

TITLE 3. FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (herein after referred to as “Department”) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person beginning **March 25, 2016** and ending at 5 p.m. **May 9, 2016**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 9932, 10324, 10326, 10327, 10386 and 10610, Food and Agricultural Code, and to implement, interpret or make specific sections 403, 408, 461, 520, 521, 527, 5006, 9101, 9166-9168, 9531, 9532, 9561-9564, 9569, 9570, 9573, 9574, 9701, 10301-10311, 10321-10323, 10325, 10341, 10342, 10351-10359, 10381-10385, 10387, 10401, 10403-10407, 10421, 10423, 10492-10496, 10511, 10512, 20013, 21081-21084, and 56181 of said Code, the Department proposes to make various changes to Title 3 of the California Code of Regulations, as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Food and Agricultural Code section 9561 authorizes the State Veterinarian to establish regulations to prevent or eradicate any condition that could cause risk to animals or the health and safety of the citizens of this State.

Food and Agricultural Code section 9562 further authorizes the State Veterinarian to quarantine or restrict the movement of animals or animal products to minimize the risk of an illness that could kill or seriously damage other animals or humans. Section 9570 authorizes the Department to establish requirements for the interstate and intrastate movement of livestock. Together sections 9562 and 9570 authorize the State Veterinarian to order the quarantine of diseased animals and establish requirements for the interstate and intrastate movement of livestock or animal products to minimize the risk of an illness that could kill or seriously damage other animals or humans.

Food and Agricultural Code section 9932 authorizes the State Veterinarian to develop regulations to prevent bovine tuberculosis from entering and spreading within the State.

Food and Agricultural Code section 10326 provides the Director may adopt regulations to prevent the spread of bovine brucellosis through limitations on movement of bovine animals or through such tests or vaccinations or other means as he may find and determine to be necessary.

Food and Agricultural Code section 10610 authorizes the Secretary of the Department to adopt regulations to control and eradicate cattle diseases through limitations on intrastate and interstate movement, and by requiring permits, diagnostic testing, vaccinations, or other appropriate methods of treatment and control.

This proposal adopts specified requirements (cattle and bison only) of the United States Department of Agriculture's (USDA) Animal Disease Traceability rule (9 Code of Federal Regulations (CFR) Part 86, effective March 11, 2013) which establishes official identification and documentation requirements for the traceability of livestock (cattle and bison, horses and other equine species, poultry, sheep and goats, swine, and captive cervids) moving between all states, and modifies those requirements as necessary to facilitate movement and husbandry practices unique to California's beef and dairy cattle industries.

This proposal additionally relocates existing importation, movement and identification regulations for cattle and bison pursuant to specific livestock diseases (bovine brucellosis and tuberculosis, and trichomonosis) into those proposed new animal disease traceability requirements; and deletes outdated requirements, replacing them with updated requirements to reflect current industry practices to enhance existing prevention, control and eradication disease programs.

FORMS INCORPORATED BY REFERENCE

- Report of Heifer Calves Vaccinated – Brucellosis, AHB Form 76-026 (Rev. 10/15).
- Pasture to Pasture Permit, AHB Form 76-074 (Rev. 10/15).
- One-Time Event Permit, AHB Form 76-074A (Rev. 10/14).
- Application for Designated Pen Status to Feed Tuberculosis or Brucellosis Exposed Cattle, AHB Form 76-197 (Rev. 4/15).
- Application for a Terminal Feedlot, AHB Form 76-198 (Rev. 4/15).
- Official Bovine Trichomonosis Test Report Form, AHB Form 76-199 (Rev. 10/15).
- Bovine Trichomonosis Test Report Continuation Form, AHB Form 76-199A (Rev. 10/15).
- Application for Slaughter Pen Status, AHB Form 76-200 (Rev. 4/15).
- Approved Tagging Site Agreement, AHB Form 76-201 (Rev. 10/14).
- Report of Heifers Spayed After Arrival, AHB Form 76-203 (Rev. 10/15).
- Report of Official Ear Tags Distributed or Applied, AHB Form 76-210 (Est. 10/15).

