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DRAFT
DEPARTMENT OF FOOD AND AGRICULTURE
ANIMAL HEALTH AND FOOD SAFETY SERVICES
PROPOSED REGULATIONS – LIVESTOCK CONFINEMENT

The Department of Food and Agriculture, Animal Health and Food Safety Services Division, proposes to adopt Article 5, Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, as specified below.

1) Adopt Article 5 and sections 1326 through 1326.23 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

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” 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 Prevention of Cruelty to Farm Animals Act, as amended (Health and Safety Code, Chapter 13.8, section 25990 et seq.).

(c) “Area of operation” means the types of covered animal production or handling operations, including egg-laying hens and shell eggs or liquid eggs, or any combination thereof that a certifying agent may be accredited to certify under this Chapter.

(d) “Certification or certified” means a determination made by a certifying agent that a production or handling operation is in compliance with the Act and the regulations in this Chapter, which is documented by a certificate of California compliant operation.

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

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(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 handling operation as a certified operation, or any government entity, including but not limited to the Department, that provides certification services.

(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 any egg-laying hen who is kept on a farm pursuant to sections 25991 (f) and (i) of the Health and Safety Code for purposes of producing covered products.

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

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

(2) Liquid eggs as defined in section 25991(l) of the Health and Safety Code and Article 1, section 1320 of this Chapter.

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

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

(l) "Handler" means an egg handler as defined in Article 1, section 1320(g) of this Chapter.

(m) "Handling operation" means any operation or portion of an operation that conducts activities as a handler.

(n) "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 an 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.

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(o) “Inspection” means the act of examining and evaluating the production or handling operation of an applicant for certification of a certified operation to determine compliance with the Act and the regulations in this Chapter.

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

(q) “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.

(r) “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.

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

(t) “Private entity” means any domestic or foreign nongovernmental for-profit or not-for-profit organization providing certification services.

(u) “Producer” means an egg producer as defined in section 1320(i)

(v) “Records” means any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the Act and regulations in this Chapter.

(w) “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.

(x) “Split operation” means an operation that produces or handles 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.

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(y) “State” means for the purpose of this Article any of the several 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: Section 25991, Health and Safety Code.

Section 1326.1. General Requirements for Certification.

A person seeking to receive or maintain certification under the regulations in this Chapter must:

- (a) Comply with the Act and applicable regulations of this Chapter;
- (b) Allow on-site inspections by the certifying agent, and authorized representatives of the Department, with access to the production or handling operation, including noncertified production and handling areas, and offices as provided for in sections 1326.2 and 1326.5;
- (c) If a producer, allow access by the certifying agent, and authorized representatives of the Department, to pastures, fields, equipment, 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.
- (d) If a handler, allow access by the certifying agent, and 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.
- (e) Allow access by the certifying agent, and authorized representatives of the Department, to containers, labels, labeling, invoices, and bills of lading used in the handling, storage, packaging, sale, transportation or distribution of covered products.
- (f) Allow access by the certifying agent, and authorized representatives of the Department, during normal business hours for review and copying of records required by section 1326.2;

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(g) 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 the regulations in this Chapter.

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

Section 1326.2. Recordkeeping by Certified Operations.

(a) A certified operation must maintain records concerning the production and handling of covered animals and/or covered products

(b) Such records shall:

(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 handler 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 Article.

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

(4) Be sufficient to demonstrate compliance with the Act and the regulations in this Chapter.

(5) Include records of all covered animal and/or covered product transactions for the preceding two-year period. The records shall indicate the date, quantity, and identity of the purchaser and seller.

(6) 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 or intended for sale in California or identified or represented as compliant with the confinement requirements of the Act and this Chapter.

(7) 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

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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.

(8) If the facility is a split operation, include documentation sufficient to demonstrate the identification, segregation 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.

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

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

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

Section 1326.3. Application for Certification.

