: No change has been made in response to this comment. HSC section 25991(e) sets clear implementation dates and the confinement standard dates in the proposed regulations must conform to the Act.

2. **Comment:** Delay and/or stagger implementation dates for third-party certification of producers and distributors, and for distributor registration in sections 1320.1, 1320.2, 1321.1, 1321.2, 1322.1, and 1322.2. (25-6, 28-2, 37-6, 38-2, 50-14, 50-17, 58-10, 58-28, 79-12, 83-8, 83-10, 83-11, 83-41, 83-42, 84-13, 84-24, 84-46)

Response: Partially accept. The deadlines for third-party certification were extended 12 months from January 1, 2023, to January 1, 2024, for producers and distributors, and a deadline for distributor registration of January 1, 2023, was added. Staggered implementation was used to develop an inventory of distributors through registration, provide targeted outreach and training related to third-party certification, and allow sufficient logistical time for adequate numbers of third-party certifying agents to become accredited by the Department. A provision allowing producers and distributors to self-certify until January 1, 2024, was added to accommodate the staggered implementation. Requests to delay the deadlines further were denied because additional delay was not equally effective in implementing the statutory policy.

3. **Comment:** Delay implementation or enforcement of the proposed certification, registration, and civil and criminal actions described in HSC section 25993(b); and provide outreach and education prior to enforcement. Due process requires additional time be given to producers and distributors. (50-1, 52-6, 72-2, 82-7, 83-41, 83-42, 83-43, 84-38, 84-45, 84-47, 10H-2, 22H-1)

Response: Partially accept. HSC section 25991(e) sets clear implementation dates and the confinement standard dates in the proposed regulations must conform to the Act. However, proposed regulations have been amended to require distributor registration by January 1, 2023, and third-party certification of producers and distributors by January 1, 2024, to provide adequate time for outreach and education, certifying agent accreditation, and third-party certification. Requests to delay the deadlines further were denied because additional delay was not equally effective in implementing the statutory policy. The Department disagrees that the regulations violate the due process rights of out-of-state pork producers and distributors. The proposed regulations provide fair notice of what is prohibited.

4. **Comment:** Regarding third-party certification of producers and distributors in sections 1320.1, 1320.2, 1321.1, 1321.2, 1322.1, and 1322.2, do not delay this requirement until January 1, 2023, because enforcement should not be delayed. (61-7, 12H-6, 12H-7, 29H-1, 46H-3, 53H-6, 53H-7, 59H-7)

Response: No change has been made in response to this comment. Confinement standard implementation dates are clearly defined in HSC 25991(e), and the proposed regulations do not delay these dates as regulations must conform to the Act. However, the additional

elements of registration and certification described in the proposed regulations, must be implemented in timeframes that are logistically possible. Providing distributors a deadline of January 1, 2023, for registration based on self-certifications, and producers and distributors a deadline of January 1, 2024, to be third-party certified will provide time for the Department to accredit certifying agents and provide time for these certifying agents to certify producers and distributors.

5. **Comment:** Commenter supports all comments “questioning the feasibility, practicality and compliance with California government law, regarding the substance and timing of the proposed rule, as well as the detrimental effect it will have on pork producers.” (72-1)

Response: No change has been made in response to this comment. The comment does not provide sufficient specificity for the Department to make any modifications to the text.

K. Federal Jurisdiction

1. **Comment:** With regard to section 1322.4 (also applicable to sections 1320.4 and 1321.4), remove required shipping document statements due to potential federal preemption and inconsistencies under the Federal Meat Inspection Act (also applicable to the Egg Products Inspection Act). (50-23, 81-2, 25H-1, 25H-3)

Response: No change has been made in response to this comment. Proposed regulations do not require labeling that is preempted under federal law. Shipping documents of covered products moving through a private company facility under mandatory inspection by FSIS do not fall under FSIS preemption. If a business chooses to sell covered product in California, to protect California consumers and provide a framework for equitable and efficient implementation of the Act, a statement of compliance or noncompliance, as an exempt transshipment for example, must be included with shipping documents accompanying the covered product.

2. **Comment:** The definition of “commercial sale” in sections 1320(e), 1321(e), and 1322(f) should exempt sales to the federal government to avoid impinging on federal programs. (83-46)

Response: Accept. The definition of “commercial sale” in sections 1320(e), 1321(f), 1322(f) was amended to clarify that sales of covered product directly to federal agencies or that take place on federal lands are exempt from the definition.

L. Trade

1. **Comment:** Regarding 1320.1, 1321.1, and 1322.1, covered products sold in California may be produced in foreign countries and implementing proposed regulations may result in International Trade Violations. (25-1, 35-4, 37-1, 50-4, 63-2, 79-3)

Response: No change has been made in response to this comment. To the extent that the comment objects to the Act, and not the proposed regulations, the Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. California consumers voted and passed the ballot initiative that set the requirement that sales of covered products in California must come from a covered animal not confined in a cruel manner as defined in the Act, and the proposed regulation must conform to the Act. Article 5 of the proposed regulations recognizes government entities (1326(n)), including foreign governments, as accepted third-party certifying agents of equivalent compliance with

confinement standards in the Act, and does not require these government entities to be accredited by the Department.

2. **Comment:** Inspection of covered product conveyances entering California described in sections 1320.6, 1321.6, and 1322.6 may interfere with required export documentation particularly when product is from certified compliant and non-certified producers, and when USDA applies seals of conveyances after inspection for export; and should therefore be amended to exclude inspection of cargo destined for export. (55-2, 67-6)

Response: No change has been made in response to this comment. Regulations do not require that conveyances be opened or that seals applied by USDA be broken, and transshipped products do not need to be identified as compliant or non-compliant but rather documentation should indicate that they are being exported or transshipped (revised proposed regulations sections 1320.4(a)(2), 1321.4(a)(2), and 1322.4(a)(2)). The current standard for inspection at the California Border Protection Stations is to review transit documents and if there are possible violations, a report is sent to the Department for potential follow-up at the vehicle's destination in California. Many conveyances are stopped at these agricultural inspection stations every year without interfering with export.

M. Beyond Statutory Authority

1. **Comment:** The Department does not have the authority to make an independent health statement in the Notice, ISOR, and Standardized Regulatory Impact Assessment that implies that the proposed regulations do not have a direct impact on human health and safety. (43-1, 64-2, 85-2)

Response: Partially accept. In response to this comment, an Addendum to the ISOR was added to the record. It recognizes that the text of the Proposition 12 ballot initiative, as approved by voters, General Election (November 6, 2018), stated that the initiative's purpose was "to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers, and increase the risk of foodborne illness and associated negative fiscal impacts on the State of California." The Addendum to the ISOR explains that the Department's prior statements reflected only that there is not currently a consensus in peer-reviewed published scientific literature that would allow the Department to independently confirm, according to its usual scientific practices, that the specific minimum confinement standards outlined in Health and Safety Code (HSC) 25991 reduce the risk of human food-borne illness, promote worker safety, or other human or safety concerns. The Department recognizes that it was reasonable for California's voters to pass the Proposition 12 initiative as a precautionary measure to address any potential threats to the health and safety of California consumers while such health and safety impacts remain a subject of scientific scrutiny. For example, the scientific literature supporting the potential public health benefits related to egg-laying hens that are provided additional space and the opportunity to express natural behavior continues to increase well after an earlier standard on confining hens (Proposition 2, 2008) went into effect.

2. **Comment:** Regulations establishing registration, third-party certification, and recordkeeping for this third-party certification should be eliminated because the requirements are beyond

authority enabled by statute and undermine the intent of relying in good faith on certification by suppliers as a defense. (59-2, 79-10, 82-6, 83-34, 84-18, 84-33, 16H-3, 43H-1, 43H-3)

Response: No change has been made in response to this comment. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. All components of the regulations are required to assure consumers that covered products sold in California are compliant. Registration and third-party certification of producers and distributors for compliance with the Act and proposed regulations is a necessary component to ensure there is integrity of this regulatory framework as described in the ISOR.

- 3. Comment:** Regarding sections 1320(b), 1321(b), and 1322(b), the definition of “audit trail” is beyond authority enabled by statute. (79-4)

Response: No change has been made in response to this comment. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. The definition of “audit trail” is necessary to ensure stakeholders understand what the expectation is for records to demonstrate compliance with the Act and proposed regulations. All components of the regulations are required to assure consumers that covered products sold in California are compliant.

- 4. Comment:** Related to sections 1320(e), 1321(e), and 1322(f), the activities described in the definition of “commercial sale” are beyond authority enabled by statute. (50-10, 58-2, 84-20)

Response: Partially accept. The definition of “commercial sale” in sections 1320(e), 1321(f), and 1322(f) was amended by striking “offer for sale, expose for sale, possesses for sale.” The definition of “commercial sale” is further limited in these sections by the qualifier “in California commerce,” and through specific exclusions of donations, sales to federal government and on tribal land, transshipments, and foreign exports. Finally, HSC section 25991(o) deems a “sale” to occur where the buyer takes physical possession of covered product from a seller, and sections 1320(aa), 1321(z), and 1322(bb) define “takes physical possession” to be when the covered products are delivered to the buyer in California, regardless of whether the title transfer takes place outside of the state, whether the seller and buyer have provided otherwise by a contract, or whether an agent of the buyer accepts the covered products outside of the state for transportation into California.

- 5. Comment:** Including outdoor space when calculating usable floorspace described in sections 1320.1(a)(3), 1321.1(a)(2), and 1322.1(a)(2) for determining if the covered animal is confined in compliance with the minimum standards of the Act is beyond the authority enabled by statute. (61-5, 12H-4, 53H-4, 59H-5)

Response: No change has been made in response to this comment. HSC section 25991(s) defines “usable floorspace” by referring to an “enclosure.” HSC section 25991(h) defines an enclosure as “a structure used to confine...” A fence or other means of outdoor confinement is a “structure.” Further, the Act does not specifically restrict floorspace to indoor space. The proposed regulations clarify that “usable floorspace” includes area indoors and outdoors where “hens are free to roam unrestricted” (1320.1(a)(1)(A)) or area indoors and outdoors that calves and breeding pigs have access to at all times (1321(bb) and 1322(dd)). HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. Including outdoor space accessible to a covered animal at all times in the definition of “usable floorspace” for determining compliance with minimum standards is consistent with the intention of the Act.

