

The Department of Food and Agriculture, Animal Health and Food Safety Services, hereby adopts Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, as follows:

Chapter 10. Animal Confinement.

Article 1. Egg-laying Hens.

Section 1320. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code).

(b) "Audit trail" means records that are in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling, packaging, distribution, and sale of shell eggs or liquid eggs that were derived from an egg-laying hen confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Article, and from egg producers that hold a valid certification as a certified operation issued pursuant to Article 5 of this Chapter.

(c) "Certified operation" means as defined in section 1326(e) of this Chapter.

(d) "Certifying agent" means as defined in section 1326(f) of this Chapter.

(e) "Commercial sale" for purposes of section 25991(o) of the Health and Safety Code and this Article means to sell, exchange, barter, trade, transfer title or possession, or distribute, conditional or otherwise, in California commerce including, but not limited to, transactions by a retailer with a consumer and electronic transactions made using the internet. It shall not include any of the following transactions or transfers of possession, 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 of shell eggs or liquid eggs:

(1) Shell eggs or liquid eggs produced outside of the state that enter and exit California, without additional processing or repackaging, exclusively for purposes of transshipment or export outside of the state;

(2) Any sale of shell eggs or liquid eggs undertaken on the premises of an official plant at which mandatory inspection is provided under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an establishment number (prefix "G") granted by the

Food Safety Inspection Service of the United States Department of Agriculture; or that is made directly to federal agencies or that takes place on federal lands located within the state; or

(3) Any sale of shell eggs or liquid eggs which takes place on tribal lands located within the state; or

(4) Donations to nonprofit organizations that have a tax exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.).

(f) "Consumer" means any person who purchases shell eggs or liquid eggs, as defined in sections 25991(l) and (p) of the Health and Safety Code and this Article, for the sole purpose of their own personal use or consumption, or that purchases or consumes shell eggs or liquid eggs at a restaurant, food facility, or other similar business that serves cooked eggs to customers or patrons.

(g) "Container" means any box, case, basket, tote, can, carton, sack, pouch, bag, package, wrapper, receptacle, or any other device which is used to facilitate the handling, distribution, transportation, or commercial sale of shell eggs or liquid eggs.

(h) "Cottage food operation" means an establishment as defined in section 113758 of the Health and Safety Code.

(i) "Department" means the California Department of Food and Agriculture.

(j) "Document of title" means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the shell eggs or liquid eggs it covers. Examples of such documents include, but are not limited to, bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of shell eggs or liquid eggs.

(k) "Egg distributor" means a person or facility engaged in the business of commercial sales or distribution of shell eggs or liquid eggs (as an egg producer or otherwise) to an end-user in California. This definition shall not apply to a person or facility that only receives shell eggs or liquid eggs as an end-user.

(l) "Egg-laying hen" means any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production. For purposes of this subsection and this Article, an egg-laying hen kept for egg production means a sexually mature female confined for the purpose of laying eggs which are intended for use as human food as shell eggs or liquid eggs.

(m) "Egg producer" means a person engaged in the business of producing eggs from domesticated chickens, turkeys, ducks, geese, or guineafowl that will be used as shell eggs or liquid eggs as defined in this article for human food. This definition shall not apply to an official

plant under mandatory inspection under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an establishment number (prefix “G”) granted by the Food Safety Inspection Service of the United States Department of Agriculture.

(n) “Enclosure” means a structure used to confine a covered animal or animals. For purposes of this subsection and this Article, a structure means any cage, crate, pen, or other construction used to confine an egg-laying hen.

(o) “End-user” means any of the following:

(1) A consumer;

(2) A retailer that is not an egg producer and only conducts commercial sales directly to a consumer, without any further distribution, of shell eggs or liquid eggs;

(3) A food processing facility or cottage food operation that receives shell eggs or liquid eggs solely for use as an ingredient to manufacture a combination food product that does not meet the definition of a shell egg or liquid egg as defined in this Article; or

(4) A restaurant, food facility, or other similar business that only cooks and serves shell eggs or liquid eggs to customers, patrons, or guests for purposes of consumption.

(p) “Flavoring” for purposes of section 25991(l) of the Health and Safety Code and this Article means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, but includes milk and butter, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and substances with a use described as a flavoring, flavoring agent, or flavoring enhancer in Part 184 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(q) “Food facility” means a facility as defined in section 113789 of the Health and Safety Code.

(r) “Food processing facility” means a facility as defined in section 109947 of the Health and Safety Code.

(s) “In its shell form” for purposes of section 25991(p) of the Health and Safety Code and this Article means an egg as developed, proportioned and shaped in the shell by an egg-laying hen, whether it is in the shell, raw, pasteurized in the shell, treated in the shell, hardboiled, or otherwise cooked in whole form, peeled, co-packaged with other foods, or subsequently sold sliced, chopped, or otherwise cut.

(t) “Liquid eggs” means the product defined in section 25991(l) of the Health and Safety Code intended for use as human food, whether it is raw or pasteurized, co-packaged with other

foods, or sold frozen, dried, freeze-dried, or as a cooked patty, puck, or other cooked form, and shall include all of the following:

(1) Liquid eggs as described by section 160.115 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(2) Dried eggs as described by section 160.105 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(3) Frozen eggs as described by section 160.110 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(4) Egg whites as described by section 160.140 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(5) Dried egg whites as described by section 160.145 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(6) Frozen egg whites as described by section 160.150 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(7) Egg yolks as described by section 160.180 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(8) Dried egg yolks as described by section 160.185 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(9) Frozen egg yolks as described by section 160.190 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference;

(10) Any mixture, irrespective of proportions, of two or more of the products specified in this subsection;

(11) Any product, or mixture of products, specified in this subsection to which has been added no more than sugar, salt, water, seasoning, coloring, flavoring, preservatives, stabilizers, or other similar food additives; and

(12) Any product represented to the customer as, or bearing the statement of identity of, liquid eggs, or any of the products specified in this subsection on the product label according to section 101.3 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(u) "Pasteurized" means a pasteurization process applied to eggs in the shell or liquid eggs by any method approved by the United States Food and Drug Administration, United States Department of Agriculture, the Department of Public Health, or the Department.

(v) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(w) "Records" means 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.

(x) "Retailer" means a facility location that conducts commercial sales of shell eggs or liquid eggs to a consumer.

(y) "Seasoning" for purposes of section 25991(l) of the Health and Safety Code and this Article is synonymous with the term "spice" and means any aromatic vegetable substance in the whole, broken, diced, or ground form, whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include onions, garlic, peppers, and the spices listed in section 182.10, and Part 184 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(z) "Shell egg" means a whole egg of an egg-laying hen in its shell form, intended for use as human food.

(aa) "Takes physical possession" for the purposes of section 25991(o) of the Health and Safety Code and this Article means when the shell eggs or liquid eggs 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 shell eggs or liquid eggs outside of the state for transportation into California.

(bb) "Usable floorspace" means the total square footage of floorspace provided to each egg-laying hen, as calculated by dividing the total square footage of floorspace provided to egg-laying hens in an individual enclosure by the number of egg-laying hens in that individual enclosure. This floorspace shall include both ground-space and elevated level flat platforms upon which hens can roost but shall not include perches or ramps.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, 109947, 113758, and 113789, Health and Safety Code.

Section 1320.1. Egg-laying Hen Confinement.

(a) No person shall knowingly engage in a commercial sale within the state of shell eggs or liquid eggs for human food if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with all of the following standards:

(1) The enclosure shall allow the egg-laying hen to lie down, stand up, fully extend limbs, and turn around freely.

(2) An enclosure shall be a cage-free housing system that complies with all of the following:

(A) The enclosure shall be an indoor or outdoor controlled environment within which hens are free to roam unrestricted;

(B) The enclosure shall provide enrichments that allow hens to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas;

(C) Employees can provide care while standing within the egg-laying hens' usable floorspace;

(D) And the enclosure shall provide the minimum amount of usable floorspace per hen required by the 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-laying Flocks: Guidelines for Cage-Free Housing, hereby incorporated by reference, as follows:

(i) Multitiered aviaries in which hens have access to multiple elevated platforms shall provide a minimum of one (1) square foot of usable floorspace per hen;

(ii) Partially slatted systems in which hens have access to elevated flat platforms shall provide a minimum of one (1) square foot of usable floorspace per hen;

(iii) Single-level all-litter floor systems bedded with litter in which hens have limited or no access to elevated flat platforms shall provide a minimum of one and one-half (1.5) square feet of usable floorspace per hen; and

(iv) Any other cage-free housing system not described in this section shall provide a minimum of one (1) square foot of usable floorspace per hen in systems that provide hens with access to vertical space and shall provide a minimum of one and one-half (1.5) square feet of usable floorspace per hen in systems that do not provide hens access to vertical space.

(3) Exceptions to the requirements of this section are specified in section 25992 of the Health and Safety Code and Article 4 of this Chapter.

(b) Commencing January 1, 2024, any person engaged in business in the state as an egg producer, or any out-of-state egg producer that is keeping, maintaining, confining, and housing an egg-laying hen for the purposes of egg production for human food as shell eggs or liquid eggs for commercial sale in California, shall hold a valid certification issued pursuant to Article 5 of this Chapter as a certified operation.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1320.2. Egg Distributor Registration.

(a) Commencing January 1, 2023, 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 pursuant to this Article.

(b) Any person registering pursuant to (a) of this section shall submit an application for registration provided by the Department that contains the following information:

(1) Business name, physical address of distribution operation, mailing address, phone number, email address, website address, federal tax identification number, and name, phone number and email of person authorized to act on the applicant's behalf.

(2) Description of the type(s) of shell eggs or liquid eggs distributed in the state.

(c) The registration shall not be transferable to any person and shall be applicable only to the location for which originally issued.

(d) A registration is required for each facility location from which shell eggs or liquid eggs are sold, distributed, or otherwise supplied to the location of an end-user.

(e) An egg distributor shall not engage in the commercial sale of shell eggs or liquid eggs within, or into, California unless such person has obtained and holds a valid registration from the Department pursuant to this section for each facility location.

(f) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the registered distributor must be reported to the Department within 30 calendar days of such change.

(g) All information set forth on applications for registrations and renewals for registrations, including but not limited to any documentation of certification required by (l) of this section, shall be truthful and not misleading.

(h) Initial or renewal of a registration will be issued after the Department reviews the application and accompanying certificate of compliance, described in (l) of this section, to ensure information is complete and accurate.

(i) Every registration expires 12 months from the date of issue.

(j) A registration may be renewed each 12-month period by the Department in response to an application for renewal by an egg distributor if the business of the facility applying for renewal was conducted in accordance with the requirements of this Article and sections 25990 and 25991 of the Health and Safety Code during the preceding registration period for which the renewal is requested.

(k) A registration will remain in effect pending review and approval by the Department of an application for registration renewal, provided the application for renewal is received prior to expiration of current registration.

(l) An application to the Department by an egg distributor for initial registration, or for purposes of renewal, shall be accompanied by documentation of valid certification pursuant to Article 5 of this Chapter for each location where registration is being sought. A registration shall not be issued for any facility location for which a valid certification required by this section has not been submitted to the Department.

(m) For purposes of the valid certification required in (l) of this section, a self-certification by an egg distributor that they comply with all applicable requirements of sections 1320.4 and 1320.5 of this Article, and distributes shell eggs or liquid eggs within or into California only from egg producers that comply with section 1320.1 of this Article, will be accepted by the Department prior to January 1, 2024.

(n) An official plant under mandatory inspection under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an establishment number with prefix of "G" granted by the Food Safety Inspection Service of the United States Department of Agriculture is excluded from mandatory registration pursuant to this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) Every person registered pursuant to section 1320.2 of this Article shall comply with this section.