A person seeking certification of a production or handling operation by a certifying agent that is a private entity or by the Department under this Article must submit an application for certification that includes all the following information:

(a) The name of the person completing the application; the applicant's business name, address, and telephone number; and, when the applicant is a corporation, the name, address, and telephone number of the person authorized to act on the applicant's behalf.

(b) 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 or denial of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct the non-compliance noted in the notification of noncompliance, including evidence of such correction.

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

(d) A description of the covered animal confinement system to be used at the facility, including but not limited to 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 the regulations in this Chapter.

(e) 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.

(f) Notwithstanding the requirements of this section, if the certifying agent is a government entity other than the Department, the procedures for application for certification established under the authority of that government entity may be followed.

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

Section 1326.4. Review of Application for Certification.

(a) Upon acceptance of an application for certification, a certifying agent that is a private entity or the Department shall:

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

(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, has submitted documentation to support the correction of any non-compliances identified in the notification of noncompliance or denial of certification, as required in section 1326.7(e); and

(4) Schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the

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production or handling operation may be in compliance with the applicable requirements of the Act and this Chapter.

(b) A certifying agent that is a private entity or the Department shall within a reasonable time:

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

(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 withdrew its application prior to the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdrew its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

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

Section 1326.5. On-site Inspections.

(a) *On-site inspections.* (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles covered animals or covered products that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles covered animal or covered products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

(2)(A) A certifying agent may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this Chapter.

(B) The Department may require that additional inspections be performed by an accredited private certifying agent for the purpose of determining compliance with the Act and the regulations in this Chapter.

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(C) Additional inspections may be announced or unannounced at the discretion of the certifying agent or as required by the Department.

(b) *Scheduling.* (1) The initial on-site inspection must be conducted within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of the Act and this Chapter: *Except*, that, the initial inspection may be delayed for up to 6 months to comply with the requirement that the inspection be conducted when the facilities and activities that demonstrate compliance or capacity to comply can be observed.

(2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present 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, except that this requirement does not apply to unannounced on-site inspections.

(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 the regulations in this Chapter.

(2) That the information provided in accordance with sections 1326.3 and 1326.8 accurately reflects the practices used or to be used by the applicant for certification or by the certified operation.

(d) *Exit interview.* The inspector 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 inspector 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: Section 25991, Health and Safety Code.

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Section 1326.6. Granting Certification.

(a) Within a reasonable time 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 handling system and all procedures and activities of the applicant's operation are in compliance with the requirements of this Chapter, the agent shall grant certification. The certification may include requirements for the correction of minor non-compliances within a specified time period as a condition of continued certification.

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

(1) Name and address of the certified operation;

(2) Effective date of certification;

(3) Categories of operation, including whether the operation is a producer, handler or both, and the species of covered animals and/or types of covered products produced or handled by the certified operation; and

(4) Name, address, and telephone number of the certifying agent.

(c) Notwithstanding subsection (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 verification 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(a) 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: Section 25991, Health and Safety Code.

Section 1326.7. Denial of Certification.

(a) When the certifying agent has reason to believe, based on a review of the information specified in sections 1326.2, 1326.3, 1326.4 or 1326.5, that an applicant for certification is not able to comply or is not in compliance with the requirements of this Chapter, the certifying agent shall provide a written notification of noncompliance to the

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applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. The 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 non-compliances and submit a description of the corrective actions taken with supporting documentation to the certifying agent;

(2) Correct non-compliances 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, conduct an on-site inspection if necessary, and

(A) 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;

or

(B) 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.

(2) Issue a written notice of denial of certification to an applicant who fails to respond to the notification of noncompliance.

(3) Provide notice of approval or denial to the Department, pursuant to section 1326.10(a)(15).

(d) 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;

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(2) Request mediation pursuant to section 1326.21; or

(3) File an appeal of the denial of certification pursuant to section 1326.23.

(e) 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. When such applicant submits a new application to a certifying agent other than the 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 non-compliances noted in the notification of noncompliance.

(f) 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.

(g) Notwithstanding subsection (a) of this section, if a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to subsection (c)(1)(B) of this section without first issuing a notification of noncompliance.