6. **Comment:** The definition of “egg-laying hen” in section 1320(l) is beyond the authority of enabling statute because it does not include immature hens (chicks up to 18 weeks of age). (61-2, 12H-1, 53H-1, 59H-2)

Response: No change has been made in response to this comment. HSC section 25991(f) defines a covered animal as an “egg-laying hen” and HSC section 25991(g) defines “egg-laying hen” as “any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production”. Immature female poultry chicks do not lay eggs and are not commonly referred to as “egg-laying hens”. They are tiny chicks and pullets that require smaller enclosures in order to be provided sufficient heat and protection to keep them alive. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. Excluding immature hens from the confinement requirements is consistent with the language and intent of the Act.

7. **Comment:** The Act is unconstitutional. Proposition 12 does not promote animal welfare. (35-1, 7H-1)

Response: No change has been made in response to this comment. The comment objects to the Act, not the proposed regulations. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope.

8. **Comment:** The veal and pork products excluded by definitions of “whole veal meat” (1321(bb)), “whole pork meat” (1322(bb)), “cut” (1321(j) 1322(k)), and “ready-to-eat” (1321(u) and 1322(w)) are beyond the authority of enabling statute and consumers would assume these types of products are included under the Act. (61-4, 12H-3, 53H-3, 59H-4, 67H-2)

Response: No change has been made in response to this comment. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. Covered product exemptions in the proposed regulations are consistent with the Act’s language and intent. HSC sections 25990(b) and 25991(u) and (v) specifically use the term “whole” in conjunction with “meat,” and only list examples of whole cuts of meat. “Meat” is further defined in the Act for veal and pork as Section 900 of Title 3 of the California Code of Regulations in HSC sections 25991(n) and (t), which is also referenced in proposed regulations for stakeholders to understand which veal and pork products would be included under the definition of “meat.” To provide further clarity, the definitions of “cut” (1321(k) and 1322(k)) in the proposed regulations reference industry standards of identity for meat. HSC sections 25991(u) and (v) specifically use the term “uncooked cut” when describing pork and veal “whole meat” and “uncooked” is defined as “requiring cooking prior to human consumption” (HSC 29551(r)). Proposed regulations sections 1321(w) and 1322(y) define “requiring cooking” as not ready-to-eat as defined by sections 317.2(l) and 381.125(b) of Title 9 of the Code of Federal Regulations. All of these definitions together clarify to stakeholders the types of veal and pork products that need to be sourced from compliant covered animals, or immediate offspring of a covered animal, in the case of pork meat, and are consistent with the Act.

9. **Comment:** Sections 1320.6, 1320.7, 1321.6, 1321.7, 1322.6, and 1322.7, describing inspection of vehicles of conveyance transporting covered product and the subsequent actions of denying entry, seizing, tagging, and detaining covered product, are beyond the authority enabled by statute. Cargo inspections also jeopardize food safety and truck drivers

are not well-versed in Proposition 12's requirements. (50-26, 50-27, 58-16, 58-17, 62-2, 62-3, 83-38)

Response: No change has been made in response to this comment. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. All components of the proposed regulations are required to assure consumers that covered products sold in California are compliant. A condition of selling covered products in California commerce is permitting inspection and a condition for a distributor selling covered product in California is registration with the Department which allows for inspection of conveyances. These elements are important to ensure only compliant product is in California commerce. The Department administers the Border Protection Stations where covered product produced outside of the state will enter for the purposes of sale in California. A proven system of reviewing documents with shipments of shell eggs passing through these border stations has already been successfully implemented for the Egg Safety and Quality Management (ESQM). The Department is not proposing to open sealed conveyances of covered product in transit, but rather a report would be sent from the California Border Protection Stations to the Department for staff to meet the vehicle of conveyance transporting covered product at its destination in California for further inspection.

10. **Comment:** Regarding sections 1320.7(c), 1321.7(c), and 1322.7(c), the Department does not have the authority to seize or hold covered product based on "reasonable suspicion" that the covered product is in violation of the Act. Proposed regulations should define "reasonable suspicion" and clarify enforcement protocols. (83-39, 84-30)

Response: No change has been made in response to this comment. The proposed regulations are reasonably clear. "Reasonable suspicion" is an accepted basis for taking enforcement action, which in this case is tagging, holding, or seizure of covered product for the purposes of further investigation to determine compliance. Proposed regulations also provide an expedited informal hearing process as described in section 1327.1 to ensure rapid resolution when there are perishable products involved. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. All components of the regulations are required to assure consumers that covered products sold in California are compliant.

11. **Comment:** The Department does not have the authority to inspect out-of-state producers (as a condition of compliance with sections 1320.1(b), 1321.1(b), and 1322.1(b)) and cannot require an on-site inspection of an out-of-state producer operation to be a condition of third-party certification as described in section 1326.5. Any regulation of out-of-state producers is unconstitutional. The Department should explain whether any current sow housing complies with the Act and proposed regulations. (84-10, 84-11, 7H-3, 43H-1)

Response: No change has been made in response to this comment. HSC section 25993(a) gives the Department broad authority to implement the Act by promulgating regulations. All components of the regulations are required to assure consumers that covered products sold in California are compliant. Third-party certification of producers (which includes an agreement to on-site inspection by the producer's certifying agent or the Department) is only required for out-of-state producers raising covered animals producing covered product destined for sale in California. Third-party certification of out-of-state producers is limited to

sales where physical possession, as defined in proposed regulations, is taken in California, and the sale is not otherwise exempt from the definition of “commercial sale”.

Proposition 12 and the proposed regulations do not violate the dormant Commerce Clause. To the extent that the comment raises specific legal questions and seek legal advice regarding the law, the commenter should consult with an attorney who is aware of all pertinent facts and relevant compliance concerns.

12. **Comment:** Proposed regulations are beyond the authority of enabling statute because they were not jointly promulgated with DPH. (43-2, 48-1, 53-2, 64-1, 85-1, 46H-1, 59H-12)

Response: No change has been made in response to this comment. The Department and DPH have jointly promulgated regulations to implement the Act as described in HSC section 25993(a). Both agencies were involved in both preliminary and formal rulemaking activities.

N. Economic Impacts, Food Supply, Employment

1. **Comment:** The proposed regulations should be withdrawn due to significant and potentially underestimated economic impacts related to increased costs to for producers, processors, and distributors; unknown cost of certification; and increased food prices impacting schools, manufacturers, federal agencies, and consumers, as well as disproportionate economic impacts on disadvantaged populations and small businesses. (2-1, 25-2, 25-3, 25-4, 25-7, 25-8, 35-3, 37-2, 37-3, 37-4, 37-7, 37-8, 40-3, 41-2, 42-1, 42-2, 50-3, 51-3, 52-3, 57-1, 58-7, 65-1, 66-2, 68-1, 68-4, 69-2, 70-2, 70-3, 71-2, 74-3, 75-1, 76-1, 77-1, 83-21, 83-22, 83-44, 83-46, 83-47, 84-41, 84-42, 84-43, 2H-1, 2H-2, 5H-1, 13H-3, 13H-4, 18H-2, 28H-1, 30H-1, 36H-1, 41H-1, 50H-3, 50H-4, 50H-6, 68H-5)

Response: No change has been made in response to this comment. The Department followed the process described in law and included a Standardized Regulatory Impact Assessment (SRIA) of proposed regulations, submitted the SRIA to the Department of Finance (DOF), and addressed DOF comments in the Notice of Proposed Action. Economic impacts of the Act as described in the ballot initiative, in the rulemaking documents, and in comments are substantial, but per the SRIA, the Act itself is the primary driver of these economic impacts due to the cost of producer housing modifications to comply with the minimum confinement standards dictated by the Act. These confinement standards and implementation dates are explicit in the Act. The proposed regulations must conform to these standards but add a regulatory framework to ensure Californians have access to compliant covered product and provide consistent assurance that covered products meet these standards.

2. **Comment:** Proposed regulations should be implemented because dire economic claims made by industry are irrelevant to the mandate to implement the statute through regulations. (46H-4)

Response: No change has been made in response to this comment. The Department is jointly promulgating regulations with DPH for implementation of the Act as directed by HSC section 25993(a).

3. **Comment:** The proposed regulations should be withdrawn due to the potential negative impacts on the food supply, such as shortages of covered products available to be sold in

California. (25-5, 36-1, 37-5, 68-1, 71-3, 73-1, 75-1, 76-1, 77-1, 83-44, 84-22, 18H-1, 41H-1, 50H-6)

Response: No change has been made in response to this comment. Withdrawing the proposed regulations will not relieve the hypothesized food supply impacts resulting from minimum confinement standards outlined in the Act. The confinement standards and implementation dates are explicit in the Act and the Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope. The proposed regulations outline a regulatory framework to ensure Californians have access to compliant covered product and provide consistent assurance that covered products meet standards. The Department is jointly promulgating regulations with DPH for implementation of the Act as directed by HSC section 25993(a).

4. **Comment:** The proposed regulations should be withdrawn due to negative impacts on employment or businesses in California. (5-3, 36-1, 71-3, 73-1, 83-45)

Response: No change has been made in response to this comment. Withdrawing the proposed regulations will not relieve the hypothesized impacts resulting from minimum confinement standards outlined in the Act. The confinement standards and implementation dates are explicit in the Act and the Department cannot implement regulations that alter or amend a statute, or that enlarge or impair its scope. The proposed regulations outline a regulatory framework to ensure Californians have access to compliant covered product and provide consistent assurance that covered products meet standards. The Department is jointly promulgating regulations with DPH for implementation of the Act as directed by HSC section 25993(a).