(b) Every egg distributor by submitting an application for registration of a facility agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access to the premises and business records of the facility for purposes of inspection and audit as described in Article 5 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) Shipping Documents.

(1) All documents of title and shipping manifests for shipments of shell eggs or liquid eggs entering the state or transported within the state for commercial sale in California shall

include the statement “Egg CA Prop 12 Compliant”. The statement shall be legible and plainly printed or stamped.

(2) For shipments of shell eggs or liquid eggs that were not produced in compliance with section 25991 of the Health and Safety Code and this Article, and enter California exclusively for purposes of transshipment, export, donation, or sale to federal agencies or on tribal lands and are not destined for commercial sale in California, all documents of title and shipping manifests shall, upon entrance into the state and during transportation and storage within the state, be marked with the statement “For Export”, “For Transshipment”, or “Not Prop 12 Compliant”. The statement shall be legible and plainly printed or stamped.

(3) For shipments of shell eggs or liquid eggs not produced in compliance with section 25991 of the Health and Safety Code and this Article that originate from an official plant, whether located inside or outside of the state, under mandatory inspection and that holds an establishment number with prefix “G” granted by the Food Safety Inspection Service of United States Department of Agriculture under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and being transported to another official plant in California under mandatory inspection and that holds an establishment number with prefix “G” granted by the Food Safety Inspection Service of United States Department of Agriculture under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.), solely for purposes of using the shell eggs or liquid eggs for making food products not covered by the Act or this Article, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation within the state, be clearly marked with the statement “Only for use at” immediately followed by the complete establishment number, including the prefix “G”, granted by the Food Safety Inspection Service of the United States Department of Agriculture for the specific facility where the shipment is destined for delivery.

(b) No person shall label, identify, mark, advertise, or otherwise represent, shell eggs or liquid eggs for purposes of commercial sale in California using the statements in (a) of this section, or as meeting the requirements of the Act or otherwise meeting California cage size or enclosure space requirements for egg-laying hens, unless the shell eggs or liquid eggs were produced in compliance with section 25991 of the Health and Safety Code and this Article.

(c) No person shall label, identify, mark, advertise, or otherwise represent shell eggs or liquid eggs for purposes of commercial sale in the state using the term “cage free” or other similar descriptive term unless the shell eggs or liquid eggs were produced in compliance with section 1320.1 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1320.5. Egg Distributor Recordkeeping.

(a) An egg distributor, as a condition of registration pursuant to section 1320.2 of this Article, shall maintain records that comply with all the requirements of this section.

(b) Records shall be sufficient for purposes of an audit trail as defined in section 1320(b) of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

(c) Records shall document in a traceable manner that shell eggs or liquid eggs being distributed for commercial sale into or within California originate from egg producers that are in compliance with all requirements of section 1320.1 of this Article.

(d) Records shall document the address of the location where the distributor, as the buyer, takes physical possession of shell eggs or liquid eggs for each sales transaction.

(e) Records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or certifying agent as required by section 1320.3 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1320.6. Inspection of Conveyances.

(a) Every egg distributor by submitting an application for registration agrees as a condition of registration to provide the Department or a certifying agent, access to inspect in California any vehicle or other conveyance under the registrant's operation or control that is transporting shell eggs or liquid eggs into or within the state.

(b) Every person shall stop at the request of the Department at any California Border Protection Station for purposes of inspection of cargo and any accompanying shipping documents, manifests, and bills of lading, any vehicle or other conveyance transporting into or within the state shell eggs or liquid eggs.

(c) The Department may deny entry to or order diversion from the state any vehicle or other conveyance transporting shell eggs or liquid eggs for commercial sale that was produced, packaged, identified, or shipped in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, including but not limited to shipping document requirements specified in section 1320.4 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

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

(a) The Department may affix a warning tag or notice to shipping documents, manifests, containers, sub-containers, lots, or loads of shell eggs or liquid eggs which have been produced, packaged, stored, labeled, marked, identified, transported, delivered, or sold in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. When a warning tag or notice is issued, the Department shall give written notice of such violation to the egg producer, egg distributor, owner, or other person in possession of the shell eggs or liquid eggs.

(b) No person shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department.

(c) The Department may seize and hold any containers, sub-containers, lots, or loads of shell eggs or liquid eggs in California which they have reasonable suspicion to believe is in violation of the provisions of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. If the Department seizes any container, sub-container, lot, or load of shell eggs or liquid eggs, a written hold notice shall be issued to the person that has control of the shell eggs or liquid eggs, and a tag or notice may be affixed to the container, sub-container, lot, or load which states it is so held.

(d) Any shell eggs or liquid eggs for which a hold notice is issued shall be held by the person having control of the shell eggs or liquid eggs and shall not be disturbed, moved, diverted, or offered for sale except under the specific directions of the Department.

(e) A person may request an informal hearing to contest tagging, hold notice, or seizure of shell eggs or liquid eggs pursuant to section 1327.1 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1320.8. Written Certification.

(a) For purposes of section 25993.1 of the Health and Safety Code, any written certification from a supplier to a buyer engaged in commercial sales of shell eggs or liquid eggs that were not derived from an egg-laying hen confined in a cruel manner shall be based upon an audit trail as defined in section 1320(b) of this Article, and shall be traceable to egg producers compliant with all requirements of section 1320.1 of this Article.

(b) A retailer or food processing facility that is an end-user and takes physical possession, whether by use of a common carrier, private carrier, or other means of conveyance, of shell eggs or liquid eggs at, or directly from, an official plant at which mandatory inspection is provided under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.), that holds an establishment number (prefix "G") granted by the Food Safety Inspection Service of the United States Department of Agriculture, and that does not hold a valid egg distributor registration, shall:

(1) Maintain records documenting written certifications that meet the requirements of this section for shell eggs or liquid eggs received during the preceding 12-month period.

(2) Maintain records documenting the address of the location where the retailer or food processing facility, as the buyer, takes physical possession of shell eggs or liquid eggs for each sales transaction.

(3) Make the records required by this section available on-site for inspection by the Department upon request. Electronic records are considered on-site if they are accessible from an on-site location.

(c) Subsection (b) of this section shall not apply to a shell egg or liquid egg end-user that is an official plant at which mandatory inspection is provided under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an establishment number (prefix "G") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) The Department may deny, suspend, or revoke a registration issued pursuant to this Article for any of the following:

(1) Violations that resulted, or reasonably could have resulted, in the commercial sale of shell eggs or liquid eggs from egg-laying hens that were not confined in compliance with this Article;

(2) Demonstrated pattern of violations with the requirements of this Article and/or statutes pertaining to shell eggs, liquid eggs or egg-laying hens in sections 25990-25992 of the Health and Safety Code;

(3) Refusal to grant access for, or interference with, inspections or audits as described in sections 1320.3 or 1320.6 of this Article;

(4) Misrepresenting shell eggs or liquid eggs as being produced in compliance with this Article; or

(5) Providing false information on an application for registration.

(b) Proposed suspension or revocation. The Department shall send a written notice of proposed suspension or revocation of registration to the egg distributor. The notice of proposed suspension or revocation shall state:

(1) The date the proposed suspension or revocation is issued;

(2) The reasons for the proposed suspension or revocation;

(3) The effective date of the proposed suspension or revocation;

(A) The effective date of suspension or revocation is 30 calendar days after the date that the proposed suspension or revocation is issued;

(4) The impact of a suspension or revocation on future eligibility for registration including conditions for reinstatement which will be determined by the Department based on the demonstrated pattern of violations described in subsections (a)(1) through (a)(5) of this section; and

(5) The right to request a formal hearing pursuant section 1327.2 of this Chapter within 30 calendar days of the date the proposed suspension or revocation was issued. Registration shall remain in effect pending the outcome of the formal hearing.

(c) A person may appeal the Department's decision to deny an application or renewal of a registration by requesting a formal hearing pursuant to section 1327.2 of this Chapter within 30 calendar days of the date of the notice of denial.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Article 2. Calves.

Section 1321. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code).

(b) "Audit trail" means records that are in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling,

packaging, distribution, and sale of whole veal meat that was derived from a calf confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Article, and from veal producers that hold a valid certification as a certified operation issued pursuant to Article 5 of this Chapter.

(c) "Calf" means any calf of the bovine species kept for the purpose of producing the food product described as veal.

(d) "Certified operation" means as defined in section 1326(e) of this Chapter.

(e) "Certifying agent" means as defined in section 1326(f) of this Chapter.

(f) "Commercial sale" for purposes of section 25991(o) of the Health and Safety Code and this Article means to sell, exchange, barter, trade, transfer title or possession, or distribute, conditional or otherwise, in California commerce including, but not limited to, transactions by a retailer with a consumer and electronic transactions made using the internet. It shall not include any of the following transactions or transfers of possession, 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 of whole veal meat:

(1) Whole veal meat produced outside of the state that enters and exits California without additional processing or repackaging exclusively for purposes of transshipment or export outside of the state;

(2) Any sale of whole veal meat undertaken on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture; or that is made directly to federal agencies or that takes place on federal lands located within the state;

(3) Any sale of whole veal meat which takes place on tribal lands located within the state; or

(4) Donations to nonprofit organizations that have a tax exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.).

(g) "Consumer" means any person who purchases whole veal meat, as defined in section 25991(v) of the Health and Safety Code and this Article, for the sole purpose of their own personal use or consumption, or that purchases or consumes cooked veal meat at a restaurant, food facility, or other business that serves cooked or ready-to-eat veal meat to customers or patrons.

(h) "Container" means any box, case, basket, tote, can, carton, sack, pouch, bag, package, wrapper, receptacle, or any other device which is used to facilitate the handling, distribution, transportation, or commercial sale of whole veal meat.

(i) "Cottage food operation" means an establishment as defined in section 113758 of the Health and Safety Code.

(j) "Curing agents" for purposes of section 25991(v) of the Health and Safety Code and this Article means any substance listed and described in section 424.21(c) of Title 9 of the Code of Federal Regulations (January 2021), hereby incorporated by reference.

(k) "Cut" for purposes of section 25991(v) of the Health and Safety Code and this Article means any uncooked primal, wholesale, sub-primal or retail cut including, but not limited to, those identified and described in the United States Department of Agriculture's Institutional Meat Purchase Specifications: Fresh Veal Series 300 (November 2014 Edition) and the 2014 Uniform Retail Meat Identity Standards developed by the Industry-Wide Cooperative Meat Identification Standards Committee, hereby incorporated by reference, but shall exclude any ground or otherwise comminuted meat products.

(l) "Department" means the California Department of Food and Agriculture.

(m) "Document of title" means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the whole veal meat it covers. Examples of such documents include, but are not limited to, bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of whole veal meat.

(n) "Enclosure" means a structure used to confine a covered animal or animals. For purposes of this subsection and this Article, a structure means any cage, crate, pen, or other construction used to confine a calf.

(o) "End-user" means any of the following:

(1) A consumer;

(2) A retailer that is not a veal producer and only conducts commercial sales directly to a consumer, without any further distribution, of whole veal meat;

(3) A food processing facility or cottage food operation that receives whole veal meat solely for use as an ingredient to manufacture a combination food product that does not meet the definition of whole veal meat as defined in this Article; or

(4) A restaurant, food facility or other business that only cooks and serves veal meat, and/or serves only ready-to-eat veal meat, to customers, patrons, or guests for purposes of consumption.

(p) “Flavoring” for purposes of section 25991(v) of the Health and Safety Code and this Article means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and substances with a use described as a flavoring, flavoring agent, or flavoring enhancer in Part 184 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(q) “Food facility” means a facility as defined in section 113789 of the Health and Safety Code.

(r) “Food processing facility” means a facility as defined in section 109947 of the Health and Safety Code.