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

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(2) An update on the correction of minor non-compliances 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 the regulations in this Chapter.

(b) Following the receipt of the information specified in subsection (a) of this section, the certifying agent shall within a reasonable time arrange and conduct an on-site inspection of the certified operation pursuant to section 1326.5: *Except*, That, when it is impossible for the certifying agent to conduct the annual on-site inspection following receipt of the certified operation's annual update of information, the certifying agent may allow continuation of certification and issue an updated certificate of California compliance on the basis of the information submitted and the most recent on-site inspection conducted during the previous 12 months: *Provided*, That, the annual on-site inspection, required pursuant to section 1326.5, is conducted within the first 6 months following the certified operation's scheduled date of annual update.

(c) If the certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in section 1326.6, that a certified operation is not complying with the requirements of the Act and the regulations in this Chapter, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with section 1326.20.

(d) If the certifying agent determines that the certified operation is complying with the Act and the regulations in this Chapter and that any of the information specified on the certificate of California compliance has changed, the certifying agent must issue an updated certificate of California compliance pursuant to section 1326.7(b).

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

Section 1326.9. Areas and Duration of Accreditation.

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

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

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(c) In lieu of accreditation under subsection (a) of this section, the Department will accept a foreign certifying agent's accreditation to certify production or handling 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 meet the requirements of this Chapter.

(d) Notwithstanding any provision of this Chapter, the Department may, at its discretion, certify a production or handling 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: Section 25991, Health and Safety Code.

Section 1326.10. General Requirements for Accreditation of a Private Certifying Agent.

(a) A private entity accredited as a certifying agent under this Chapter must:

(1) Have sufficient expertise in covered animal production and covered product handling 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 the regulations in this Chapter, including the provisions of sections 1326.3 through 1326.8;

(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 handling 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 the regulations in this Chapter;

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

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(7) Maintain strict confidentiality with respect to its clients under the certification program and not disclose to third parties (with the exception of the Department) any business-related information concerning any client obtained while implementing the regulations in this Chapter, except as provided for in section 1326.13(b)(5);

(8) Prevent conflicts of interest by:

(A) Not certifying a production or handling 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 handling 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 handling 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: *Except*, That, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations;

(14) 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;

(15) Submit to the Department a copy of:

(A) Any notice of denial of certification issued pursuant to section 1326.7, notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation sent pursuant to section 1326.20 simultaneously with its issuance; and

(B) A list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year;

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(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 the regulations in this Chapter;

(2) Transfer to the Department all records or copies of records concerning the person's certification activities 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, national origin, gender, religion, age, disability, political beliefs, sexual orientation, 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 the regulations in this Chapter, including but not limited to all applicable requirements of this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 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 subpart must submit an application for accreditation which contains the applicable information and documents set forth in sections 1326.12 and 1326.13 to the Department.

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

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

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Section 1326.12. Applicant Information.

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

(a) 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 (telephone, facsimile, email and Internet address) of the applicant, and, for an applicant who is a private person, the entity's taxpayer identification number;

(b) The name, office location, mailing address, and contact numbers (telephone, 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;

(c) Each area of operation 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;

(d) The type of entity the applicant is (e.g., for-profit business, not-for-profit membership 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

(e) 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 handling operations pursuant to this Chapter.

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

Section 1326.13. Evidence of Expertise and Ability.

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

(a) *Personnel* (1) The name and position description of all personnel to be used in the certification operation, including administrative staff, certification inspectors, members of any certification review and evaluation committees, contractors, and all parties responsibly connected to the certifying agent.

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

(A) Each inspector to be used by the applicant.

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

(3) A description of procedures, practices and 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 the regulations in this Chapter.

(b) *Administrative policies and procedures.* (1) A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates;

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

(3) A copy of the procedures to be used for complying with the recordkeeping requirements set forth in section 1326.10(a)(9);

(4) A copy of the procedures to be used for maintaining the confidentiality of any business-related information as set forth in 1326.10(a)(10);

(c) *Conflicts of interest.* (1) A copy of procedures to be implemented to prevent the occurrence of conflicts of interest, as described in section 1326.10(a)(11).