O. Health and Safety and Other Benefits Misstated

1. **Comment:** Related to the Notice of Proposed Action (NOPA), the Initial Statement of Reasons (ISOR), and the Department's statement about human health and safety benefits of the proposed regulations, the characterization of the benefits to human health and the impacts of animal cruelty was misstated and contradicts language in Proposition 12 (2018) ballot initiative. (43-1, 48-2, 53-1, 60-1, 61-1, 64-2, 78-5, 80-1, 85-2, 46H-2, 59H-1)

Response: Partially accept. In response to this comment, an Addendum to the ISOR was added to the record. It recognizes that the text of the Proposition 12 ballot initiative, as approved by voters, General Election (November 6, 2018), stated that the initiative's purpose was "to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers, and increase the risk of foodborne illness and associated negative fiscal impacts on the State of California." The Addendum to the ISOR explains that the Department's prior statements reflected only that there is not currently a consensus in peer-reviewed published scientific literature that would allow the Department to independently confirm, according to its usual scientific practices, that the specific minimum confinement standards outlined in Health and Safety Code (HSC) 25991 reduce the risk of human food-borne illness, promote worker safety, or other human or safety concerns. The Department recognizes that it was reasonable for California's voters to pass the Proposition 12 initiative as a precautionary measure to address any potential threats to the health and safety of California consumers while such health and safety impacts remain a subject of scientific scrutiny. For example, the

scientific literature supporting the potential public health benefits related to egg-laying hens that are provided additional space and the opportunity to express natural behavior continues to increase well after an earlier standard on confining hens (Proposition 2, 2008) went into effect.

2. **Comment:** In general, the proposed regulations are burdensome and are not based on science; they do not promote animal welfare, reduce foodborne illness nor promote worker safety and therefore should be scaled-back or withdrawn. Further, related to the NOPA and the Department's statement about benefits of the proposed regulations, the Department overstated the potential benefits without any scientific evidence, and understated the reduction in operations due to increased costs. (63-1, 70-1, 83-1, 83-45, 83-48, 87-4)

Response: No change has been made in response to this comment. The proposed regulations outline a regulatory framework to ensure Californians have access to compliant covered product and provide consistent assurance that covered products meet standards. The Department and DPH are jointly promulgating regulations for implementation of the Act as directed by HSC section 25993(a) and have made every effort to limit the burden of the proposed regulations while implementing the Act.

P. Other Requests or Comments

1. **Comment:** All proposed regulations should be formally adopted to become law because the Act was approved by California voters and will improve animal welfare, have human health and safety benefits, and the Department should not be influenced by animal agriculture industry and lobbyists. (31-1, 32-1, 45-1, 12H-8, 44H-1, 45H-1, 46H-5, 53H-8, 70H-1)

Response: No change has been made in response to this comment. The comment concurred with the proposed regulations, so no further response is required.

2. **Comment:** All proposed regulations should be rescinded because Proposition 12 (2018) should not be implemented for various reasons such as the Act is unconstitutional; the confinement standards are not based in science; implementation carries detrimental economic impacts; proposed regulations are overly burdensome; confinement standards will have negative impacts on human health, food safety, worker safety, humane conditions and animal health; confinement standards require financial investment and there is no certainty that they will not change, and implementation will adversely impact climate change. (4-1, 25-10, 35-2, 37-10, 42-3, 46-1, 47-2, 52-5, 74-2, 74-3, 79-8, 82-1, 84-1, 20H-1, 34H-1, 36H-1, 40H-1, 41H-1, 43H-2)

Response: No change has been made in response to this comment. To the extent that the comment objects to the Act, and not the proposed regulations, the Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. Withdrawing the proposed regulations will not rescind the minimum confinement standards because they are included in the Act, which can only be amended via ballot initiative or legislative action. Proposed regulations outline a regulatory framework to ensure Californians have access to compliant covered products and provide consistent assurance that covered products meet standards. The Department is jointly promulgating regulations with DPH for implementation of the Act as directed by HSC section 25993(a).

3. **Comment:** The Act and proposed regulations do not adequately protect and promote animal welfare. (27H-1, 48H-1, 52H-1, 66H-1, 71H-1, 72H-1, 74H-1, 75H-1, 76H-1, 77H-1, 78H-1, 79H-1, 80H-1, 81H-1, 82H-1, 83H-1)

Response: No change has been made in response to this comment. To the extent that the comment objects to the Act, and not the proposed regulations, the Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. Minimum confinement standards are required by the Act, which can only be amended via ballot initiative or legislative action. Proposed regulations outline a regulatory framework to ensure Californians have access to compliant covered products and provide consistent assurance that covered products meet these standards.

4. **Comment:** The regulations should not be adopted until CDFA and CDPH complete environmental review and comply with the California Environmental Quality Act (CEQA). (11H-1, 42H-1)

Response: No amendments were made in response to this comment and no additional environmental review under CEQA is required concerning the proposed regulations. CEQA's requirements were considered and followed. The proposed regulations qualify for the common-sense exemption under CEQA because there is no possibility that the regulations could have a significant adverse effect on the environment. See CEQA Guidelines, § 15061(b)(3). The proposed regulations establish a program of registration, certification, inspection, and marking requirements for the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in California, and implement the Prevention of Cruelty to Farm Animals Act (Act). The Act specifically places the responsibility on the Department and DPH to promulgate regulations needed to enforce the Act (HSC section 25993), but the Act itself details the confinement requirements (HSC section 25991(e)). These activities are administrative in nature and simply provide a framework to implement the confinement requirements that are included in the Act, including the minimum farm-animal confinement standards that California voters approved in 2018 through passage of Proposition 12.

The Act defines space requirements for housing egg-laying hens, veal calves, and breeding pigs. (HSC section 25991(e)). The proposed regulations do not change or expand the explicit housing requirements for covered farm animals that were adopted via California initiative and are included in the Act, and the Department does not have the discretion to alter those housing requirements in its regulations. Rather, the proposed regulations outline administrative requirements needed to fully implement the Act and include the housing standards that the Act mandates. As described in the ISOR, the administrative activities in the proposed regulations include registration and certification. The regulations also provide definitions where clarity was needed but do not expand the Act. For that example, while the SRIA analyzes alternative programs based on the definition of pork in order to illustrate potential cost impacts, the regulations conform to the definition used in the Act which excludes comminuted products like sausage (HSC section 25991(u)) because CDFA does not have discretion to expand or change the Act.

Commenters also suggested that implementation of the Act's confinement standards for covered farm animals will require operations within California to construct new facilities. But the Act does not require that facilities be expanded. Rather, the Act requires more space per covered animal confined in California; it does not dictate how an individual farm should

meet these requirements. If a farm in California does choose to reconfigure or build additional facilities, any required CEQA compliance would be conducted at that time by the entity responsible for approving construction of the additional facilities.

5. **Comment:** The Department should request budget augmentation through the Governor's General Fund and other cost efficiencies through existing programs within the Department to ensure consumers are not priced out of affordable food and to pay for program costs to avoid delay in enforcement because the Act does not provide fee authority to fund implementation. (65-2, 78-1, 78-2, 87-2)

Response: No change has been made in response to this comment because the proposed regulations do not include fees. Initial program costs have been funded through General Funds as anticipated in the ballot initiative. Existing staff including egg inspectors and Border Protection Station inspectors will be maximally leveraged for efficient implementation of the Act with time being tracked and charged against the budget provided to implement the Act. While the Act does not include fee authority, the Act was modified in 2020 by adding fee authority to Food and Agricultural Code section 19700, so regulations establishing fees to fund implementation can be promulgated.

6. **Comment:** Related to supporting documentation, commenters request a copy of the rulemaking file related to these proposed regulations. (10-1)

Response: The Department provided a copy of rulemaking file including materials relied upon to stakeholders as requested.

7. **Comment:** Provide additional guidance and training to help producers, distributors, or certifying agents understand proposed regulations and the Act as they apply to specific situations. For example, clarification of next steps after current public comment period closes, when is the earliest possible date regulations could go into effect, how to comply with proposed "audit trail" requirement from a distributor perspective, what is the cost of proposed certification, when could a certifying agent become accredited, can certification begin prior to finalization of regulations, how do requirements in proposed regulations align with other regulatory requirements, proposed labeling markings on shipping documents of compliant vs noncompliant covered product, specific stakeholder definitions of covered product scenarios, and a request for stakeholder workshops. (1-1, 6-1, 7-1, 8-1, 9-1, 9-2, 9-3, 9-4, 9-5, 9-6, 11-1, 12-1, 13-1, 14-1, 15-1, 18-1, 21-1, 22-1, 26-1, 26-2, 29-1, 29-2, 29-3, 29-7, 29-8, 29-9, 30-1, 30-2, 50-2, 50-7, 50-15, 50-25, 68-3, 68-5, 79-2, 81-5, 81-6, 81-8, 83-18, 83-27, 83-35, 84-9, 84-23, 8H-1, 55H-1, 55H-2, 68H-2, 73H-3, 73H-5, 73H-6)

Response: No change has been made in response to these comments. Some of the comments are not specifically directed at the Department's proposed regulations or to the procedures followed by the Department in promulgating these regulations. However, the Department appreciates these comments because they provide information that can guide the development of outreach, training, and more situation-specific guidance documents.

To the extent that the comment raises specific legal questions and seek legal advice regarding the law, the commenter should consult with an attorney who is aware of all pertinent facts and relevant compliance concerns.

8. **Comment:** Related to Article 5 and third-party certification of producers and distributors, commenter offers their certification services. (6H-1, 47H-1)

Response: No change has been made in response to this comment. These comments are not specifically directed at the proposed regulations or the rulemaking procedures followed.