(s) “Kept for the purpose of producing” for purposes of section 25991(d) of the Health and Safety Code and this Article means keeping a calf of the bovine species that is, or is intended to be, slaughtered at more than 21 days of age or more than 150 pounds in liveweight for the production of food described, advertised, represented, identified, or labeled as veal.

(t) “Person” means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(u) “Ready-to-eat (RTE)” means in a form that is edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, gastronomic, or culinary purposes. RTE product is not required to bear a safe-handling instruction (as required for non-RTE products by sections 317.2(l) and 381.125(b)) of Title 9 of the Code of Federal Regulations (January 2021), hereby incorporated by reference, or other labeling that directs that the product must be cooked or otherwise treated for safety and can include frozen meat products.

(v) “Records” means 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.

(w) “Requiring cooking” for the purposes of section 25991(r) of the Health and Safety Code and this Article means not ready-to-eat in the condition sold, offered for sale, or otherwise distributed.

(x) “Retailer” means a facility location that conducts commercial sales of whole veal meat to a consumer.

(y) “Seasoning” for purposes of section 25991(v) of the Health and Safety Code and this Article is synonymous with the term “spice” and means any aromatic vegetable substance in the whole, broken, or ground form, whose primary function in food is seasoning rather than

nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include onions, garlic, peppers, and the spices listed in section 182.10 and Part 184 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(z) "Takes physical possession" for the purposes of section 25991(o) of the Health and Safety Code and this Article means when the whole veal meat 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 whole veal meat outside of the state for transportation into California.

(aa) "Uncooked" means requiring cooking prior to human consumption.

(bb) "Usable floorspace" shall be calculated by dividing the total square footage of floorspace provided to calves in an enclosure by the number of calves in the enclosure. This floorspace shall also include ground-space for enclosures that are outdoor pens or pastures accessible at all times by all calves confined in the enclosure.

(cc) "Veal distributor" means a person or facility engaged in the business of commercial sales or distribution of whole veal meat (as a veal producer or otherwise) to an end-user in California. This definition shall not apply to a person or facility that only receives whole veal meat as an end-user.

(dd) "Veal producer" means a person engaged in the business of keeping, confining, and/or housing a calf of the bovine species, to be slaughtered at more than 21 days of age or more than 150 pounds, for the purpose of producing the human food product described, advertised, represented, identified, or labeled as veal. This definition shall not apply to the following:

(1) A person housing calves exclusively for purposes of standard dairy herd management practices at, or for, a dairy farm holding a valid market milk permit or manufacturing milk permit pursuant to section 33222 of the Food and Agricultural Code or a valid permit issued by the government milk regulatory authority where the dairy farm is located if not in California; or

(2) An establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

(ee) "Whole veal meat" means any uncooked cut of veal, including chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin, or cutlet, that is comprised entirely of veal meat, except for seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives.

Whole veal meat does not include combination food products, including soups, sandwiches, pizzas, hotdogs, or similar processed or prepared food products, that are comprised of more than veal meat, seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, 109947, 113758, and 113789, Health and Safety Code.

Section 1321.1. Calf Confinement.

(a) No person shall knowingly engage in a commercial sale within the state of whole veal meat for human food if it is the product of a calf that was confined in an enclosure that fails to comply with the following standards:

(1) An enclosure shall allow the calf to lie down, stand up, fully extend limbs, and turn around freely.

(2) An enclosure shall provide a minimum of 43 square feet of usable floorspace per calf.

(3) Exceptions to the requirements of this section are specified in section 25992 of the Health and Safety Code and Article 4 of this Chapter.

(b) Commencing January 1, 2024, any person engaged in business in the state as a veal producer, or any out-of-state veal producer that is keeping, maintaining, confining, and/or housing calves for the purposes of producing whole veal meat for human food for commercial sale in California, shall hold a valid certification issued pursuant to Article 5 of this Chapter as a certified operation.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991 and 25992, Health and Safety Code.

Section 1321.2. Veal Distributor Registration.

(a) Commencing January 1, 2023, 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 pursuant to this Article.

(b) Any person registering pursuant to (a) of this section shall submit an application for registration provided by the Department that contains the following information: Business name, physical address of distribution operation, mailing address, phone number, email address, website address, federal tax identification number, and name, phone number and email of person authorized to act on the applicant's behalf.

(c) The registration shall not be transferable to any person and shall be applicable only to the location for which originally issued.

(d) A registration is required for each facility location from which whole veal meat is sold, distributed, or otherwise supplied to the location of an end-user.

(e) A veal distributor shall not engage in the commercial sale of whole veal meat within, or into, California unless such person has obtained and holds a valid registration from the Department pursuant to this section for each facility location.

(f) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the registered distributor must be reported to the Department within 30 calendar days of such change.

(g) All information set forth on applications for registrations and renewals for registrations, including but not limited to any documentation of certification required by (l) of this section, shall be truthful and not misleading.

(h) Initial or renewal of a registration will be issued after the Department reviews the application and accompanying certificate of compliance, described in (l) of this section, to ensure information is complete and accurate.

(i) Every registration expires 12 months from the date of issue.

(j) A registration may be renewed each 12-month period by the Department in response to an application for renewal by a veal distributor if the business of the facility applying for renewal was conducted in accordance with the requirements of this Article and sections 25990 and 25991 of the Health and Safety Code during the preceding registration period for which the renewal is requested.

(k) A registration will remain in effect pending review and approval by the Department of an application for registration renewal, provided the application for renewal is received prior to expiration of current registration.

(l) An application to the Department by a veal distributor for initial registration, or for purposes of renewal, shall be accompanied by documentation of valid certification pursuant to Article 5 of this Chapter for each location where registration is being sought. A registration shall not be issued for any facility location for which the valid certification required by this section has not been submitted to the Department.

(m) For purposes of the valid certification required in (l) of this section, a self-certification by a veal distributor that they comply with all applicable requirements of sections 1321.4 and 1321.5 of this Article, and distributes whole veal meat within or into California only from veal

producers that comply with section 1321.1 of this Article, will be accepted by the Department prior to January 1, 2024.

(n) An establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture is excluded from mandatory registration pursuant to this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) Every person registered pursuant to section 1321.2 of this Article shall comply with this section.

(b) Every veal distributor by submitting an application for registration of a facility agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access to the premises and business records of the facility for purposes of inspection and audit as described in Article 5 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1321.4. Whole Veal Meat Shipping Document Requirements.

(a) Shipping Documents.

(1) All documents of title and shipping manifests for shipments of whole veal meat entering the state or transported within the state for commercial sale in California shall include the statement "Veal CA Prop 12 Compliant". The statement shall be clearly legible and plainly printed or stamped.

(2) For shipments of whole veal meat that were not produced in compliance with section 25991 of the Health and Safety Code and this Article, and enter California exclusively for purposes of transshipment, export, donation, or sale to federal agencies or on tribal lands and are not destined for commercial sale in California, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation and storage within the state, be marked with the statement "For Export", "For Transshipment", or "Not Prop 12 Compliant". The statement shall be legible and plainly printed or stamped.

(3) For shipments of whole veal meat not produced in compliance with section 25991 of the Health and Safety Code and this Article that originate from a facility, whether located inside

or outside of the state, under mandatory inspection and that holds an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and being transported to another facility in California under mandatory inspection and holding an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), solely for purposes of using the whole veal meat for making food products not covered by the Act or this Article, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation within the state, be clearly marked with the statement "Only for use at" immediately followed by the complete establishment number, including the prefix "M", granted by the Food Safety Inspection Service of the United States Department of Agriculture for the specific facility where the shipment is destined for delivery.

(b) No person shall label, identify, mark, advertise, or otherwise represent, calves or whole veal meat for commercial sale in California using the statements in (a) of this section, or as meeting the requirements of the Act or otherwise meeting California enclosure space requirements, unless they were produced in compliance with section 25991 of the Health and Safety Code and this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1321.5. Veal Distributor Recordkeeping.

(a) A veal distributor, as a condition of registration pursuant to section 1321.2 of this Article, shall maintain records that comply with all the requirements of this section.

(b) Records shall be sufficient for purposes of an audit trail as defined in section 1321(b) of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

(c) Records shall document in a traceable manner that whole veal meat being sold into or within California originates from veal producers that are certified operations pursuant to Article 5 of this Chapter.

(d) Records shall document the address of the location where the distributor, as the buyer, takes physical possession of whole veal meat for each sales transaction.

(e) Records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or a certifying agent as required by section 1321.3 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1321.6. Inspection of Conveyances.

(a) Every veal distributor by submitting an application for registration agrees as a condition of registration to provide the Department or a certifying agent, access to inspect in California any vehicle or other conveyance under the registrant's operation or control that is transporting whole veal meat into or within the state.

(b) Every person shall stop at the request of the Department at any California Border Protection Station for purposes of inspection of cargo and any accompanying shipping documents, manifests, and bills of lading, any vehicle or other conveyance transporting into or within the state whole veal meat.

(c) The Department may deny entry to or order diversion from the state any vehicle or other conveyance transporting whole veal meat intended for commercial sale that was produced, packaged, identified, or shipped in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, including but not limited to shipping document requirements specified in section 1321.4 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1321.7. Tagging and Seizure of Whole Veal Meat.

(a) The Department may affix a warning tag or notice to shipping documents, manifests, containers, sub-containers, lots, or loads of whole veal meat which have been produced, packaged, stored, labeled, marked, identified, transported, delivered, or sold in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. When a warning tag or notice is issued, the Department shall give written notice of such violation to the veal producer, veal distributor, owner, or other person in possession of the whole veal meat.

(b) No person shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department.

(c) The Department may seize and hold any containers, sub-containers, lots, or loads of whole veal meat in California which they have reasonable suspicion to believe is in violation of the provisions of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. If the Department seizes any container, sub-container, lot, or load of whole veal meat, a written hold notice shall be issued to the person that has control of the whole veal meat, and a tag or notice may be affixed to the container, sub-container, lot, or load which states it is so held.

(d) Any whole veal meat for which a hold notice is issued shall be held by the person having control of the whole veal meat and shall not be disturbed, moved, diverted, or offered for sale except under the specific directions of the Department.

(e) A person may request an informal hearing to contest tagging, hold notice, or seizure of whole veal meat pursuant to section 1327.1 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1321.8. Written Certification.

(a) For purposes of section 25993.1 of the Health and Safety Code, any written certification from a supplier to a buyer engaged in commercial sales of whole veal meat that was not derived from a calf confined in a cruel manner shall be based upon an audit trail as defined in section 1321(b) of this Article, and shall be traceable to veal producers compliant with all requirements of section 1321.1 of this Article.

(b) A retailer or food processing facility that is an end-user and takes physical possession, whether by use of a common carrier, private carrier, or other means of conveyance, of whole veal meat at, or directly from, an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture, and that does not hold a valid veal distributor registration, shall:

(1) Maintain records documenting written certifications that meet the requirements of this section for whole veal meat received during the preceding 12-month period.

(2) Maintain records documenting the address of the location where the retailer or food processing facility, as the buyer, takes physical possession of whole veal meat for each sales transaction.

(3) Make the records required by this section available on-site for inspection by the Department upon request. Electronic records are considered on-site if they are accessible from an on-site location.

(c) Subsection (b) of this section shall not apply to a whole veal meat end-user that is an establishment under mandatory inspection under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) The Department may deny, suspend, or revoke a registration issued pursuant to this Article for any of the following:

(1) Violations that resulted, or reasonably could have resulted, in the commercial sale of whole veal meat from a calf that was not confined in compliance with this Article;

(2) Demonstrated pattern of violations with the requirements of this Article and/or statutes pertaining to whole veal meat or a calf raised for veal in sections 25990-25992 of the Health and Safety Code;

(3) Refusal to grant access for, or interference with, inspections or audits described in sections 1321.3 or 1321.6 of this Article;

(4) Misrepresenting whole veal meat as being produced in compliance with this Article;

or

(5) Providing false information on an application for registration.