(d) *Current certification activities.* An applicant who currently certifies production or handling operations for livestock care, confinement, or welfare standards, either equivalent to or different than those specified in the Act or the regulations of this Chapter, for covered animals must submit: (1) A list of all production and handling operations currently certified by the applicant;

(2) Copies of at least 3 different inspection reports and certification evaluation documents for production or handling operations certified or approved by the applicant during the previous year; and

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(3) The results of any accreditation process of the applicant's operation by an accrediting body during the previous year for the purpose of evaluating its certification activities.

(e) 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: Section 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; and

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

(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;

(3) Any terms and conditions for the correction of minor non-compliances; and

(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 1326.18(c), the certifying agent voluntarily ceases its certification activities, or accreditation is suspended or revoked pursuant to section 1326.22.

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

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Section 1326.15. Denial of Accreditation.

(a) If the Department has reason to believe, based on a review of the information specified in sections 1326.12 and 1326.13 or after a site evaluation 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 the regulations in 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.

(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 non-compliances, 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 notification of accreditation denial. An applicant who has received written notification of accreditation denial may apply for accreditation again at any time in accordance with sections 1326.20 and 1326.22 or appeal the denial of accreditation in accordance with section 1326.23 by the date specified in the notification of accreditation denial.

(d) If the certifying agent was accredited prior to the site evaluation and the certifying agent fails to correct the non-compliances, fails to report the corrections by the date specified in the notification of noncompliance, or fails to file a rebuttal of the notification of noncompliance by the date specified, the Department will begin proceedings to suspend or revoke the certifying agent's accreditation. A certifying agent who has had its accreditation suspended may at any time, unless otherwise stated in the notification 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

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compliance with the Act and the regulations in this Chapter. A certifying agent whose accreditation is revoked will be ineligible for accreditation for a period of not less than 2 years following the date of such determination.

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

Section 1326.16. Site Evaluations.

(a) Site evaluations of accredited certifying agents shall be conducted for the purpose of examining the certifying agent's operations and evaluating its compliance with the Act and the regulations of this Chapter. Site evaluations shall include an on-site review of the certifying agent's certification procedures, decisions, facilities, administrative and management systems, and production or handling operations certified by the certifying agent. Site evaluations shall be conducted by a representative(s) of the Department.

(b) An initial site evaluation of an accreditation applicant may, at the discretion of the Department, be conducted before or within a reasonable period of time after issuance of the applicant's "notification of accreditation." A site evaluation shall be conducted after application for renewal of accreditation but prior to the issuance of a notice of renewal of accreditation. One or more site evaluations will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the general requirements set forth in section 1326.10.

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 the anniversary date of the issuance of the notification of accreditation, the following reports:

(1) A complete and accurate update of information submitted pursuant to sections 1326.12 and 1326.13;

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

(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

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determined by the Department to be necessary, as specified in the most recent notification of accreditation or notice of renewal of accreditation;

(b) *Recordkeeping.* 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 5 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 5 years beyond their creation; and

(3) Records created or received by the certifying agent pursuant to the accreditation requirements of this Article, excluding any records covered by 1326.17(b)(2), must be maintained for not less than 5 years beyond their creation or receipt.

(c) *Renewal of accreditation.* (1) The Department shall send the accredited certifying agent a notice of pending expiration of accreditation approximately 1 year prior to the scheduled date of expiration.

(2) An accredited certifying agent's application for accreditation renewal must be received at least 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation. The accreditation of certifying agents who make timely application for renewal of accreditation will not expire during the renewal process. The accreditation of certifying agents who fail to make timely application for renewal of accreditation will expire as scheduled unless renewed prior to the scheduled expiration date. Certifying agents with an expired accreditation shall not perform certification activities under the Act and the regulations of this Chapter.

(3) Following receipt of the information submitted by the certifying agent in accordance with subsection (a) of this section and the results of a site evaluation, the Department will determine whether the certifying agent remains in compliance with the Act and the regulations of this Chapter and should have its accreditation renewed.