9. **Comment:** Asked the Department to remove a previously submitted letter from the record. (44-12)

Response: Irrelevant comment. The Department does not have authority to remove any comments received during a public comment period and therefore all comments received must be included in the rulemaking file.

IV. Comment Summaries and Responses - 15-day Comment Period

4.1. List of Commenters - 15-day Comment Period

Written comments received for the 15-day comment period are included in the rulemaking file in Binder I.

Members of the public submitting written comments during the 15-day comment period for the modified text, December 3, 2021 – December 17, 2021, identified in number order of receipt by the Department (numbered 1-49):

Written Commenter #	Name of Commenter	Affiliation	Date Received
1	Brady Otto	Associated Feed	12/7/21
2	Nycole Pederson Amazon and Internet Specialist	Jay Robb Enterprises, Inc.	12/7/21
3	Ken Klippen President	National Association of Egg Farmers	12/7/21
4	Jeannie Fite	Gerber School	12/8/21
5	Alicia Baker Director of Marketing	North Country Smokehouse	12/9/21
6	Scott Edwards General Counsel	Animal Wellness Action Center for a Humane Economy	12/9/21
7	Vy Phung		12/3/21 12/9/21
8	Barbara Cole Gates	Lean and Green Kids	12/9/21
9	Jim Riva VP Global Alliances	Where Food Comes From, Inc.	12/10/21
10	Daniel Sarapin Director of Quality Assurance	North Country Smokehouse	12/13/21
11	Maisie Ganzler Chief Strategy & Brand Officer	Bon Appetit Management Company	12/13/21
12	Daniela Castillo, DVM, CEO	Castillo Animal Veterinary	12/15/21

13	Chris Sandbothe Sr. Sourcing Manager, Pork and Poultry	Topco Associates, LLC	12/15/21
14	Robert Kelly President	Hen Haven	12/15/21
15	Tim Goodman Technical Services Pork Division	JBS	12/15/21
16	Katy Fendrich-Turner		12/15/21
17	Will Kaelin	McVean Trading and Investments, LLC	12/16/21
18	Lance Lange Partner	Faegre, Drinker, Biddle & Reath, LLP	12/16/21
19	Jennifer Haley MBA, CAE Executive Director Bob Wynands President Kim O'Neil Director of Regulatory Affairs	Veal Farmers of Ontario Canadian Veal Association Canadian Meat Council	12/16/21
20	Donna Krudwig President	Americans For Family Farmers	12/16/21
21	Sherrie Webb, MSc Director, Animal Welfare	American Association of Swine Veterinarians	12/16/21
22	Katy Fendrich-Turner		12/16/21
23	Nicole Meschi President	California Schools Nutrition Association	12/16/21
24	Anne Malleau, MSc., MBA Agr. Executive Director	Global Animal Partnership	12/17/21
25	Kara Shannon Director of Farm Animal Welfare Policy	The American Society for the Prevention of Cruelty to Animals	12/17/21
26	Rebecca Cary Peter Brandt Kelsey Eberly Sarah Hanneken Hannah Truxell Emily Von Klemperer Ben Williamson Will Lowrey	The Humane Society of the United States Animal Legal Defense Fund Animal Equality The Humane League Farm Sanctuary Compassion in World Farming, Inc Animal Outlook	12/17/21

	Cameron Harsh	World Animal Protection	
	AJ Albrecht	Mercy for Animals	
27	Luc Rivard A/Director General, Market Access Secretariat	Agriculture and Agri- Foods Canada	12/17/21
28	Mark Dopp Chief Operating Officer and General Counsel	North American Meat Institute	12/17/21
29	relocated to FFA/4-H commenter category		
30	Travis Groth Sales – Domestic and Alternative Mkt.	HyLife Foods	12/17/21
31	Oscar Garrison Sr. Vice President Food Safety Regulatory Affairs	United Egg Producers	12/17/21
32	David Will Vice President of Sales	Chino Valley Ranchers	12/17/21
33	Chris Oliviero General Manager	Niman Ranch	12/17/21
34	Eldon McAfee Brick Gentry P.C.	Iowa Pork Producers	12/17/21
35	Steve Mahrt	Petaluma Farms	12/17/21
36	Chance Reeder		12/17/21
37	Mala Parker Vice President, Government Relations	International Foodservice Distributors Association	12/17/21
38	Frank Cohen President	Eggs Unlimited	12/17/21
39	Leticia Garcia Director Government Relations	California Grocers Association	12/17/21
40	Debra Murdock Executive Director	Pacific Egg and Poultry Association Association of California Egg Farmers	12/17/21
41	Glenn County Fair		12/17/21
42	Michael Leslie Partner	King and Spalding, LLP	12/17/21
43	Glenn Hickman President and CEO	Hickman's Family Farms	12/17/21
44	Cynthia Cordes Partner Emily Lyons Sr. Associate Attorney Husch Blackwell, LLP	Triumph Foods, LLC	12/17/21
45	Dale Bakke President	American Veal Association	12/17/21
46	Michael Formica AVP and General Counsel	National Pork Producers Council	12/17/21

47	Jill Damskey Executive Director	California Pork Producers Association	12/17/21
48	Isaac Robles Department Chair Agriculture Mechanics Instructor FFA Advisor	Oakdale High School	12/17/21
49	Louie Brown, Jr. Kahn, Soares and Conway	Western Fairs Association	12/17/21

The Department additionally accepted 2,077 written comments that were grouped together into the same comment summary and response from individuals and/or representatives of FFA, 4-H, Grange, and Independent youth programs during the 15-day comment period for the modified text. The Department grouped these comments together without assigned individual commenter numbers because each of these written comments asked for the Department to provide an exemption from the regulations for these types of youth programs. All of these written comments received that were categorized by the Department into this group are included in the rulemaking file in Binder I.

4.2. Comment Summaries and Responses - 15-day Comment Period

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to all of the objections and recommendations directed at the modified text changes during the 15-day comment period.

Many of comments received during this 15-day comment period overlapped and asserted the same points and were therefore grouped together for the Department to provide a uniform and concise response. Despite this effort, some duplication in the responses to comments was inevitable.

Summaries of comments and corresponding responses for the modified text noticed are organized by topic and then subcategorized accordingly.

The specific comments that are represented in the comment summary statement are listed after each comment summary by the commenter number as identified above followed by a dash and numbered comment when a commenter submitted more than one comment. Each individual comment number for a given commenter highlighted and numbered on the comment received which is included in the rulemaking file in Binder I.

Additionally, the Department has included an Index of all numbered comments for each commenter in Part V. of this document. A commenter can look up their assigned commenter number from the table above and then refer to the Index to determine where all of their individual comments are addressed in the comment summaries and responses.

A. Definitions

1. **Comment:** Regarding sections 1320(e), 1321(f), and 1322(f), the definition of “commercial sale” is too narrow. The regulatory definition should apply to all commercial sales of covered products and should not include exemptions for certain industry groups. (12-4, 16-4)

Response: No change has been made in response to these comments. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. The exemptions to the definition of “commercial sale” in the proposed regulations are consistent with those provided by statute in the definition of “sale” described in HSC section 25991(o) and with the definition of “Business owner or operator” in HSC section 25991(b).

2. **Comment:** Regarding sections 1320(e), 1321(f), and 1322(f), the definition of “commercial sale” is too broad. The regulatory definition includes a transfer of possession or distribution of covered product, and it includes covered products that are only processed and repackaged in California for final use outside of the state. The list of exemptions should include sales of covered products at facilities under voluntary inspection by FSIS, and all sales to schools, universities, and other institutions. (28-9, 28-10, 28-11,46-2)

Response: No change has been made in response to these comments. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. The proposed regulations are consistent with the definition of “sale” in HSC section 25991(o), which specifies exemptions for establishments under mandatory inspection by FSIS (under the Federal Meat Inspection Act and Egg Products Inspection Act) but does not exempt establishments under voluntary inspection. The inclusion of types of transactions considered a “sale”, such as transfers of possession and distribution, are necessary to protect the consuming public and to allow equitable enforcement through registration and certification of distributors selling any covered product to an end-user in California.

Exemptions for sales to schools and universities were not made because HSC section 25990(b) prohibits a business owner or operator from knowingly engaging in a sale as described, meaning that if a business is selling product to a non-profit or government agency other than the federal government, a commercial transaction has occurred, and regulations must conform to statute.

3. **Comment:** CDFA should clarify that sales to third-party food vendors who then provide food services on tribal and federal lands in California are exempt from definition of “commercial sale” in sections 1320(e), 1321(f), and 1322(f). (37-9)

Response: No change has been made in response to this comment. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. The exemption in proposed regulation sections 1320(e), 1321(f), and 1322(f) is specific to a “commercial sale” where possession is taken on tribal or federal lands, regardless of who is taking possession. Sections 1320(aa), 1321(z), and 1322(bb) of the proposed regulations define “takes physical possession” for the purpose of HSC section 25991(o) to mean “when the covered product is delivered to the buyer in California, regardless of whether the title transfer takes place outside of the state, whether the seller and buyer have provided otherwise by a contract, or whether an agent of the buyer accepts the covered product outside of the state for transportation into California”.

4. **Comment:** Regarding sections 1320(e), 1321(f), and 1322(f), the definition of “commercial sale”, it is not clear what “conditional or otherwise” means. (42-6)

Response: No change has been made in response to this comment. The definition of “commercial sale” in sections 1320(e), 1321(f), and 1322(f) is reasonably clear using general and common terms for the types of transactions of covered products that will be included under the Act and the proposed regulations. It is impractical to include specific details on all potential transactional or contractual situations in the proposed regulations.