(b) Proposed suspension or revocation. The Department shall send a written notice of proposed suspension or revocation of registration to the veal distributor. The notice of proposed suspension or revocation shall state:

(1) The date the proposed suspension or revocation is issued;

(2) The reasons for the proposed suspension or revocation;

(3) The effective date of the proposed suspension or revocation;

(A) The effective date of suspension or revocation is 30 calendar days after the date that the proposed suspension or revocation is issued;

(4) The impact of a suspension or revocation on future eligibility for registration including conditions for reinstatement which will be determined by the Department based on the

demonstrated pattern of violations described in subsections (a)(1) through (a)(5) of this section;
and

(5) The right to request a formal hearing pursuant section 1327.2 of this Chapter within 30 calendar days of the date the proposed suspension or revocation was issued. Registration shall remain in effect pending the outcome of the formal hearing.

(c) A person may appeal the Department's decision to deny an application or renewal of a registration by requesting a formal hearing pursuant to section 1327.2 of this Chapter within 30 calendar days of the date of the notice of denial.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Article 3. Breeding Pigs.

Section 1322. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code).

(b) "Audit trail" means records that are in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling, packaging, distribution, and sale of whole pork meat that was derived from a breeding pig, or immediate offspring of a breeding pig, confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Article, and from pork producers that hold a valid certification as a certified operation issued pursuant to Article 5 of this Chapter.

(c) "Breeding pig" means any female pig of the porcine species kept for the purpose of commercial breeding who is six (6) months of age or older, or pregnant.

(d) "Certified operation" means as defined in section 1326(e) of this Chapter.

(e) "Certifying agent" means as defined in section 1326(f) of this Chapter.

(f) "Commercial sale" for purposes of section 25991(o) of the Health and Safety Code and this Article means to sell, exchange, barter, trade, transfer title or possession, or distribute, conditional or otherwise, in California commerce including, but not limited to, transactions by a retailer with a consumer and electronic transactions made using the internet. It shall not include any of the following transactions or transfers of possession, 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 of whole pork meat:

(1) Whole pork meat produced outside of the state that enters and exits California, without additional processing or repackaging, exclusively for purposes of transshipment or export outside of the state;

(2) Any sale of whole pork meat undertaken on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture; or that is made directly to federal agencies or that takes place on federal lands located within the state; or

(3) Any sale of whole pork meat which takes place on tribal lands located within the state; or

(4) Donations to nonprofit organizations that have a tax exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.).

(g) "Consumer" means any person who purchases whole pork meat, as defined in section 25991(u) of the Health and Safety Code and this Article, for the sole purpose of their own personal use or consumption, or that purchases or consumes cooked pork meat at a restaurant, food facility, or other business that serves cooked or ready-to-eat pork meat to customers or patrons.

(h) "Container" means any box, case, basket, tote, can, carton, sack, pouch, bag, package, wrapper, receptacle, or any other device which is used to facilitate the handling, distribution, transportation, or commercial sale of whole pork meat.

(i) "Cottage food operation" means an establishment as defined in section 113758 of the Health and Safety Code.

(j) "Curing agents" for purposes of section 25991(u) of the Health and Safety Code and this Article means any substance listed and described in section 424.21(c) of Title 9 of the Code of Federal Regulations (January 2021), hereby incorporated by reference.

(k) "Cut" for purposes of section 25991(u) of the Health and Safety Code and this Article means any uncooked primal, wholesale, sub-primal or retail cut including, but not limited to, those identified and described in the United States Department of Agriculture's Institutional Meat Purchase Specifications: Fresh Pork Series 400 (November 2014 Edition) and the 2014 Uniform Retail Meat Identity Standards developed by the Industry-Wide Cooperative Meat Identification Standards Committee, hereby incorporated by reference, but shall exclude any ground or otherwise comminuted meat products.

(l) "Department" means the California Department of Food and Agriculture.

(m) "Document of title" means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the whole pork meat it covers. Examples of such documents include, but are not limited to, bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of whole pork meat.

(n) "Enclosure" means a structure used to confine a covered animal or animals. For purposes of this subsection and this Article, a structure means any cage, crate, pen, or other construction used to confine a breeding pig.

(o) "End-user" means any of the following:

(1) A consumer;

(2) A retailer that is not a pork producer and only conducts commercial sales directly to a consumer, without any further distribution, of whole pork meat;

(3) A food processing facility or cottage food operation that receives whole pork meat solely for use as an ingredient to manufacture a combination food product that does not meet the definition of whole pork meat as defined in this Article; or

(4) A restaurant, food facility or other business that only cooks and serves pork meat, and/or serves only ready-to-eat pork meat, to customers, patrons or guests for purposes of consumption.

(p) "Flavoring" for purposes of section 25991(u) of the Health and Safety Code and this Article means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and substances with a use described as a flavoring, flavoring agent, or flavoring enhancer in part 184 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(q) "Food facility" means a facility as defined in section 113789 of the Health and Safety Code.

(r) "Food processing facility" means a facility as defined in section 109947 of the Health and Safety Code.

(s) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(t) "Pork distributor" means a person or facility engaged in the business of commercial sales or distribution of whole pork meat (as a pork producer or otherwise) to an end-user in

California. This definition shall not apply to a person or facility that only receives whole pork meat as an end-user.

(u) "Pork producer" means a person engaged in the business of keeping, maintaining, confining and/or housing a female pig of the porcine species that is six (6) months of age or older, or is pregnant, for the purpose of commercial breeding to produce pork meat from the breeding pig or her immediate offspring for human consumption. This definition shall not apply to an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

(v) "Production cycle" means the lifecycle of a commercial breeding pig for the generation of immediate offspring. A production cycle for gilts begins when they are six (6) months or older and moved into an enclosure for breeding and ends when a litter of piglets is weaned. A new production cycle for sows begins when each litter of piglets is weaned.

(w) "Ready-to-eat (RTE)" means in a form that is edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, gastronomic, or culinary purposes. RTE product is not required to bear a safe-handling instruction (as required for non-RTE products by sections 317.2(l) and 381.125(b)) of Title 9 of the Code of Federal Regulations (January 2021), hereby incorporated by reference, or other labeling that directs that the product must be cooked or otherwise treated for safety and can include frozen meat products.

(x) "Records" means 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.

(y) "Requiring cooking" for the purposes of section 25991(r) of the Health and Safety Code and this Article means not ready-to-eat in the condition sold, offered for sale or otherwise distributed.

(z) "Retailer" means a facility location that conducts commercial sales of whole pork meat to a consumer.

(aa) "Seasoning" for purposes of section 25991(u) of the Health and Safety Code and this Article is synonymous with the term "spice" and means any aromatic vegetable substance in the whole, broken, or ground form, whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include onions, garlic, peppers, and the spices listed in section 182.10, and

Part 184 of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(bb) "Takes physical possession" for the purposes of section 25991(o) of the Health and Safety Code and this Article means when the whole pork meat 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 whole pork meat outside of the state for transportation into California.

(cc) "Uncooked" means requiring cooking prior to human consumption.

(dd) "Usable floorspace" shall be calculated by dividing the total square footage of floorspace provided to breeding pigs in an enclosure by the number of breeding pigs in the enclosure. This floorspace shall also include ground-space for enclosures that are outdoor pens or pastures accessible at all times by all breeding pigs confined in the enclosure.

(ee) "Whole pork meat" means any uncooked cut of pork, including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin, or cutlet, that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives. Whole pork meat does not include combination food products, including soups, sandwiches, pizzas, hotdogs, or similar processed or prepared food products, that are comprised of more than pork meat, seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, 109947, 113758, and 113789, Health and Safety Code.

Section 1322.1. Breeding Pig Confinement.

(a) No person shall knowingly engage in a commercial sale within the state of whole pork meat for human food if the whole pork meat is the product of a breeding pig, or the product of the immediate offspring of a breeding pig, that was confined at any time during the production cycle for said product in an enclosure that fails to comply with the following standards:

(1) An enclosure shall allow the breeding pig to lie down, stand up, fully extend limbs, and turn around freely.

(2) An enclosure shall provide a minimum of 24 square feet of usable floorspace per breeding pig.

(3) Exceptions to the requirements of this section are specified in section 25992 of the Health and Safety Code and Article 4 of this Chapter.

(b) Commencing January 1, 2024, any person engaged in business in the state as a pork producer, or any out-of-state pork producer that is keeping, maintaining, confining, and/or housing a breeding pig for purposes of producing whole pork meat, from the breeding pig or its immediate offspring, for human food for commercial sale in California, shall hold a valid certification issued pursuant to Article 5 of this Chapter as a certified operation.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1322.2. Pork Distributor Registration.

(a) Commencing January 1, 2023, 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 pursuant to this Article.

(b) Any person registering pursuant to (a) of this section shall submit an application for registration provided by the Department that contains the following information: Business name, physical address of distribution operation, mailing address, phone number, email address, website address, federal tax identification number, and name, phone number and email of person authorized to act on the applicant's behalf.

(c) The registration shall not be transferable to any person and shall be applicable only to the location for which originally issued.

(d) A registration is required for each facility location from which whole pork meat is sold, distributed, or otherwise supplied to the location of an end-user.

(e) A pork distributor shall not engage in the commercial sale of whole pork meat within, or into, California unless such person has obtained and holds a valid registration from the Department pursuant to this section for each facility location.

(f) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the registered distributor must be reported to the Department within 30 calendar days of such change.

(g) All information set forth on applications for registrations and renewals for registrations, including but not limited to any documentation of certification required by (l) of this section, shall be truthful and not misleading.

(h) Initial or renewal of a registration will be issued after the Department reviews the application and accompanying certificate of compliance, described in (l) of this section, to ensure information is complete and accurate.

(i) Every registration expires 12 months from the date of issue.

(j) A registration may be renewed each 12-month period by the Department in response to an application for renewal by a pork distributor if the business of the facility applying for renewal was conducted in accordance with the requirements of this Article and sections 25990 and 25991 of the Health and Safety Code during the preceding registration period for which the renewal is requested.

(k) A registration will remain in effect pending review and approval by the Department of an application for registration renewal, provided the application for renewal is received prior to expiration of current registration.

(l) An application to the Department by a pork distributor for initial registration, or for purposes of renewal, shall be accompanied by documentation of valid certification pursuant to Article 5 of this Chapter for each location where registration is being sought. A registration shall not be issued for any facility location for which the valid certification required by this section has not been submitted to the Department.

(m) For purposes of the valid certification required in (l) of this section, a self-certification by a pork distributor that they comply with all applicable requirements of sections 1322.4 and 1322.5 of this Article, and distributes whole pork meat within or into California only from pork producers that comply with section 1322.1 of this Article, will be accepted by the Department prior to January 1, 2024.

(n) An establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture with prefix of "M" is excluded from mandatory registration pursuant to this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) Every person registered pursuant to section 1322.2 of this Article shall comply with this section.

(b) Every pork distributor by submitting an application for registration of a facility agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access to the premises and business records of the facility for purposes of inspection and audit as described in Article 5 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1322.4. Whole Pork Meat Shipping Document Requirements.

(a) Shipping Documents.

(1) All documents of title and shipping manifests for shipments of whole pork meat entering the state or transported within the state for commercial sale in California shall include the statement "Pork CA Prop 12 Compliant". The statement shall be clearly legible and plainly printed or stamped.

(2) For shipments of whole pork meat that was not produced in compliance with section 25991 of the Health and Safety Code and this Article, and enter California exclusively for purposes of transshipment, export, donation, or sale to federal agencies or on tribal lands and are not destined for commercial sale in California, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation and storage within the state, be marked with the statement "For Export", "For Transshipment", or "Not Prop 12 Compliant". The statement shall be legible and plainly printed or stamped.