(d) *Notice of renewal of accreditation.* Upon a determination that the certifying agent is in compliance with the Act and the regulations of this part, the Department will issue a notice of renewal of accreditation. The notice of renewal will specify any terms

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and conditions that must be addressed by the certifying agent and the time within which those terms and conditions must be satisfied.

(e) *Noncompliance.* Upon a determination that the certifying agent is not in compliance with the Act and the regulations of this Chapter, the Department will initiate proceedings to suspend or revoke the certifying agent's accreditation.

(f) *Amending accreditation.* Amendment to scope of an accreditation may be requested at any time. The application for amendment shall be sent to 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.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 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 handling operations and accredited certifying agents that are private entities for compliance with the Act or regulations in this Chapter.

(b) The Department may initiate suspension or revocation proceedings against a certified operation:

(1) When the Department has reason to believe that a certified operation has violated or is not in compliance with the Act or regulations in this Chapter; or

(2) When a certifying agent fails to take appropriate action to enforce the Act or regulations in this Chapter.

(c) The Department may initiate suspension or revocation of a private certifying agent's accreditation 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 1326.22 and each response to such

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notification must be sent to the recipient's place of business via a delivery service which provides dated return receipts.

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

Section 1326.19. Investigation of Certified Operations.

A certifying agent may investigate complaints of noncompliance with the Act or regulations of this Chapter concerning production and handling operations certified as California compliant by the certifying agent. A certifying agent that is a private entity must notify the Department of all compliance proceedings and actions taken pursuant to this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 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 to the certified operation. 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 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, 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 notification 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 proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification shall state:

- (1) The reasons for the proposed suspension or revocation;
- (2) The proposed effective date of such suspension or revocation;
- (3) The impact of a suspension or revocation on future eligibility for certification;

and

(4) The right to request mediation pursuant to section 1326.21 or to file an appeal pursuant to section 1326.23.

(d) *Willful violations.* Notwithstanding subsection (a) of this section, if a certifying agent has reason to believe that a certified operation has willfully violated the Act or regulations in this Chapter, the certifying agent shall send the certified operation a notification 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, to resolve the issue through rebuttal or mediation, or to file an appeal of the proposed suspension or revocation of certification, the certifying agent shall send the certified operation a written notification of suspension or revocation.

(2) A certifying agent must not send a notification of suspension or revocation to a certified operation that has requested mediation pursuant to section 1326.21 or filed an appeal pursuant to section 1326.23, while final resolution of either is pending.

(f) *Eligibility.* (1) A certified operation whose certification has been suspended under this section may at any time, unless otherwise stated in the notification 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 the regulations in this Chapter.

(2) A certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 3 years following the date of such revocation, *Except*, that, the Department may, when

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in the best interest of the certification program, reduce or eliminate the period of ineligibility.

(g) Notwithstanding subsections (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.

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

Section 1326.21. Mediation.

(a) Any dispute with respect to denial of certification or proposed suspension or revocation of certification under this Article part may be mediated at the request of the applicant for certification or certified operation and with acceptance by the certifying agent. Mediation shall be requested in writing to the applicable certifying agent. If the certifying agent rejects the request for mediation, the certifying agent shall provide written notification to the applicant for certification or certified operation. The written notification shall advise the applicant for certification or certified operation of the right to request an appeal, pursuant to section 1326.23, within 30 days of the date of the written notification of rejection of the request for mediation. If mediation is accepted by the certifying agent, such mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation. If the certifying agent is a government entity, the mediation procedures established under the authority of that government entity may be followed.

(b) The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent's decision pursuant to section 1326.23. Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and the regulations in this Chapter. The Department may review any mediated agreement for conformity to the Act and the regulations in this Chapter and may reject any agreement or provision not in conformance with the Act or the regulations in this Chapter.

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Section 1326.22. Noncompliance Procedure for 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 regulations in this Chapter, a written notification of noncompliance shall be sent 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.