5. **Comment:** Part of the definition of “commercial sale” is unclear in the proposed regulations. Sections 1320(e), 1321(f), and 1322(f) include language that states, “which apply only to a specific transaction listed below, not to the covered product itself, and therefore does not apply to all subsequent commercial sales”. Does this exemption refer to the resale of that particular covered product in the exempted transaction, or to subsequent transactions of covered products between those parties and third parties? (42-7)

Response: No change has been made in response to this comment. The definition of “commercial sale” in sections 1320(e), 1321(f), and 1322(f) is reasonably clear regarding how the exemptions to “commercial sale” apply “only to a specific transaction listed below, not to the covered product itself, and therefore does not apply to all subsequent commercial sales.” “Subsequent commercial sales” can only refer to future sales of the covered product where possession is taken at a non-exempt location because all transactions where possession is taken at an exempt location are exempt from the definition of “commercial sale.” The definition of “takes physical possession” for the purpose of HSC section 25991(o) is included in the proposed regulation sections 1320(aa), 1321(z), and 1322(bb), to add further clarity, stating: “when the covered product is delivered to the buyer in California, regardless of whether the title transfer takes place outside of the state, whether the seller and buyer have provided otherwise by a contract, or whether an agent of the buyer accepts the covered product outside of the state for transportation into California”.

6. **Comment:** Clarify that all purchases by schools of products produced under the USDA Foods processing program are exempt from HSC 25591 requirements as they are, in fact, not commercial sales. (23-1)

Response: No change has been made in response to this comment. The regulations are reasonably clear. The definition of “sale” in HSC section 25991(o) includes the phrase “commercial sale by a business.” A transaction between two government entities that are not businesses, such as a school district purchasing from USDA, would not meet the definition of a “sale” as specified in the Act.

7. **Comment:** Clarify how the Act and proposed regulations apply to the federal school lunch program. For example, USDA will purchase and donate unpasteurized liquid eggs to a school. Before the school receives those liquid eggs, however, the school will pay a processor to cook and prepare the liquid egg into a product ready to serve to students. How does the definition of “commercial sale” apply to services paid by the school to the processor to process the covered product originally donated by USDA? (23-1, 31-2)

Response: No change has been made in response to this comment. The regulations are reasonably clear. The definitions of “commercial sale” in sections 1320(e), 1321(f), and 1322(f) establish an exemption for covered product donated to a non-profit, such as a school. Further processing of the donated product to a useable form by a school using the paid services of a commercial food manufacturer would not change that exemption.

8. **Comment:** Clarify if purchases of covered products made using donated funds provided by the federal government fall under the definition of “commercial sale”. (28-3)

Response: No change has been made in response to this comment. The regulations are reasonably clear. The exemptions to the definition of “commercial sale” in the proposed regulations are consistent with those provided by statute in the definition of “sale” described in HSC section 25991(o). The definition of “sale” in HSC section 25991(o), in turn, does not exempt sales of covered products made with donated funds.

9. **Comment:** In sections 1320(j), 1321(m), and 1322(m), the definition of “document of title” should include the phrase “but are not limited to” to qualify the list of documents and inform readers that the list of examples is not exhaustive. (28-12)

Response: No change has been made in response to this comment. The suggested amendment was already included in the modified proposed regulations.

10. **Comment:** In section 1322(v), clarify “enclosure for breeding.” Not all gilts are moved into a separate enclosure for breeding, and some gilts are not moved into a breeding enclosure until 7 months of age. (44-7)

Response: No change has been made in response to this comment. The regulations are reasonably clear. The definition of “production cycle” in proposed regulation section 1322(v) and “enclosure” in section 1322(n) provide the necessary clarity for pork producers to comply with confinement requirements. The age, “6 months of age or older” is specified in the definition of “breeding pig” kept for the purposes of commercial breeding in HSC section 25991(a), and regulations must conform to the Act.

11. **Comment:** The phrase “takes physical possession” as used in sections 1320(aa), 1321(z), 1322(bb) should be amended to exempt sales where product is destined for California, but the buyer arranges title transfer to occur outside of California. (28-13, 46-3)

Response: No change has been made in response to these comments. The Department disagrees with the comment’s interpretation of the statute. The regulation’s definition of “take physical possession” is consistent with the language of the Act. The Act’s confinement standards apply to those covered animals providing described covered products destined for a physical location within California. Further, to ensure equal treatment of in- and out-of-state sellers, the definition of “takes physical possession” as proposed covers agreements in which buyers with physical locations in California take possession outside of California from out of state sellers, making it reasonably clear that when a covered product reaches a physical location destination in California, then a sale has taken place under the Act.

B. Sales Prohibitions/Space Requirements

1. **Comment:** Amend section 1320.1(a)(1)(C) to read: “employees can provide care where they can stand safely in areas hens have continuous access”. This suggested change is to account for employee safety in multitier aviary egg-laying hen housing systems. (35-1)

Response: No changes were made in response to this comment. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. Sections 1320.1(a)(1)(A) through (D), therefore, use the same language from HSC section 25991(c) which describes a “cage-free housing system” with specificity, and regulations must conform to the Act.

2. **Comment:** Regarding sections 1320.1(a), 1321.1(a), and 1322.1(a), provide clarity on when “turn around freely” went into effect and how it relates to the usable floorspace square footage minimum requirements and life cycles of covered animals. (17-1, 22-4, 42-5)

Response: No change has been made in response to these comments. HSC section 25991(e)(2) through (5) includes clear implementation dates of the square footage requirements. Because HSC section 25991(e)(1) does not have a specific implementation date, the requirement of “turning around freely” went into effect when the ballot initiative was codified into law in December 2018. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope.

3. **Comment:** With the addition of a regulatory definition for “production cycle” in section 1322(v), CDFA should clarify if pregnant pigs are still allowed to be confined in a crate. (22-4)

Response: No change has been made in response to this comment. The regulations are reasonably clear. Adding the definition of “production cycle” in section 1322(v) does not modify the confinement standards of breeding pigs as required by the Act. As addressed in the Addendum to the ISOR, this definition was added to provide clarity regarding life stages of a breeding pig in relation to the proposed regulations and the Act. For example, a pork producer that is transitioning to a new compliant barn for breeding pigs could move adult sows into this new facility at the beginning of a “production cycle” and whole pork meat from the immediate offspring of that next “production cycle” of these adult sows would be compliant with the Act.

4. **Comment:** The ability of a veal calf to complete the “turning around freely” requirement does not require 43 square feet of usable floorspace. Canadian veal producers are already required to comply with a turnaround requirement in the Canadian Code of Practice and therefore veal meat from these veal calves should be legal to sell in California and allowed to be labeled as CA Compliant. (19-1)

Response: No change has been made in response to this comment. The regulations as originally proposed allow for the Department to accept a foreign government entity as a certifying agent and as an accreditor of a third-party certifier, provided the standards of such foreign government programs are equivalent to the Act and these proposed regulations. The Act contains specific language related to confinement standards for animals producing covered product sold in California, regardless of covered animal origin. Therefore, to be recognized as equivalent, the standards of confinement would need to be to the same as the standards specified in the Act, which require both a minimum of 43 square feet of usable

floorspace per veal calf and that the veal calf be able to turn around freely. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope.

5. **Comment:** Sales liability under the Act extends to business owners and operators. The Department has expanded potential sales liability under the Act through proposed regulations that extend sales liability to any “person” who engages in prohibited conduct. Therefore, the word “person” in sections 1320.1(a), 1321.1(a), and 1322.1(a) should be changed to “business owner or operator”. (26-5)

Response: No change has been made in response to this comment. The proposed regulations are consistent with the Act in that “person” is used in conjunction with a “commercial sale” in sections 1320.1(a), 1321.1(a), and 1322.1(a). Thus, “person” would only apply to businesses and a “business operator” engaging in commercial sales of covered products. “Person” is defined in HSC section 25991(m) as “any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate” and this same definition is repeated in sections 1320(v), 1321(t), and 1322(s) of modified regulations. HSC section 25993(b) also uses the word “person” in the description of enforcement penalties.

C. Certification

1. **Comment:** Regarding sections 1320.1(b), 1320.2(k), 1321.1(b), 1321.2(k), 1322.1(b), and 1322.2(k), the Department should not extend the deadline for third-party certification of producers and distributors. (22-2, 36-1)

Response: No change has been made in response to these comments. In drafting these regulations, the Department has considered the registration and certification timeline. For the reasons set forth in the Addendum to the ISOR, the Department has determined that while confinement standards go into effect based on statutory deadlines, the process of accreditation and third-party certification will require the logistical time allotted via modified proposed regulations.

2. **Comment:** Regarding sections 1320.1(b), 1320.2(k), 1321.1(b), 1321.2(k), 1322.1(b), and 1322.2(k), further delay the deadline for third-party certification of producers and distributors and maintain the self-certification during this delay. (28-1, 46-5)

Response: No change has been made in response to these comments. In drafting these regulations, the Department has considered the registration and certification timeline. The modified proposed language extends the deadline for producers and distributors to acquire third-party certification to 1/1/2024 from 1/1/2023, allowing these stakeholders 12 months to acquire the certification as proposed. This additional time will allow the Department to accredit certifying agents and the on-site visits to be completed for certification. The minimum confinement requirements for covered animals have been detailed in statute since December 2018, allowing over four years for producers to prepare for compliance.

3. **Comment:** Clarity is requested for how producers and distributors can legally comply with confinement standards of the Act and engage in sales of covered product prior to the third-party certification deadlines of 1/1/2024 described in sections 1320.1(b), 1320.2(k), 1321.1(b), 1321.2(k), 1322.1(b), and 1322.2(k). (39-1, 47-2)

Response: No change has been made in response to these comments. The regulations are reasonably clear. Confinement standards for covered animals and sales of covered products from covered animals are set in statute and cannot be modified through regulations. The proposed regulations outline deadlines that have been extended for producers and distributors to be certified by a certified agent as described in the regulatory framework for implementation of the Act. Further, sections 1320.2(k), 1321.2 (k) and 1322.2(k) of the proposed modified regulations allow for self-certification by distributors of covered products that they comply with applicable requirements of the Act and these regulations for purposes of registration with the Department prior to January 1, 2024.