(3) For shipments of whole pork meat not produced in compliance with section 25991 of the Health and Safety Code and this Article that originate from a facility, whether located inside or outside of the state, under mandatory inspection and that holds an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and being transported to another facility in California under mandatory inspection and that holds an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), solely for purposes of using the whole pork meat for making food products not covered by the Act or this Article, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation within the state, be clearly marked with the statement "Only for use at" immediately followed by the complete establishment number, including the prefix "M", granted by the Food Safety Inspection Service of the United States Department of Agriculture for the specific facility where the shipment is destined for delivery.

(b) No person shall label, identify, mark, advertise, or otherwise represent, pigs or whole pork meat for commercial sale in California using the statements in (a) of this section, or as meeting the requirements of the Act or otherwise meeting California enclosure space

requirements, unless they were produced in compliance with section 25991 of the Health and Safety Code and this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1322.5. Pork Distributor Recordkeeping.

(a) A pork distributor, as a condition of registration pursuant to section 1322.2 of this Article, shall maintain records that comply with all the requirements of this section.

(b) Records shall be sufficient for purposes of an audit trail as defined in section 1322(b) of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

(c) Records shall document in a traceable manner that whole pork meat being distributed for commercial sale into or within California originates from pork producers that are in compliance with all requirements of section 1322.1 of this Article.

(d) Records shall document the address of the location where the distributor, as the buyer, takes physical possession of whole pork meat for each sales transaction.

(e) Records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or a certifying agent as required by section 1322.3 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1322.6. Inspection of Conveyances.

(a) Every pork distributor by submitting an application for registration agrees as a condition of registration to provide the Department or a certifying agent, access to inspect in California any vehicle or other conveyance under the registrant's operation or control that is transporting whole pork meat into or within the state.

(b) Every person shall stop at the request of the Department at any California Border Protection Station for purposes of inspection of cargo and any accompanying shipping documents, manifests, and bills of lading, any vehicle or other conveyance transporting into or within the state whole pork meat.

(c) The Department may deny entry to or order diversion from the state any vehicle or other conveyance transporting whole pork meat intended for commercial sale that was produced, packaged, identified, or shipped in violation of the requirements of sections 25990-

25992 of the Health and Safety Code, or the provisions of this Article, including but not limited to shipping document requirements specified in section 1322.4 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1322.7. Tagging and Seizure of Whole Pork Meat.

(a) The Department may affix a warning tag or notice to shipping documents, manifests, containers, sub-containers, lots, or loads of whole pork meat which have been produced, packaged, stored, labeled, marked, identified, transported, delivered, or sold in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. When a warning tag or notice is issued, the Department shall give written notice of such violation to the pork producer, pork distributor, owner, or other person in possession of the whole pork meat.

(b) No person shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department.

(c) The Department may seize and hold any containers, sub-containers, lots or loads of whole pork meat in California which they have reasonable suspicion to believe is in violation of the provisions of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. If the Department seizes any container, sub-container, lot, or load of whole pork meat, a written hold notice shall be issued to the person that has control of the whole pork meat, and a tag or notice may be affixed to the container, sub-container, lot, or load which states it is so held.

(d) Any whole pork meat for which a hold notice is issued shall be held by the person having control of the whole pork meat and shall not be disturbed, moved, diverted, or offered for sale except under the specific directions of the Department.

(e) A person may request an informal hearing to contest tagging, hold notice, or seizure of whole pork meat pursuant to section 1327.1 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1322.8. Written Certification.

(a) For purposes of section 25993.1 of the Health and Safety Code, any written certification from a supplier to a buyer engaged in commercial sales of whole pork meat that was not derived from a breeding pig, or offspring of a breeding pig, confined in a cruel manner

shall be based upon an audit trail as defined in section 1322(b), of this Article, and shall be traceable to pork producers compliant with all requirements of section 1322.1 of this Article.

(b) A retailer or food processing facility that is an end-user and takes physical possession, whether by use of a common carrier, private carrier or other means of conveyance, of whole pork meat at, or directly from, an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture with a prefix of "M", and that does not hold a valid pork distributor registration, shall:

(1) Maintain records documenting written certifications that meet the requirements of this section for whole pork meat received during the preceding 12-month period.

(2) Maintain records documenting the address of the location where the retailer or food processor, as the buyer, takes physical possession of whole pork meat for each sales transaction.

(3) Make the records required by this subsection available on-site for inspection by the Department upon request. Electronic records are considered on-site if they are accessible from an on-site location.

(c) Subsection (b) of this section shall not apply to a whole pork meat end-user that is an establishment under mandatory inspection under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25900 and 25991, Health and Safety Code.

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

(a) The Department may deny, suspend, or revoke a registration issued pursuant to this Article for any of the following:

(1) Violations that resulted, or reasonably could have resulted, in the commercial sale of whole pork meat from breeding pigs, or offspring of breeding pigs, that was not confined in compliance with this Article;

(2) Demonstrated pattern of violations with the requirements of this Article and/or statutes pertaining to whole pork meat or breeding pigs in sections 25990-25992 of the Health and Safety Code;

(3) Refusal to grant access for, or interference with, inspections or audits described in sections 1322.3 or 1322.6 of this Article;

(4) Misrepresenting whole pork meat as being produced in compliance with this Article;

or

(5) Providing false information on an application for registration.

(b) Proposed suspension or revocation. The Department shall send a written notice of proposed suspension or revocation of registration to the pork distributor. The notice of proposed suspension or revocation shall state:

(1) The date the proposed suspension or revocation is issued;

(2) The reasons for the proposed suspension or revocation;

(3) The effective date of the proposed suspension or revocation;

(A) The effective date of suspension or revocation is 30 calendar days after the date that the proposed suspension or revocation is issued;

(4) The impact of a suspension or revocation on future eligibility for registration including conditions for reinstatement which will be determined by the Department based on the demonstrated pattern of violations described in subsections (a)(1) through (a)(5) of this section;

and

(5) The right to request a formal hearing pursuant section 1327.2 of this Chapter within 30 calendar days of the date the proposed suspension or revocation was issued. Registration shall remain in effect pending the outcome of a formal hearing.

(c) A person may appeal the Department's decision to deny an application or renewal of a registration by requesting a formal hearing pursuant to section 1327.2 of this Chapter within 30 calendar days of the date of the notice of denial.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Article 4. Exceptions.

Section 1324. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Breeding pig" means any female pig of the porcine species kept for the purpose of commercial breeding who is six (6) months of age or older, or pregnant.

(b) “Individual treatment” for purposes of section 25992 of the Health and Safety Code, and this Chapter, means any protocol, practice, procedure, or application of care concerned with the diagnosis, treatment, mitigation, or prevention of animal disease, injury or harm that is administered by, or conducted under the order or recommendation of, a licensed veterinarian as part of a veterinarian-client-patient relationship as defined in section 530.3(i) of Title 21 of the Code of Federal Regulations (April 2021), hereby incorporated by reference.

(c) “Medical research” for purposes of section 25992 of the Health and Safety Code, and this Chapter, means any basic and applied research that relates or contributes to the scientific understanding, promotion, or protection of human or animal health, fitness, function, performance, welfare or care, and that is conducted under 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 (January 2021), hereby incorporated by reference, or is conducted at a facility that holds a valid accreditation by the American Association for Accreditation of Laboratory Animal Care.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1324.1. Confinement Standards Exceptions.

(a) The Act and this Chapter shall not apply:

(1) During medical research;

(2) During examination, testing, individual treatment, or operation for veterinary purposes;

(3) During transportation;

(4) During rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions;

(5) During slaughter when performed in accordance with the provisions of Chapter 6 (commencing with Section 19501) of Part 3 of Division 9 of the Food and Agricultural Code, relating to humane methods of slaughter, and other applicable laws and regulations;

(6) To a breeding pig during the five-day period prior to the breeding pig’s expected date of giving birth, and any day that the breeding pig is nursing piglets; or

(7) During temporary periods for animal husbandry purposes for no more than six hours in any 24-hour period, and no more than 24 hours total in any 30-day period.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25992, Health and Safety Code.

Article 5. Certification and Accredited Certifiers.

Section 1326. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Accreditation or accredit" means a determination made by the Department that authorizes a private entity to conduct certification activities as a certifying agent under this Chapter.

(b) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code).

(c) "Area of operation" means the facilities and records for covered animal production or covered product distribution operations, including calves and whole veal meat, breeding pigs and whole pork meat, egg-laying hens and shell eggs or liquid eggs, or any combination thereof that a certifying agent may certify under this Chapter.

(d) "Certification or certify" means a determination made by a certifying agent that a production or distribution operation is in compliance with the Act and this Chapter, which is documented by a certificate of California farm animal confinement compliance.

(e) "Certified operation" means a production or distribution operation, or portion of such operation, that is certified by a certifying agent as utilizing a system of animal confinement or distribution as described by the Act and this Chapter.

(f) "Certifying agent" means any private entity accredited by the Department as a third-party certifying agent for the purpose of certifying a production or distribution operation as a certified operation, the Department, or any government entity that the Department recognizes as providing functionally equivalent certification services to the requirements of this Chapter.

(g) "Certifying agent's operation" means all sites, facilities, personnel, and records used by an accredited private certifying agent to conduct certification activities under the regulations in this Chapter.

(h) "Covered animal" means all of the following animals when kept on a farm pursuant to sections 25991(f) and (i) of the Health and Safety Code for purposes of producing covered products:

(1) Breeding pig as defined in section 25991(a) of the Health and Safety Code and section 1322(c) of this Chapter;

(2) Calf as defined in section 25991(d) of the Health and Safety Code and section 1321(c) of this Chapter; and

(3) Egg-laying hen as defined in section 25991(g) of the Health and Safety Code and section 1320(l) of this Chapter.

(i) "Covered product" means all of the following:

(1) Shell eggs as defined in section 25991(p) of the Health and Safety Code and section 1320(z) of this Chapter;

(2) Liquid eggs as defined in section 25991(l) of the Health and Safety Code and, section 1320(u) of this Chapter;

(3) Whole veal meat as defined in section 25991(v) of the Health and Safety Code and section 1321(ee) of this Chapter; and

(4) Whole pork meat as defined in section 25991(u) of the Health and Safety Code and section 1322(ee) of this Chapter.

(j) "Department" means the California Department of Food and Agriculture.

(k) "Distributor" means an egg distributor as defined in section 1320(k), a veal distributor as defined in section 1321(cc), and a pork distributor as defined in section 1322(t), of this Chapter.

(l) "Distributor operation" means any operation or portion of an operation that conducts activities as a distributor.

(m) "Employee" means any person providing paid or volunteer services for a certifying agent.

(n) "Governmental entity" means any local, state, or federal domestic government, tribal government, or foreign governmental subdivision providing certification services.

(o) "Immediate family" means the spouse, minor children, or blood relatives who reside in the immediate household of a certifying agent or in the immediate household of employee, inspector, contractor, or other personnel of the certifying agent. For the purpose of this Chapter, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent shall be considered to be an interest of the certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent.

(p) "Inspection" means the act of examining and evaluating the production or distribution area of operation of an applicant for certification or a certified operation to determine compliance with the Act and this Chapter.

(g) "Inspector" means any person retained or used by a certifying agent to conduct inspections of certification applicants or certified production or distribution operations, or an authorized representative of the Department.

(r) "Label" means a display of written, printed, or graphic material on the immediate container of a covered product or any such material affixed to any covered product or affixed to a bulk container containing a covered product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(s) "Labeling" means all written, printed, or graphic material accompanying a covered product at any time or written, printed, or graphic material about the covered product displayed at retail stores about the product.