(b) Resolution. When the certifying agent demonstrates that each noncompliance has been resolved, 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 notification of proposed suspension or revocation of accreditation to the certifying agent. The notification of proposed suspension or revocation shall state whether the certifying agent's accreditation or specified areas of accreditation are to be suspended or revoked. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation may be combined in one notification. The notification of proposed suspension or revocation of accreditation shall state:

- (1) The reasons for the proposed suspension or revocation;
 - (2) The proposed effective date of the suspension or revocation;
 - (3) The impact of a suspension or revocation on future eligibility for accreditation;
- and

- (4) The right to file an appeal pursuant to section 1326.23.

(d) Willful violations. Notwithstanding paragraph (a) of this section, if the Department has reason to believe that a certifying agent has willfully violated the Act or regulations in this part, the Department shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent.

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(e) *Suspension or revocation.* When the accredited certifying agent fails to file an appeal of the proposed suspension or revocation of accreditation, 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 in each area of accreditation and in each State for which its accreditation is suspended or revoked.

(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 notification 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 the regulations in this Chapter.

(2) A certifying agent whose accreditation is revoked by the Department shall be ineligible to be accredited as a certifying agent under the Act and the regulations in this part for a period of not less than 3 years following the date of such revocation.

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

Section 1326.23. Adverse Determination Appeal Process.

(a) An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's noncompliance decision or notification of proposed suspension or revocation of certification, to the Department by requesting an informal hearing as outlined in this section; *Except*, that when the certifying agent is a government entity, the appeal must be made to that government entity which will carry out the appeal procedures established under the authority of that government entity.

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(b) An applicant for accreditation and an accredited certifying agent may appeal the Department's denial of accreditation or proposed suspension or revocation of accreditation by requesting an informal hearing as outlined in this section.

(c) A respondent, or his or her duly authorized representative, may contest a notice of adverse determination from the Department under this Article by requesting an informal hearing as outlined in this section.

(d) Informal hearing requests shall be submitted 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 within 30 days from the date of receipt of the Department's notice of adverse determination.

(e) Any request for an informal hearing shall include a copy of the notice of adverse determination and may state the grounds for the appeal.

(f) Any objection to the Department's selection of the informal hearing procedure shall be made in writing to the Legal Office of Hearings and Appeals and shall be resolved by the Hearing Officer prior to the hearing pursuant to Government Code section 11445.30.

(g) Failure to submit a timely request for a hearing constitutes a waiver of the respondent's right to contest the notice of an adverse determination. Untimely requests for a hearing may be denied by the Department.

(h) The Department shall schedule an informal hearing within 30 days from the receipt of the request from the respondent.

(i) At least 10 business days prior to the informal hearing, the Department shall provide a notice of the informal hearing to the respondent containing all of the following information:

(1) Date, location, and time of the informal hearing;

(2) Departmental contact information including applicable telephone and facsimile numbers; and

(3) Subject matter of the adverse determination.

(j) The notice of an informal hearing shall be sent to the address of the person charged as provided by any application, license, registration, certification, or permit on

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record with the Department and/or as provided by a driver's license record obtained from the Department of Motor Vehicles.

(k) A notice that is sent pursuant to subsection (j) shall be considered effective even if delivery is refused or if the notice is not accepted at that address.

(l) Any documents to be considered by the hearing officer shall be received at least three business days prior to the scheduled informal hearing at the Legal Office of Hearings and Appeals. Any documents not timely submitted may be considered at the discretion of the Hearing Officer.

(m) The informal hearing shall be presided over and conducted by a hearing officer designated by the Secretary.

(n) 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.

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

(p) 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.

(q) The decision of the hearing officer shall be in writing, issued within 30 days after the conclusion of the hearing, and shall be effective immediately upon issuance.

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

Note: Authority cited: Section 25993, Health and Safety Code, and section 11400.20, Government Code. Reference: Article 10 (commencing with section 11445.10), Chapter 4.5 (commencing with section 11400); and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.