D. Shipping Documents

1. **Comment:** Proposed labeling of shipping documents in sections 1320.4(a)(2), 1321.4(a)(2), and 1322.4(a)(2) should be amended so that covered products not intended for commercial sale as defined are not disparaged by having to declare “Not CA Prop 12 Compliant” on accompanying documents. (28-4)

Response: No change has been made in response to this comment. The proposed shipping document statements are not disparaging but are necessary identifiers for effective enforcement and clarity for the industry. Further, the modified proposed regulations for labeling shipping documents of covered products for transshipment or export include options for using statements such as “For Export” or “For Transshipment” instead of “Not CA Prop 12 Compliant”. In sections 1320.4(a)(2), 1321.4(a)(2), and 1322.4(a)(2) use of the word “or” when listing the options for labeling of shipping documents clarifies that only one of these statements is required. The modified proposed regulations require that noncompliant covered products must be marked to support efficient and equitable enforcement and to prevent potential disruption of trade. The modified proposed regulations also do not prohibit compliant covered products for transshipment or export from bearing similar statements, so the use of the proposed statements “For Export” or “For Transshipment” does not equate to “Not CA Prop 12 Compliant.”

2. **Comment:** Sections 1320.4(a), 1321.4(a), and 1322.4(a) should include an implementation date for required shipping document statements that provides sufficient time to make the changes. (28-5)

Response: No change has been made in response to this comment. Changes to markings on shipping documents can be made quickly by stakeholders through adjusting text through electronically generated documents. The proposed shipping document markings are critical to support orderly marketing of compliant covered product and enforcement of the Act.

3. **Comment:** Add clarity to sections 1320.4(a)(2), 1321.4(a)(2), and 1322.4(a)(2) related to what “export” means in this context, whether “export” also includes sales to other U.S. states in addition to sales to non-U.S. jurisdictions. (31-3)

Response: No change has been made in response to this comment. The regulations are reasonably clear. “Export” means the movement outside of California regardless of destination. This is clearly stated in sections 1320.4(a)(2), 1321.4(a)(2), and 1322.4(a)(2) as shipping documents of noncompliant covered products that will “enter California exclusively

for purposes of transshipment, or export...and are not destined for commercial sale in California” are required to have identifying labeling statements as specified.

4. **Comment:** Sections 1320.4(a)(3), 1321.4(a)(3), and 1322.4(a)(3)’s instructions for marking of shipping documents for noncompliant covered products should not require indication of the specific establishment under FSIS inspection where the noncompliant covered product is destined to be used in California because noncompliant covered product can exchange hands many times and all establishments under federal inspection are exempt from the Act. (28-6)

Response: No change has been made in response to these comments. HSC section 25991(o)’s definition of “sale” includes a specific and narrow exemption for sales at facilities where mandatory inspection under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) of a specific product is occurring. When a facility is under this mandatory inspection, an official establishment number will have been assigned by the United States Department of Agriculture with a corresponding alpha prefix (“M” for Federal Meat Inspection Act and “G” for Egg Products Inspection Act). Further, HSC section 25991(o) does not include an exemption at locations under other federal food safety laws, making it clear that only sales of covered product under active mandatory inspection under the specific federal laws cited in the Act are exempt. The exemption from the definition of a “sale” does not broadly apply to an entire establishment with any form of federal on-site inspection or oversight.

E. Article 4. Exceptions

1. **Comment:** The exception to confinement standards in sections 1320.1, 1321.1, and 1322.1 should include emergencies and natural disasters should be added to section 1324.1. (28-21, 46-9)

Response: No change has been made in response to these comments. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. The statute does not include an emergency or natural disaster exemption in HSC section 25992.

2. **Comment:** Proposed paperwork requirements will be burdensome for processors that slaughter fair and exhibition animals. Clarity should be added to Article 4 that sales of covered product in commerce originating from these types of youth projects should be exempt. (36-3)

Response: No change has been made in response to these comments. HSC section 25992(d) specifically uses the term “during,” and the exceptions in modified proposed regulation section 1324.1 incorporate the language in HSC section 25992 exactly as written. If products from covered animals that were exempt while confined during a youth program exhibition enter California commerce (for example products are sold by a commercial distributor), to protect consumer interest, those sales would need to meet the requirements of the Act and the modified proposed regulations. The Department has made every effort to limit the burden while implementing the Act. The method of establishing traceability from a product to compliantly confined animals by distributors described in sections 1320.5, 1321.5, and 1322.5 of the proposed regulations is not prescriptive to allow for the most efficient

documentation methods, such as possible “lot” identification by a fair or exhibition being serviced.

- 3. Comment:** Exemptions to the Act and Article 4 of proposed regulations should include covered animals that are a part of all youth livestock programs including 4H, FFA, Grange, county fairs, and independent fairs and exhibitions. This exemption should also include all subsequent sales of covered products derived from these youth program animals. (36-3, 47-1, 49-1, 49-2, 49-3, all 4H comments as an attachment)

Response: No change has been made in response to these comments. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. HSC section 25992(d) states that the Act does not apply “[d]uring rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions,” and this wording is included in proposed regulation section 1324.1(a)(4). This wording plainly includes other youth programs because they are “similar”, but it is impractical for the modified proposed regulations to list each type of youth project. The Act does not include sales of live animals (only sales of covered products), and therefore the sales of animals as part of a 4-H or similar youth project and are not included in the Act or these regulations. HSC section 25992 also limits all exceptions to a period of time and explicitly uses the term “during” when referring to 4-H programs in HSC section 25992(d). Subsequent sales of whole pork meat from a retailer to a consumer of covered products are included as a “commercial sale” if the sales are not occurring “during” these types of youth programs and exhibitions.

- 4. Comment:** Section 1324.1(a) conflicts with HSC section 25992(d). (49-2)

Response: No change has been made in response to these comments. There is no conflict between HSC section 25992(d) and the proposed regulation. The exceptions in section 1342.1 of the modified proposed regulations incorporate the language in HSC section 25992 exactly as written.

- 5. Comment:** Do not exempt 4H programs and similar exhibitions from the Act and proposed regulations because it will be detrimental to compliant pig producers (exhibition breeders) of youth project animals in the State of California as pork producers from other states could raise hogs that are not “prop 12” compliant, yet still be sold and processed in California. (48-1)

Response: No change has been made in response to these comments because the requirements of the Act and proposed regulations are clear and specific. California commercial breeding sows must be compliant with the confinement standards in the Act and proposed regulations as clearly stated in HSC section 25990(a). All commercial sales of covered product where physical possession is taken in California must be from animals housed according to the standards described in the Act and proposed regulations (HSC 25990(b)). Sales of live animals, including pigs for exhibition, are not commercial sales of covered product included in the Act or these regulations. The exception in HSC section 25992(d) and repeated in proposed regulations section 1324.1(a)(4) applies to confinement “during” the program or exhibition, not to the animal or covered product that is no longer in the excluded period.

- 6. Comment:** Section 1324.1(a)(2) exception for veterinary purposes should be at the direction of the herd veterinarian and should apply to calves as well as pigs. (45-3)

Response: No change has been made in response to this comment. Article 4 states that the exceptions apply to all covered animals as described in section 1324.1(a), “The Act and this Chapter shall not apply:” and lists all exceptions from HSC section 25992 including the veterinary exemption in HSC section 25992(b).

7. **Comment:** Exceptions to confinement standards in Article 4 do not adequately except certain confinement practices that may be necessary for a breeding pig’s welfare or wellbeing and the Department should add an exception for welfare purposes or expand the definition of “individual treatment” to include confinement determined necessary for the breeding pig’s welfare or wellbeing. (46-8)

Response: No change has been made in response to this comment. The Department cannot implement regulations that alter or amend a statute or enlarge or impair its scope. The definition of “individual treatment” in section 1324(b) includes confinement determined necessary for the breeding pig’s welfare or wellbeing as long as that determination is made by the veterinarian of a covered animal operation.

F. Distributor Registration

1. **Comment:** Regarding sections 1320.2, 1321.2, and 1322.2, distributor registration and certification should occur sooner than proposed. (12-2, 16-2, 22-3, 26-3)

Response: No change has been made in response to these comments. In drafting these regulations, the Department has considered the registration and certification timeline. For the reasons set forth in the ISOR, the Department has determined that while confinement standards go into effect based on statutory deadlines, the process of distributor registration will require the logistical time allotted via modified proposed regulations for the Department and distributors to complete.

2. **Comment:** Regarding sections 1320.1, 1320.2, 1321.1, 1321.2, 1322.1, and 1322.2, the date that producers must have third-party certification should occur before distributors are required to register with the Department because distributors will be relying on producer self-certification until January 1, 2024. (37-6)

Response: No change has been made in response to this comment. In drafting these regulations, the Department has considered the registration and certification timeline. For the reasons set forth in the ISOR, the Department has determined that uniform implementation where possession of covered products is taken in California by distributors is essential to implementation of the Act through the regulatory framework as proposed. Registration of distributors is a critical component of effective regulatory oversight of the overall production and distribution system for covered products and cannot be delayed further. Producers of covered product to be sold to distributors have had notice of confinement requirements since December 2018 when Proposition 12 was passed by California voters, and buyers of covered product in California have also been aware of written certification by suppliers as a defense against any action to Proposition 12 claims since December 2018. Therefore, self-certification is an efficient and feasible approach as proposed.

3. **Comment:** Confinement standards in sections 1320.1, 1321.1, and 1322.1 should be delayed to similar dates of proposed registration and third-party certification. (42-4)

Response: No change has been made in response to this comment. The Department disagrees with the comment's interpretation of the statute. The regulation is consistent with the language of the Act. The implementation dates for confinement standards are set in statute, HSC sections 25990 and 25991, and cannot be changed via regulation.