(t) "Person" means any individual, firm, partnership, joint venture, association, limited liability corporation, corporation, estate, trust, receiver, or syndicate.

(u) "Private entity" means any domestic or foreign nongovernmental, for-profit, or not-for-profit organization providing certification services.

(v) "Producer" means an egg producer as defined in section 1320(m), a veal producer as defined in section 1321(dd), and a pork producer as defined in section 1322(u).

(w) "Records" means 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.

(x) "Responsibly connected" means any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant, or a recipient of certification or accreditation.

(y) "Split operation" means an operation that produces or distributes covered animals and/or covered products from operations, or portions of an operation, that are both in conformance and out-of-conformance with the confinement standards of the Act and this Chapter.

(z) "State" means any of the states of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.1. General Requirements for Certification.

(a) A person seeking to receive or maintain certification under this Chapter must:

(1) Comply with the Act and applicable regulations of this Chapter;

(2) Allow on-site inspections by the certifying agent, and/or authorized representatives of the Department, with access to the production and/or distribution operation, and offices as provided for in sections 1326.2 and 1326.5 of this Article;

(3) If a producer, allow access by the certifying agent, and/or authorized representatives of the Department, to pastures, fields, structures, and houses where covered animals and covered animal products may be kept, produced, processed, handled, stored or transported, including the inspection of all enclosures for covered animals;

(4) If a distributor, allow access by the certifying agent, and/or authorized representatives of the Department, to examine all covered products that are sold or intended, held, segregated, stored, packaged, labeled, or represented for sale or distribution in California;

(5) Allow access by the certifying agent, and/or authorized representatives of the Department, to containers, labels, labeling, invoices, documents of title, and bills of lading used in the handling, storage, packaging, sale, transportation, or distribution of covered products in California;

(6) Allow access by the certifying agent, and/or authorized representatives of the Department, during normal business hours for review and copying of records required by section 1326.2 of this Article; and

(7) Immediately notify the certifying agent concerning any change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.2. Recordkeeping by Certified Operations.

(a) In order to receive and maintain certification, a certified operation must maintain records concerning the production and distribution of covered animals and/or covered products.

(b) Such records must:

(1) Be maintained by a producer in sufficient detail to document that covered animals were confined in compliance with sections 25991 and 25992 of the Health and Safety Code and the requirements of this Chapter;

(2) Be maintained by a distributor in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling, packaging, distribution, and sale of covered products that were derived from animals confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Chapter;

(3) Be maintained for not less than two (2) years beyond their creation;

(4) Include records of all covered animal and/or covered product transactions for the preceding two-year period. The records must indicate the date, quantity, identity of the buyer and seller, and the address where physical possession of covered product took place for each transaction;

(5) Include documentation and records for the preceding two-year period pertaining to the production, processing, handling, packaging, storage, transportation, or sale of covered animals or covered products sold, intended for sale in California or identified or represented as compliant with the confinement requirements of the Act and this Chapter;

(6) Include documentation of the size of the certified operation, the quantity of covered animals and/or covered products produced or processed from each facility or farm unit in the certified operation, the number of covered animal enclosures for each facility or farm unit, the size of each enclosure, the number of covered animals housed in each enclosure, and the dates of stocking, harvest and production;

(7) If the facility is a split operation, include documentation sufficient to demonstrate the identification, segregation, distribution, and handling of covered animals and/or covered products to prevent commingling with any animals or products that do not comply with requirements of the Act; and

(8) Include documentation of registration issued by the Department pursuant to sections 1320.2, 1321.2, and 1322.2 of this Chapter, as applicable to the certified operation.

(c) The inspection and audit of any records and documents required by this section, may be conducted by the Department, or other certifying agent, by on-site inspection at the certified operation location, or by utilizing email, phone, teleconference, or any combination thereof, at the discretion of the certifying agent or the Department.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1326.3. Application for Certification.

(a) A person seeking certification of a production or distribution operation by a certifying agent under this Article must submit an application for certification that includes all the following information:

(1) The name of the person completing the application; the applicant's business name, physical address, mailing address, and phone number; and, when the applicant is a corporation,

the name, address, email, and phone number of the person authorized to act on the applicant's behalf;

(2) The name(s) of any certifying agent(s) to which application has previously been made; the year(s) of application; the outcome of the application(s) submission, including, when available, a copy of any notification of noncompliance, denial or revocation of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct the noncompliance noted in the notification of noncompliance, including evidence of such correction;

(3) A description of the type and quantity of covered animals and/or covered products to be produced and/or distributed at the facility for which certification is being requested;

(4) A description of the covered animal confinement system to be used at the facility, such as the number of enclosures, size of enclosures and maximum number of covered animals to be housed in each, and additional information as deemed necessary by the certifying agent to determine compliance with the Act and this Chapter; and

(5) A description of the management practices, physical barriers, and standard operating procedures established to prevent commingling of covered animals or covered products if the facility is a split operation.

(b) If the certifying agent is a government entity other than the Department, it may use its own authorized procedures for application for certification in lieu of this section's requirements.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.4. Review of Application for Certification.

(a) Upon acceptance of an application for certification, a certifying agent must:

(1) Review the application to ensure completeness pursuant to section 1326.3 of this Article;

(2) Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of the Act and this Chapter;

(3) Verify that an applicant who previously applied to another certifying agent and received a notification of noncompliance or denial of certification, pursuant to section 1326.7 of this Article, has submitted documentation to support the correction of any issues of noncompliance identified in the notification of noncompliance or denial of certification, as required in section 1326.7(e) of this Article; and

(4) Schedule an on-site inspection, pursuant to section 1326.5 of this Article, of the production or distribution operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the production or distribution operation may be in compliance with the applicable requirements of the Act and this Chapter.

(b) A certifying agent shall:

(1) Review the application materials received and communicate its findings to the applicant; and

(2) Provide the applicant with a copy of the on-site inspection report, as approved by the certifying agent, for any on-site inspection performed.

(c) The applicant may withdraw its application at any time. An applicant that voluntarily withdraws its application prior to the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdraws its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

(d) If the certifying agent is a government entity other than the Department, it may use its own authorized procedures for application review in lieu of this section's requirements as long as such review includes an on-site inspection of an applicant's compliance with the Act and applicable provisions of this Chapter by a process equivalent to that described in section 1326.5 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.5. Certification On-site Inspections.

(a) On-site inspections.

(1) In order to grant certification, a certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or distributes covered animals or covered products that is included in an operation for which certification is requested. An on-site inspection must be conducted at least once every 12 months thereafter for each certified operation that produces or distributes covered animals or covered products for the purpose of determining whether to approve the request for certification or whether certification of the operation should continue.

(2) The Department may require that additional inspections be performed by an accredited certifying agent or the Department for the purpose of determining compliance with the Act and this Chapter. Additional inspections may be announced or unannounced as required by the Department.

(b) Scheduling.

(1) The initial on-site inspection must be conducted within three (3) months following a determination that the applicant appears to comply or may be able to comply with the requirements of the Act and this Chapter.

(2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present, can access operation records, and at a time when facilities and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of the Act and this Chapter can be observed.

(c) Verification of information. The on-site inspection of an operation must verify:

(1) The operation's compliance or capability to comply with the Act and this Chapter; and
(2) That the information provided in accordance with sections 1326.3 and 1326.8 of this Article accurately reflects the practices used or to be used by the applicant for certification or by the certified operation.

(d) Exit interview. The certifying agent must conduct an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The certifying agent must also address the need for any additional information as well as any issues of concern.

(e) A copy of the on-site inspection report shall be sent to the inspected operation by the certifying agent.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.6. Granting Certification.

(a) After completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the confinement or distribution system and all procedures and activities of the applicant's operation are in compliance with the Act and this Chapter, the certifying agent shall grant certification.

(b) When a certifying agent issues a certificate of compliance it shall specify all the following:

(1) Name and address of the certified operation;

(2) Effective date of certification;

(3) Date of most recent on-site inspection;

(4) Categories of operation, including whether the operation is a producer, distributor or both, a split operation, and the species of covered animals and/or types of covered products produced or distributed by the certified operation; and

(5) Name, address, and phone number of the certifying agent.

(c) Notwithstanding (a) of this section, the Department will accept certifications granted by another government entity using procedures established under the authority of that government entity, provided such certification is based on on-site inspection of a certified operation's compliance with the Act and applicable provisions of this Chapter by a process equivalent to that described in section 1326.5 of this Article, and that the certificate specifies at a minimum the information described in paragraph (b) of this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.7. Denial of Certification.

(a) When the certifying agent, based on a review of the information specified in sections 1326.2, 1326.3, 1326.4 or 1326.5 of this Article, determines that an applicant for certification is not in compliance with the Act and this Chapter, the certifying agent shall provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notice of denial of certification may be combined in one notice. A notification of noncompliance shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Upon receipt of such notification of noncompliance, the applicant may:

(1) Correct noncompliances and submit a description of the corrective actions taken with supporting documentation to the certifying agent;

(2) Correct noncompliances and submit a new application to another certifying agent: Provided, that the applicant must include a complete application, the notification of noncompliance received from the first certifying agent, and a description of the corrective actions taken with supporting documentation; or

(3) Submit written information to the issuing certifying agent to rebut the noncompliance described in the notification of noncompliance.

(c) After issuance of a notification of noncompliance, the certifying agent must:

(1) Evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal and conduct an on-site inspection if necessary;

(2) When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, issue the applicant an approval of certification pursuant to section 1326.6 of this Article; or

(3) When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification, issue the applicant a written notice of denial of certification.

(d) A certifying agent must issue a written notice of denial of certification to an applicant who fails to respond to the notification of noncompliance within 30 calendar days of the date issued.

(e) A notice of denial of certification must state the reason(s) for denial and the applicant's right to:

(1) Reapply for certification pursuant to sections 1326.3 and 1326.8 of this Article;

(2) Request mediation pursuant to section 1327.3 of this Chapter within 30 calendar days of date of notice of denial; or

(3) Request a formal hearing of the denial of certification pursuant to section 1327.2 of this Chapter within 30 calendar days of date of notice of denial.

(f) An applicant for certification who has received a written notification of noncompliance or a written notice of denial of certification may apply for certification again at any time with any certifying agent, in accordance with sections 1326.3 and 1326.8 of this Article. When such applicant submits a new application to a certifying agent other than the certifying agent who issued the notification of noncompliance or notice of denial of certification, the applicant for certification must include a copy of the notification of noncompliance or notice of denial of certification and a description of the actions taken, with supporting documentation, to correct the noncompliances noted in the notification of noncompliance.

(g) A certifying agent who receives a new application for certification, which includes a notification of noncompliance or a notice of denial of certification, must treat the application as a new application and begin a new application process pursuant to sections 1326.3 and 1326.4 of this Article.

(h) Notwithstanding (a) of this section, if a certifying agent has evidence that an applicant for certification has made a false statement or otherwise misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this Article, the certifying agent may deny certification pursuant to (e) of this section without first issuing a notification of noncompliance.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.8. Continuation of Certification.

(a) To continue certification, a certified operation must annually submit the following renewal information, as applicable, to the certifying agent:

(1) A summary statement, supported by documentation, detailing any deviations from, or changes to, information submitted on the previous year's application, including but not limited to any additions to or deletions from the information required pursuant to section 1326.3 of this Article;

(2) An update on the correction of any noncompliances previously identified by the certifying agent as requiring correction for continued certification; and

(3) Other information as deemed necessary by the certifying agent to determine compliance with the Act and this Chapter.

(b) Following the receipt of the information specified in subsection (a) of this section, the certifying agent shall arrange and conduct an on-site inspection of the certified operation pursuant to section 1326.5 of this Article to determine compliance with the Act and this Chapter.

(c) If the certifying agent determines, based on the on-site inspection and a review of the information specified in (a) of this section, that a certified operation is not complying with the requirements of the Act and this Chapter, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with section 1326.20 of this Article.

(d) If the certifying agent determines, based on the on-site inspection and a review of the information specified in subsection (a) of this section, that the certified operation is complying with the Act and this Chapter, the certifying agent shall issue an updated certificate of compliance pursuant to section 1326.6(b) of this Article.

(e) Any change in ownership, change of business name, or change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the certified operation must be reported to the certifying agent within 30 calendar days of such change.

(f) If the certifying agent is a government entity other than the Department, it may use its own authorized procedures for continuation of certification in lieu of this section's requirements as long as such renewal process includes an on-site inspection of the certified operation to determine compliance with the Act and applicable provisions of this Chapter by a process equivalent to that described in section 1326.5.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) The Department may accredit a qualified domestic or foreign applicant to certify a domestic or foreign production or distribution operation as a certified operation.

(b) Accreditation shall be for a period of five (5) years from the date of approval of accreditation pursuant to section 1326.14 of this Article.

(c) In lieu of accreditation under (a) of this section, the Department will accept a foreign certifying agent's accreditation to certify production or distribution operations if the Department determines, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent are functionally equivalent to the requirements of this Chapter.

(d) Notwithstanding any provision of this Chapter, the Department may, at its discretion, certify a production or distribution operation as a certified operation after determining an operation is in compliance with the provisions of the Act and this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.10. General Requirements for Accredited Certifying Agents.

(a) In order to receive and maintain accreditation, a private entity accredited as a certifying agent under this Chapter must:

(1) Have sufficient expertise in covered animal production and covered product distribution techniques to fully comply with and implement the terms and conditions of the certification program established under this Chapter;

(2) Carry out the provisions of the Act and this Chapter, including the provisions of certifying operations as described in sections 1326.3 through 1326.8 of this Article;

(3) Use a sufficient number of adequately trained personnel, including inspectors, and certification review personnel, to comply with and implement the certification program established under this Chapter;

(4) Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in covered animal production and covered product distribution to successfully perform the duties assigned;

(5) Provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and this Chapter;

(6) Maintain all records pursuant to section 1326.17(b) of this Article and make all such records available for inspection and copying during normal business hours by authorized representatives of the Department;

(7) Not disclose any information collected pursuant to this Article that was obtained while certifying producers or distributors for compliance with this Chapter to any third-party without approval by the Department. 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 (Government Code section 6250 et seq.);

(8) Prevent conflicts of interest by:

(A) Not certifying a production or distribution operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or distribution operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(B) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or distribution operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(C) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected.

(9) Refrain from making false or misleading claims about its accreditation status, the accreditation program for certifying agents, or the nature or qualities of covered products; and

(10) Submit to the Department a copy of:

(A) Within 14 calendar days of creation, any notice of proposed suspension or revocation and notice of suspension or revocation sent pursuant to section 1326.20 of this Article; and

(B) Annual report as described in section 1326.17(a) of this Article including the name, address, and phone number of each operation granted initial certification pursuant to section 1326.6 of this Article or an updated certification pursuant to section 1326.8 of this Article, during the preceding year.

(b) A private entity accredited as a certifying agent must:

(1) Hold the Department harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and this Chapter; and

(2) Transfer to the Department all records or copies of records concerning the person's certification activities related to this Article in the event that the certifying agent dissolves or loses its accreditation; provided, that, such transfer shall not apply to a merger, sale, or other transfer of ownership of a certifying agent.

(c) No certifying agent under this Article shall exclude from participation in or deny the benefits of certification to any person due to discrimination because of race, color, sex, national origin, gender, religion, age, disability, political beliefs, sexual orientation, national origin, source of income, or marital or family status.

(d) A private entity seeking accreditation under this Article must sign and return a statement of agreement prepared by the Department which affirms that, if granted accreditation as a certifying agent under this Chapter, the applicant will carry out the provisions of the Act and this Chapter, including but not limited to all applicable requirements of this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.11. Applying for Accreditation as a Certifying Agent.

(a) A private entity seeking accreditation as a certifying agent under this section must submit an application for accreditation provided by the Department which contains the applicable information and documents set forth in sections 1326.12 and 1326.13 of this Article.

(b) Following the receipt of the information and documents, the Department will determine, pursuant to sections 1326.12 and 1326.13 of this Article, whether the applicant for accreditation should be accredited as a certifying agent.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) A private entity seeking accreditation as a certifying agent must submit the following information:

(1) The business name, primary office location, mailing address, name of the person(s) responsible for the certifying agent's day-to-day operations, contact numbers (phone, facsimile, email and Internet address) of the applicant, and the entity's federal taxpayer identification number;

(2) The name, office location, mailing address, and contact numbers (phone, facsimile, email and Internet address) for each of its organizational units, such as Chapters or subsidiary offices, and the name of a contact person for each unit;

(3) Each area of operation (calves, breeding pigs, egg-laying hens, or distribution) for which accreditation is requested and the estimated number of each type of operation anticipated to be certified annually by the applicant along with a copy of the applicant's schedule of fees for all services to be provided under these regulations by the applicant;

(4) The type of entity the applicant is (e.g., for-profit business, not-for-profit association) and documentation showing the entity's status and organizational purpose, such as Articles of incorporation and by-laws or ownership or membership provisions, and its date of establishment; and

(5) A list of each state or foreign country in which the applicant has previously conducted certification services and a list of each state or foreign country in which the applicant intends to certify production or distribution operations pursuant to this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.13. Evidence of Expertise and Ability.

(a) A private entity seeking accreditation as a certifying agent must submit to the Department all of the following documents and information:

(1) Personnel.

(A) The name and position description of personnel in the certifier's operation performing inspections, members of any certification review committees, and inspection contractors.

(B) A description of the qualifications, including experience, training, and education in auditing, inspection, covered animal production and/or covered product distribution, or other relevant areas of work for:

(i) Each inspector to be used by the applicant; and

(ii) Each person to be designated by the applicant to review or evaluate applications for certification.

(C) A description of procedures, practices, and training, including biosecurity training, to ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, auditing and decision-making responsibilities have sufficient expertise to successfully perform the duties assigned and to comply with and implement the requirements of the Act and this Chapter.

(2) Administrative policies and procedures.

(A) A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certificates;

(B) A copy of the procedures to be used for reviewing and investigating certified operations compliance with the Act and this Chapter and the reporting of violations of the Act and this Chapter to the Department; and

(C) A copy of the procedures to be used for complying with the recordkeeping requirements set forth in section 1326.10(a)(6) of this Article.

(3) Conflicts of interest. A copy of procedures to be implemented to prevent the occurrence of conflicts of interest, as described in section 1326.10(a)(8) of this Article.

(4) Other information. Any other information the applicant believes may assist in the Department's evaluation of the applicant's expertise and ability.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.14. Granting Accreditation.

(a) Accreditation will be granted when:

(1) The accreditation applicant has submitted the information required by sections 1326.12 and 1326.13 of this Article; and

(2) The Department determines that the applicant for accreditation meets the requirements for accreditation as stated in section 1326.10 of this Article, as determined by a review of the information submitted in accordance with sections 1326.12 and 1326.13 of this Article and, if necessary, a review of the information obtained from an on-site inspection as provided for in section 1326.16 of this Article.

(b) On making a determination to approve an application for accreditation, the Department will notify the applicant of the granting of accreditation in writing, stating:

(1) The area(s) for which accreditation is given;

(2) The effective date of the accreditation; and

(3) The date of expiration of the accreditation.

(c) The accreditation of a certifying agent shall continue in effect until such time as the certifying agent fails to renew accreditation as provided in section 1326.17(c) of this Article, the certifying agent voluntarily ceases its certification activities, or accreditation is suspended or revoked pursuant to section 1326.21 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.15. Denial of Accreditation.

(a) If the Department has evidence, based on a review of the information specified in sections 1326.12 and 1326.13 of this Article or after an on-site inspection as specified in section 1326.16, that an applicant for accreditation is not able to comply or is not in compliance with the requirements of the Act and this Chapter, the Department shall provide a written notification of noncompliance to the applicant. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(A) This date will be determined by the Department based on the nature of the noncompliance and an estimated reasonable time for the applicant to come into compliance with the Act and this Chapter.

(b) When each noncompliance has been resolved, the Department will send the applicant a written notification of noncompliance resolution and proceed with further processing of the application.

(c) If an applicant fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, fails to file a rebuttal of the notification of noncompliance by the date specified, or is unsuccessful in its rebuttal, the Department will provide the applicant with written notice of accreditation denial. An applicant who has received written notice of accreditation denial may apply for accreditation again at any time in accordance with sections 1326.12 and 1326.13 of this Article or request a formal hearing pursuant to section 1327.2 of this Chapter within 30 calendar days of the notice of denial.

(d) If the certifying agent was accredited prior to an on-site inspection and the on-site inspection reveals issues of noncompliance, the Department will begin the noncompliance procedures for accredited certifying agents according to section 1326.21 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.16. Certifying Agent On-site Inspections.

(a) In order to receive and maintain accreditation, an accredited certifying agent must allow on-site inspections for the purpose of examining the certifying agent's operations and records to evaluate its compliance with the Act and this Chapter. On-site inspections shall include a review of the certifying agent's certification procedures, facilities, administrative and management systems for production or distribution operations certified by the certifying agent. On-site inspections shall be conducted by a representative(s) of the Department.

(b) An initial on-site inspection of an accreditation applicant may, at the discretion of the Department, be conducted before or after issuance of the applicant's "notice of accreditation." An on-site inspection shall be conducted after application for renewal of accreditation, but prior to the issuance of a notice of renewal of accreditation. One or more on-site inspections will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the requirements set forth in section 1326.10 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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

(a) Annual report. An accredited certifying agent must submit annually to the Department, on or before January 30, the following reports:

(1) A complete and accurate update of information submitted pursuant to sections 1326.10(a)(10)(B), 1326.12 and 1326.13 of this Article;

(2) Information supporting any changes being requested in the areas of accreditation described in section 1326.9 of this Article; and

(3) A description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the Department to be necessary, as specified in the most recent on-site inspection report.

(b) Recordkeeping. Accredited private certifying agents must maintain records according to the following schedule:

(1) Records obtained from applicants for certification and certified operations must be maintained for not less than three (3) years beyond their receipt;

(2) Records created by the certifying agent regarding applicants for certification and certified operations must be maintained for not less than three (3) years beyond their creation; and

(3) Records created or received by the certifying agent pursuant to the accreditation requirements of this Article, must be maintained for not less than three (3) years beyond their creation or receipt.

(c) Renewal of accreditation.

(1) An accredited certifying agent's application for accreditation renewal must be received at least six (6) months prior to the fifth anniversary of issuance of the notice of accreditation and each subsequent renewal of accreditation.

(2) Following receipt of the information submitted by the certifying agent in accordance with (a) of this section and the results of an on-site inspection, the Department will determine whether the certifying agent remains in compliance with the Act and this Chapter and should have its accreditation renewed.

(3) Valid accreditation shall remain in effect pending review and approval by the Department, provided the application for renewal is received by the required deadline in (c)(1) of this section.

(4) Certifying agents with an expired accreditation shall not perform certification activities under the Act and this Chapter.

(d) Notice of renewal of accreditation. Upon a determination that the certifying agent is in compliance with the Act and this Chapter, the Department will issue a notice of renewal of accreditation according to 1326.14(b) of this Article.

(e) Notice of denial of renewal of accreditation. If the certifying agent is found not to be in compliance with the Act and this Chapter, and the accreditation has expired, the Department will issue a notice of denial of renewal and include reason(s) why renewal was denied and corrective actions to be taken by the certifying agent before applying again according to sections 1326.12 and 1326.13 of this Article. A notice of denial of renewal of accreditation can be appealed by requesting a formal hearing pursuant to section 1327.2 of this Chapter within 30 calendar days of the notice of denial.