- Comment:** Regarding sections 1320.2(l), 1321.2(l), and 1322.2(l)), do not exempt covered animals and covered products processed at establishments under mandatory federal inspection from the minimum space requirements. (22-9)

Response: No change has been made in response to this comment. The comment's interpretation of the statute is inconsistent with the language and intent of the Act. The exemption related to sales where physical possession is taken at a location under described mandatory federal inspection is required by HSC section 25991(o), and regulations must be consistent with the statute. However, this exemption applies to the location, not the covered product. Any subsequent sales of the covered product, including to California consumers at retail, must be compliant with the Act. This point is clarified in sections 1320(e), 1321(f), and 1322(f), which include definitions of "commercial sale" in the proposed modified regulations.

- Comment:** Sections 1320.9(a)(1), 1321.9(a)(1), and 1322.9(a)(1), describing denial, suspension, or revocation of distributor registration should be reserved for when a violation occurs, not when it "reasonably could have resulted" in a noncompliant commercial sale. (28-20)

Response: No change has been made in response to this comment. In drafting these regulations, the Department has considered the parameters of what constitutes a violation. If a noncompliant covered product is being advertised for sale in California by a distributor, the distributor is engaged in the initial sales function and may be creating an unfair business advantage. Sections 1320.9(b)(5) and (c), 1321.9(b)(5) and (c), and 1322.9(b)(5) and (c) of modified proposed regulations describe a process for appeal of the Department's action.

- Comment:** Reinstate section 1322.9(c) to allow pork distributors' registrations to be active pending the outcome of the appeals process. (44-9)

Response: No change has been made in response to this comment. A change in the proposed regulation is not needed to address this comment because new section 1322.9(b)(5) states that a distributor's registration shall remain in effect pending the outcome of a formal hearing.

G. Distributor Recordkeeping

- Comment:** The Department should not exempt establishments that are under mandatory federal inspection from processing covered animals and covered products in compliance with the Act. (22-7, 22-8)

Response: No change has been made in response to this comment. The exemption to registered distributor recordkeeping requirements described in sections 1320.5, 1321.5, and 1322.5 is related to the HSC section 25991(o) exclusion of a "sale" where physical possession is taken at an establishment under described mandatory federal inspection. Those establishments are not required to register as a distributor with the Department. However, this exemption applies only to the establishment's location, not the covered product itself, so subsequent sales of the covered product, including sales by other

businesses not exempted from distributor registration or to California retail consumers, would fall under the definition of “sale” and would therefore need to comply with the Act and modified proposed regulations.

2. **Comment:** Distributor recordkeeping requirements in sections 1320.5, 1321.5, and 1322.5 should be changed because, as currently described, the requirements will result in a de facto information collection and recordkeeping obligation on federally regulated facilities and indirect regulation of these facilities by the Department. (28-8)

Response: No change has been made in response to this comment. HSC section 25990 describes what is unlawful under the Act, and enforcement will occur at appropriate locations where these prohibited acts could take place, e.g., on a producer operation or where a sale of covered product occurs. The confinement standards apply to sales of all covered products in the state when physical possession of a covered product is taken in California regardless of where the covered animals producing the covered products were raised. Therefore, to protect California consumers and assure equitable enforcement, certification of distributors must include a method of compliance verification via an auditable trace-back system.

3. **Comment:** Clarify how the public can obtain a copy of the “audit trail” to verify that the producer has complied with the law. (22-6)

Response: No change has been made in response to this comment. The regulations are reasonably clear. Section 1326.10(a)(7) states that any request to an accredited certifying agent for records or documents must be submitted to the Department for review and approval pursuant to the California Public Records Act (Gov. Code § 6250 et seq.).

H. Certifying Agent On-Site Inspections

1. **Comment:** Regarding section 1326.13(a), the addition of biosecurity training is beneficial, but Article 5 should be expanded to include a requirement that certifying agents comply with a farm’s biosecurity protocols. (21-4, 46-10)

Response: No change has been made in response to these comments. The Department understands the importance of following a producer’s biosecurity practices but rejects this comment because a requirement to follow a producer’s biosecurity practices is overly vague and could be used to prevent on-site inspections to verify compliance with the Act.

I. Joint Promulgation with of Regulations

1. **Comment:** Proposed regulations are beyond the authority of enabling statute because they were not jointly promulgated with DPH. (6-3, 26-2, 42-2)

Response: No change has been made in response to this comment. The Department and DPH have jointly promulgated regulations to implement the Act as described in HSC section 25993(a). Both agencies were involved in both preliminary and formal rulemaking activities.

J. Public Health Benefits

1. **Comment:** The revised health and safety benefit statement in the Addendum to the ISOR is more accurate, but continues to understate the public health benefits of the Act. (6-2, 8-1, 11-1, 12-1, 14-1, 16-1, 26-1, 33-1, 38-1)

Response: The Addendum to the ISOR is accurate. It recognizes that the text of the Proposition 12 ballot initiative, as approved by voters, General Election (November 6, 2018), stated that the initiative’s purpose was “to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers, and increase the risk of foodborne illness and associated negative fiscal impacts on the State of California.” The Addendum to the ISOR explained that the Department’s prior statements reflected only that there is not currently a consensus in peer-reviewed published scientific literature that would allow the Department to independently confirm, according to its usual scientific practices, that the specific minimum confinement standards outlined in HSC section 25991 reduce the risk of human food-borne illness, promote worker safety, or other human or safety concerns. But the Department continues to recognize that it was reasonable for California’s voters to pass the Proposition 12 initiative as a precautionary measure to address any potential threats to the health and safety of California consumers while such health and safety impacts remain a subject of scientific scrutiny. For example, the scientific literature supporting the potential public health benefits related to egg-laying hens that are provided additional space and the opportunity to express natural behavior continues to increase well after an earlier standard on confining egg-laying hens (Proposition 2, 2008) went into effect.

K. Standardized Regulatory Impact Assessment

1. **Comment:** Another Standardized Regulatory Impact Assessment (SRIA) or cost-benefit analysis needs to be performed for the modified proposed regulations for public review because the previous SRIA and prior cost-benefit analysis is not sufficient for the 15-day Notice. (42-8)

Response: The Department followed all legal requirements for promulgation of modified proposed regulations. The FSOR includes a statement of compliance with Government Code section 111346.9, subdivision (a)(4).

Responses to general, miscellaneous, and “irrelevant” comments received during the 15-day comment period for the Modified Text, grouped according to subject matter.

The Department developed standard responses to the comments as follows:

Standard Response 1: This comment is not specifically directed at the Department’s proposed regulations or to the procedures followed by the Department in proposing or adopting these regulations or is too generalized or personalized so that no meaningful response can be formulated to refute or accommodate the comment. (Gov. Code, § 11346.9(a)(3)).

Standard Response 2: Pursuant to Government Code section 11346.8(c), the Department need not respond to a comment submitted during the public re-notice period if it does not specifically relate to the changes to the regulation text announced during the re-notice period.

Category	Commenters	Comment	Response
L	2-1, 5-1, 5-2, 7-2, 13-3, 18-1, 18-2,	Requesting clarity of implementation dates of the Act	Standard Response 2.

	26-4, 26-6, 30-1, 30-2, 32-1, 44-1	and regulations unrelated to the modified proposed regulations	
M	31-4, 31-5, 37-2, 37-3, 46-7	Shipping document markings comments unrelated to the modified proposed regulations	Standard Response 2 For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section H, Labels and Shipping Documentation.
N	3-1, 34-3, 42-3, 44-11, 44-12, 46-1	Requesting a delay in implementation of the Act and regulations	Standard Response 2 For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section J, Delay.
O	19-2, 27-1	International trade issues	Standard Response 2 For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section L, Trade.
P	42-1	CEQA	Standard Response 2 For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section P, Other, Comment 4.
Q	7-3, 28-14	Definition of “whole pork meat”	Standard Response 2 For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section C, Covered Products and Animals, Comments 3, 4 and 5
R	12-3, 16-3	Definition of “commercial sale” unrelated to modified text	Standard Response 2 For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section D, Commercial Sale.
S	4-1	Oppose the Act and regulations due to economic impact	Standard Response 2 For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section N, Economic Impacts, Comments 1, 3, and 4.

T	7-1, 28-7, 28-16, 28-23, 28-24, 37-7	Distributor recordkeeping unrelated to the modified text	Standard Response 2.
U	28-17, 28-18, 37-8	Authority	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section M, Beyond Statutory Authority.
V	15-1, 28-15, 37-4	Distributor registration	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section E, Registration.
W	21-2, 46-11	On-site inspections - unannounced	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section G, On-site Inspections.
X	21-1, 21-3, 24-1, 28-2, 28-25, 28-26, 28-27, 45-1, 45-2, 46-6, 46-12,	On-site inspections - frequency	Standard Response 2. For responses to related comments on the 45dDay Noticed Text, see Final Statement of Reasons Section G, On-site Inspections.
Y	28-19, 28-22. 28-28, 28-29, 28-30, 28-31, 28-32, 37-5, 41-1, 41-4, 44-4, 44-5, 44-8, 44-10	Certification/accreditation unrelated to the modified text	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section F, Certification and Certifiers.
Z	44-2, 44-3	Unfair economic advantage to in-state producers	Standard Response 2.
AA	12-5, 16-5	Confinement of calves	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section A, Confinement.
BB	44-6	Confinement of breeding pigs	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section A, Confinement.

CC.1.	2-2, 6-1, 13-1, 13-2, 22-1, 22-5, 31-1, 31-6, 32-2, 33-2, 34-2, 36-2, 37-1, 39-2, 40-1, 41-3, 43-1, 45-4, 46-4, 47-3	Unrelated/Miscellaneous	Standard Response 2.
CC.2.	1-1, 3-2, 9-1, 10-1, 20-1, 22-10, 22-11, 25-1, 30-3, 34-1, 41-2	Unrelated/Miscellaneous	Standard Responses 1 and 2.

V. Comment Summaries and Responses – Second 15-day Comment Period

5.1. List of Commenters – Second 15-day Comment Period

Written comments received for the second 15-day comment period are included in the rulemaking file in Binder I.

Members of the public submitting written comments during the second 15-day comment period for the modified text, June 10, 2022 – June 24, 2022, identified in number order of receipt by the Department (numbered 1-14):

Written Commenter #	Name of Commenter	Affiliation	Date Received
1	Jose Osuna, Divisional Export Compliance Manager	Cranswick Country Foods/Second Nature	June 10, 2022
2	Ken Klippen, President	National Association of Egg Farmers	June 10, 2022
3	Sarah Cummings	Western Fairs Association	June 15, 2022
4	Devin Kulla, Marketing Director	Strauss Brands LLC	June 22, 2022
5	Steve Anderson, President	Midwest Livestock, LLC	June 22, 2022
6	Christopher Cervantes, Technical Manager, Regulatory	Bakkavor USA	June 23, 2022
7	Anthony Catelli, Jr. President & CEO	Catelli Bros Family of Foods	June 24, 2022
8	Luc Rivard A/Director General, Market Access Secretariat	Agriculture and Agri-Food Canada	June 24, 2022
9	Jill Damskey Executive Director	California Pork Producers Association	June 24, 2022
10	Steven Mahrt California Egg Producer		June 24, 2022
11	Mark Dopp	North American Meat Institute	June 24, 2022

	Chief Operating Officer and General Counsel		
12	Mathew Smith Executive Director Technical Barriers and Regulations Division	Global Affairs Canada	June 24, 2022
13	Michael Formica General Counsel	National Pork Producers Council	June 24, 2022
14	Bob Wynands President Kim O'Neil Vice President	Canadian Veal Association Canadian Meat Council	June 28, 2022

5.2. Comment Summaries and Responses – Second 15-day Comment Period

Pursuant to Government Code section 11346.9(a)(3), the Department summarized and responded to all of the objections and recommendations directed at the second modified text changes during the second 15-day comment period.

Many of comments received during this second 15-day comment period overlapped and asserted the same points and were therefore grouped together for the Department to provide a uniform and concise response. Despite this effort, some duplication in the responses to comments was inevitable.

Summaries of comments and corresponding responses for the second modified text noticed are organized by topic and then subcategorized accordingly.

The specific comments that are represented in the comment summary statement are listed after each comment summary by the commenter number as identified above followed by a dash and numbered comment when a commenter submitted more than one comment. Each individual comment number for a given commenter is highlighted and numbered on the comment received which is included in the rulemaking file in Binder I.

Additionally, the Department has included an Index of all numbered comments for each commenter in Part V. of this document. A commenter can look up their assigned commenter number from the table above and then refer to the Index to determine where all of their individual comments are addressed in the comment summaries and responses.

A. Distributor Registration

- 1. Comment:** “How are registrations renewed? I believe they should remain valid until revoked, or abandoned. Since the Proposition does not provide for a [sic] fees to be assessed, whose responsibility will it be for renewals?” (10-4)

Response: No change has been made in response to this comment. Sections 1320.2, 1321.2, and 1322.2 were amended in the second modified proposed text to provide distributors greater clarity of the registration renewal requirements and steps to be taken by

the Department when processing renewal applications. For responses related to similar comments on Distributor Registration, refer to Part 3.2. Comment Summaries and Responses - 45-day, Section E.

Responses to general, miscellaneous, and “irrelevant” comments received during the second 15-day comment period for the Second Modified Text, grouped according to subject matter.

The Department developed standard responses to the comments as follows:

Standard Response 1: This comment is not specifically directed at the Department’s proposed regulations or to the procedures followed by the Department in proposing or adopting these regulations or is too generalized or personalized so that no meaningful response can be formulated to refute or accommodate the comment. (Gov. Code, § 11346.9(a)(3)).

Standard Response 2: Pursuant to Government Code section 11346.8(c), the Department need not respond to a comment submitted during the public re-notice period if it does not specifically relate to the changes to the regulation text announced during the re-notice period.

Category	Commenters	Comment	Response
B	11-12	Covered Products and Covered Animals	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Sections C.3., C.4., and C.5., Covered Products and Covered Animals.
C	4-1, 5-1, 7-4	Covered Products and Covered Animals	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Sections C.8. and C.9., Covered Products and Covered Animals.
D	11-9	Commercial Sale	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Sections D.1., Commercial Sale.
E	8-1, 12-1	Commercial Sale	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Sections D.6., Commercial Sale.

F	11-8	Commercial Sale	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Sections D.6. and D.8., Commercial Sale.
G	7-7, 11-13	Registration	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section E.3., Registration.
H	11-18	Distributor Registration	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section F.5., Distributor Registration.
I	8-5, 12-5, 14-2	Certification and Certifiers	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section F.6. and F.7., Certification and Certifiers.
J	11-27	Certification and Certifiers	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section F.9., Certification and Certifiers.
K	11-20, 11-26, 11-28, 11-29, 11-30	Certification and Certifiers	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section F.12., Certification and Certifiers.
L	11-17	Certification and Certifiers	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section F.15., F.18., F.21., Certification and Certifiers.

M	7-2, 11-2, 13-1	Certification	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section C.2., Certification.
N	7-5	Certification	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section C.3., Certification.
O	11-23, 11-24, 11-25	On-Site Inspections / Audits	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section G., On-Site Inspections / Audits.
P	7-5	Delay	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section J.3., Delay.
Q	11-15	Trade	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section L.2., Trade.
R	11-16	Beyond Statutory Authority	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section M., Beyond Statutory Authority.
S	8-1, 12-1	Beyond Statutory Authority	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section M.4., Beyond Statutory Authority.
T	11-15	Beyond Statutory Authority	Standard Response 2. For responses to related comments, see Final Statement of Reasons Sections 45-day M.9. and

			M.10., Beyond Statutory Authority.
U	7-1, 7-9	Economic Impacts, Food Supply, Employment	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section N.1., Economic Impacts, Food Supply, Employment.
V	7-9	Economic Impacts, Food Supply, Employment	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section N.3., Economic Impacts, Food Supply, Employment.
W	7-1, 7-8	Health and Safety and Other Benefits Misstated	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section O.2., Health and Safety and Other Benefits Misstated.
X	7-8, 7-9	Other Requests or Comments	Standard Response 2. For responses to related comments on the 45-day Noticed Text, see Final Statement of Reasons Section P.3., Other Requests or Comments.
Y	11-7, 11-8, 11-9	Definitions	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section A.2., Definitions.
Z	11-10	Definitions	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section A.9., Definitions.
AA	8-1, 11-11, 12-1	Definitions	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section A.11., Definitions.

BB	10-3	Sales Prohibitions/Space Requirements	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section B.1., Sales Prohibitions/Space Requirements.
CC	4-1, 5-1, 14-1	Sales Prohibitions/Space Requirements	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section B.4., Sales Prohibitions/Space Requirements.
DD	8-2, 12-2	Shipping Documents	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section D.3., Shipping Documents.
EE	11-4	Shipping Documents	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section D.4., Shipping Documents.
FF	11-19	Article 4. Exceptions	Standard Response 2. For responses to related comments, see Final Statement of Reasons Section 15-day E.1., Article 4. Exceptions.
GG	3-1, 3-2, 9-1	Article 4. Exceptions	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Sections E.2. and E.3., Article 4. Exceptions.
HH	11-6	Distributor Recordkeeping	Standard Response 2. For responses to related comments on the 15-day Modified Text, see Final Statement of Reasons Section G.2., Distributor Recordkeeping.

II	7-3, 10-1, 10-2, 11-3, 11-14, 11- 21, 11-22	Unrelated/Miscellaneous	Standard Response 2.
JJ	1-1, 2-1, 2-2, 2-3, 2-4, 2-5, 2-6, 6-1, 7-6, 8-3, 8-4, 11-1, 11-5, 12-3, 12-4	Unrelated/Miscellaneous	Standard Responses 1 and 2.

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Erika Turner	Gary Miles	Haley Tucker
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Erin Collup	Gary Troester	Hanna Hornyak
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Erin Evans	Gauge Goehring	Hannah Salinas
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Lesley Pincombe	Lori Porter	Marilyn Togninali
Lesli King	Lori Putnam	Mario Rodriguez

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Mark Mullion	Meghan Barton	Michael Wise
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Matt Vosseler	Michael Buchanan	Mikael Zaccaglin
Matthew Anchordoguy	Michael Cox	Mikaela Hanes
Matthew Efird	Michael DeRee	Mikayla Aaenson
Matthew Field	Michael Desouza	Mikayla Duchi
Matthew Haddon	Michael Fischer	Mikayla Rosales
Matthew Hayes	Michael Good	Mike Albiani
Matthew Hendrick	Michael Harms	Mike Curry
Matthew Thomson	Michael Ireland	Mike Gorman
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Siarah Garcia	Summer Darling	Teresa Voss
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Skylar Wiley	Susan Christiano	Terri Collins
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Sonia Del Toro	Susan Jones	Terri Wallis
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Theresa Locke	Trenton Kemps	Washburn Donna
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Thomas Horgan	Trisha Bennett	Wesley Stewart
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Tiffanie Reitz	Trisha Wood	Whitney Wayman
Tiffany Carson	Trissha Stivers	Whittney Wolf
Tiffany Kelley	Tristyn Hopfe	Willem Veenhoven
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Timothy Hay	Ty Nunes	William Lhuillier
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Tom Wyatt	Veronica Lewis	
Toni Scully	Veronica Viramontes	
Tony Ojeda	Vicki Gravel	
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