(f) Noncompliance. Upon a determination that the certifying agent is not in compliance with the Act and this Chapter, and the accreditation has not expired, the Department will initiate proceedings to suspend or revoke the certifying agent's accreditation as described in section 1326.21 of this Article.

(g) Amending accreditation. Amendment to scope of an accreditation may be requested at any time. The application for amendment shall be provided by the Department and shall contain information applicable to the requested change in accreditation, and a complete and

accurate update of the information submitted pursuant to sections 1326.12 and 1326.13 of this Article.

(h) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the accredited certifier must be reported to the Department within 30 calendar days of such change.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.18. General Compliance.

(a) As a condition of certification and accreditation as a private certifying agent, the Department may inspect and review certified production and distribution operations and accredited certifying agents that are private entities for compliance with the Act or this Chapter.

(b) The Department may initiate suspension or revocation proceedings against a certified operation as described in section 1326.20 of this Article:

(1) When the Department has determined a certified operation has violated or is not in compliance with the Act or this Chapter; or

(2) When a certifying agent, other than the Department, has failed to take appropriate action to enforce the Act or this Chapter.

(c) The Department may initiate suspension or revocation of a private certifying agent's accreditation, as described in section 1326.21 of this Article, if the certifying agent that is a private entity fails to meet, conduct, or maintain accreditation requirements pursuant to the Act or this Chapter.

(d) Each notification of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, and suspension or revocation issued pursuant to sections 1326.20, 1326.21, and 1327.3 and each response to such notification must be sent in writing to the recipient.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.19. Investigation of Certified Operations.

A certifying agent shall report to the Department complaints of noncompliance with the Act or this Chapter concerning production and distribution operations certified as compliant with the Act and this Chapter by the certifying agent. The Department may at its discretion

investigate complaints of noncompliance with the Act and require additional inspections by a certifying agent.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.20. Noncompliance Procedure for Certified Operations.

(a) Notification. When an inspection, review, or investigation of a certified operation by a certifying agent reveals any noncompliance with the Act or regulations in this Chapter, a written notification of noncompliance shall be sent by the certifying agent to the certified operation.

Such notification shall provide:

(1) The date issued;

(2) A description of each noncompliance;

(3) The facts upon which the notification of noncompliance is based; and

(4) The date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Resolution. When a certified operation demonstrates that each noncompliance has been resolved within the prescribed time period, the certifying agent shall send the certified operation a written notification of noncompliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the certifying agent shall send the certified operation a written notice of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the notice of proposed suspension or revocation of certification may be combined. The notice of proposed suspension or revocation of certification shall state:

(1) The date the proposed suspension or revocation was issued;

(2) The reasons for the proposed suspension or revocation;

(3) The effective date of proposed suspension or revocation;

(A) The number of days from date of the notice of proposed suspension or revocation and effective date of suspension or revocation is 30 calendar days;

(4) The impact of a suspension or revocation on future eligibility for certification including conditions for reinstatement; and

(5) The right to request mediation pursuant to section 1327.3 of this Chapter or to request a formal hearing pursuant to section 1327.2 of this Chapter within 30 calendar days of the date the proposed suspension or revocation was issued.

(6) The certifying agent and the Department shall not issue a notice of suspension or revocation while the outcome from mediation or a formal hearing is pending.

(d) Willful violations. Notwithstanding (a) of this section, if a certifying agent has evidence that a certified operation has willfully violated the Act or this Chapter, the certifying agent shall send the certified operation a notice of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance.

(e) Suspension or revocation.

(1) If the certified operation fails to correct the noncompliance according to the prescribed time period, to resolve the issue through rebuttal or mediation, or to request a formal hearing of the proposed suspension or revocation of certification before the suspension or revocation goes into effect, the certifying agent shall send the certified operation a written notice of suspension or revocation.

(2) A certifying agent must not send a notice of suspension or revocation to a certified operation that has requested mediation pursuant to section 1327.3 of this Chapter or a formal hearing pursuant to section 1327.2 of this Chapter, while final resolution of either is pending.

(f) Eligibility.

(1) A certified operation whose certification has been suspended under section 1326.20 of this Article may at any time, unless otherwise stated in the notice of suspension, submit a request to the Department for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and this Chapter.

(2) A certified operation or a person responsibly connected with an operation whose certification has been revoked under section 1326.20 of this Article will be ineligible to receive certification for a period of two (2) years following the date of such revocation.

(g) Notwithstanding (a) through (e) of this section, if the certifying agent is a government entity other than the Department, the noncompliance procedures for certified operations established under the authority of that government entity may be followed in lieu of sections 1326.20(a) through (e) of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.21. Noncompliance Procedure for Accredited Certifying Agents.

(a) Notification. When an inspection, review, or investigation of an accredited certifying agent by the Department reveals any noncompliance with the Act or this Chapter, a written notification of noncompliance shall be sent by the Department to the certifying agent. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible.

(A) This date will be determined by the Department based on the nature of the noncompliance and an estimated reasonable time for the certifying agent to come into compliance with the Act and this Chapter.

(b) Resolution. When the certifying agent demonstrates that each noncompliance has been resolved within the prescribed time period, the Department shall send the certifying agent a written notification of noncompliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the Department shall send a written notice of proposed suspension or revocation of accreditation to the certifying agent. When correction of a noncompliance is not possible, the notification of noncompliance and the notice of proposed suspension or revocation may be combined. The notice of proposed suspension or revocation of accreditation shall state:

(1) The date that the proposed suspension or revocation was issued;

(2) The reasons for the proposed suspension or revocation;

(3) The effective date of the proposed suspension or revocation;

(A) The number of days from date of the notice of proposed suspension or revocation and effective date of suspension or revocation is 30 calendar days;

(4) The impact of a suspension or revocation on future eligibility for accreditation including conditions for reinstatement; and

(5) The right to request a formal hearing pursuant to section 1327.2 of this Chapter within 30 calendar days from the date that the proposed suspension or revocation was issued.

(6) The Department shall not issue a notice of suspension or revocation while the outcome of a formal hearing is pending.

(d) Willful violations. Notwithstanding paragraph (a) of this section, if the Department has evidence that a certifying agent has willfully violated the Act or this Chapter, the Department shall send a written notice of proposed suspension or revocation of accreditation to the certifying agent.

(e) Suspension or revocation. When the accredited certifying agent fails to correct the issues of noncompliance as described in the proposed suspension or revocation, or fails to request a formal hearing of the proposed suspension or revocation of accreditation within 30 calendar days from the date the proposed suspension or revocation was issued, the Department shall send a written notice of suspension or revocation of accreditation to the certifying agent.

(f) Cessation of certification activities. A certifying agent whose accreditation is suspended or revoked must:

(1) Cease all certification activities under this Chapter in each area of accreditation and in each state for which its accreditation is suspended or revoked; and

(2) Transfer to the Department all records concerning its certification activities that were suspended or revoked.

(g) Eligibility.

(1) A certifying agent whose accreditation is suspended by the Department under this section may at any time, unless otherwise stated in the notice of suspension, submit a request to the Department for reinstatement of its accreditation. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and this Chapter.

(2) A certifying agent whose accreditation is revoked by the Department shall be ineligible to reapply to be accredited as a certifying agent under the Act and this Chapter for two (2) years following the date of such revocation.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.22. Government Entity Providing Certification.

(a) A government entity acting as a certifying agent and performing certification of producer or distribution operations for compliance with the Act and this Chapter may:

(1) Register annually with the Department;

(2) Submit to the Department a copy of any notice of proposed suspension or revocation of certification and notice of suspension and revocation of certification sent pursuant to section 1326.20 of this Article; and

(3) Submit to the Department a list, on January 30 of each year, the name, address, and phone number of each operation granted initial certification pursuant to section 1326.6 of this Article and an updated certification pursuant to section 1326.8 of this Article, during the preceding year.

(b) For issues of certifying agent noncompliance, the Department will use substantially equivalent procedures to section 1327.3 of this Chapter to resolve any noncompliance in a government entity's certification activities under this Chapter, and if the government entity fails to correct such noncompliance, to notify the government entity that the Department will no longer accept its certifications for compliance with the Act and this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Article 6. Hearings and Mediation.

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

(a) A respondent may request an informal hearing to contest a notice of adverse determination that seizes or places a hold on covered product pursuant to sections 1320.7, 1321.7, and 1322.7 of this Chapter.

(b) The request for an informal hearing shall be submitted to the Department by electronic mail, facsimile, or by phone within three (3) business days from the date of receipt of the notice of adverse determination.

(c) The notice of adverse determination shall remain in effect pending the outcome of the informal hearing.

(d) Hearings conducted under this section shall be held within three (3) business days after the Department receives the request for an informal hearing.

(e) The informal hearing shall be presided over and conducted by a Hearing Officer designated by the Secretary.

(f) The standard of proof to be applied by the Hearing Officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.

(g) A teleconference line shall be made available at every hearing.

(h) Hearings shall be recorded by the Department. A transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request.

(i) The decision of the Hearing Officer shall be in writing, issued within three (3) business days after the conclusion of the hearing, and shall be effective immediately upon issuance.

(j) The decision shall be served on the respondent by U.S. Mail or, if available, by electronic mail.

(k) The respondent may appeal the Hearing Officer's decision and order by filing a petition for a writ of administrative mandamus in accordance with section 1094.5 of the Code of Civil Procedure.

Note: Authority cited: Section 25993, Health and Safety Code and section 11400.20, Government Code. Reference: Sections 11445.30, 11445.40, 11445.50, and 11445.60, Government Code and sections 25990, 25991, and 25992, Health and Safety Code.

Section 1327.2. Formal Hearing Procedures.

(a) A respondent may request a formal hearing to contest a notice of adverse determination pursuant to sections 1320.9, 1321.9, 1322.9, 1326.7, 1326.15, 1326.17, 1326.20, and 1326.21 of this Chapter.

(b) The request for a formal hearing shall be made by written correspondence to the California Department of Food and Agriculture, Legal Office of Hearings and Appeals, 1220 N Street, Suite 315, Sacramento, California 95814.

(c) Formal hearings shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The notice of adverse determination shall remain in effect pending the outcome of a formal hearing.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Chapter 5 (commencing with Section 11500), Government Code and Sections 25990 and 25991, Health and Safety Code.

Section 1327.3. Mediation.

(a) Mediation may be requested for adverse actions that include denial of certification under section 1326.7 or any proposed suspension or revocation or noticed suspension or revocation of certification under section 1326.20.

(b) Any request for mediation shall be requested in writing to the applicable certifying agent within 30 calendar days of the date a denial of certification, proposed suspension or revocation, or noticed suspension or revocation of certification was issued.

(c) The certifying agent may accept or reject the request for mediation of an adverse action.

(1) If the certifying agent rejects the request for mediation, the certifying agent shall provide written notification to the applicant for certification or certified operation of the rejection. The written notification shall advise the applicant for certification or certified operation of the right to request an appeal of the proposed adverse action, pursuant to section 1326.2 of this Chapter within 30 calendar days of the date of the written notification of rejection of the request for mediation.

(2) If the certifying agent accepts the request for mediation, certifying agent shall provide written notification to the applicant or certified operation of the acceptance.

(d) The mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation.

(e) The parties to the mediation shall have no more than 30 calendar days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 calendar days from termination of mediation to appeal the certifying agent's decision to deny, suspend, or revoke certification pursuant to section 1327.2 of this Chapter.

(f) Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and this Chapter.

(g) If the certifying agent is an out-of-state government entity, the mediation procedures established under the authority of that government entity may be followed in lieu of this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

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