ANTICIPATED BENEFITS OF THE PROPOSAL

The benefits of this proposal include the enhanced ability to trace animal disease more quickly and efficiently than at present with fewer private entities needing to be included in the investigations. Regionalizing and compartmentalizing animal health issues as a result of an improved traceability system further reduces the risk of disease spread from known infected animals through the timely location of other animals that may have been infected or exposed however not yet exhibiting signs of disease. As a result, successful and timely traceability enables the reestablishment of foreign and domestic livestock markets with minimal delay which will ultimately benefit public and private entities. Because many livestock diseases also have serious human health implications, benefits of this proposal to the health and welfare of California

residents include a reduction or elimination of the potential spread to or cause of human health illnesses due to livestock disease events.

CONSISTENCY AND COMPATIBILITY WITH EXISTING REGULATIONS

The Department has evaluated whether there are any other existing state regulations pertaining to the identification of cattle and bison, and has found that these are the only regulations for this purpose. Therefore, the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. This proposal amends existing disease control regulations to incorporate federal and State efforts to establish official identification and documentation requirements for the traceability of cattle moving into and within California.

COMPARABLE FEDERAL REGULATIONS

There are federal regulations under 9 CFR Part 86 which specify the requirements of the USDA's Animal Disease Traceability rule. The Department is modifying those requirements as necessary to facilitate unique movement and husbandry practices of California's cattle industry in accordance with Food and Agricultural Code sections 407, 9932, 10324 and 10610.

FISCAL IMPACT ESTIMATES

Cost to any local agency or school district for which Government Code Sections 17500 et seq. require reimbursement: None.

Fiscal impacts on public agencies including costs/savings to State agencies or costs/savings in Federal funding to the State: None.

Non-discretionary cost/savings to local agencies: None.

Local Mandate: None.

Business Impact: The Department has made the initial determination that the proposed regulatory action may have significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. Businesses potentially impacted by this action include:

- Approximately 1,500 dairies in California.
- Approximately 10,925 beef operations in California.
- An undetermined number of Approved Tagging Sites, premises with slaughter pens and terminal feedlots.

The Department is basing this initial determination on the fact that this regulatory proposal will impose new animal identification requirements potentially impacting the above listed businesses in an effort to enhance animal disease traceability for the protection of livestock and public health. Specifically, business potentially affected include those moving dairy cattle within the State, vaccinating cattle against brucellosis, owning bulls changing ownership; Approved Tagging Sites, feedlots with designated pens, business owners of a premises with slaughter pens or terminal feedlots; California licensed veterinarians; and businesses receiving cattle, applying official

identification to cattle or moving cattle within the State. Due to potential cost impacts of this proposal, these businesses may choose to not market or move cattle within the State.

Additionally, California businesses will be required to comply with the paperwork and reporting requirements as follows:

- *Paperwork requirement:* The Department is proposing the keeping of specified records for purposes of disease control and disease traceability in compliance with and complementary to the USDA's Animal Disease Traceability rule (9 CFR Part 86) and federal interstate movement requirements. Businesses engaged in the following activities may be impacted by the requirements to maintain specified records for five (5) years:
 - Applying vaccination eartags; applying new, additional or replacing official identification tags or devices; distributing official identification devices and owning animals vaccinated for brucellosis must maintain specified information about the event.
 - Receiving livestock shall maintain official documents with supporting documents.
 - USDA accredited and state-licensed veterinarians issuing Certificates of Veterinary Inspection must maintain the Certificates of Veterinary Inspection with supporting documents.
 - Approved licensed dealers, approved livestock facilities, Approved Tagging Sites, registered feedlots and livestock markets must keep any Certificates of Veterinary Inspection or alternate documentation with supporting documents for the movement of livestock entering the facility.
 - Owners or managers of feedlots with designated pens, terminal feedlots and premises with slaughter pens must maintain all cattle movement records.
 - USDA accredited and state-licensed veterinarians or other persons or entities distributing official eartags or any person applying official eartags to animals on behalf of the owner must maintain specified information documenting the event.

The Department believes the paperwork requirements of this proposal do not adversely affect businesses engaged in cattle husbandry or marketing in California. The Department believes the five-year recordkeeping requirement is necessary and reasonable as any needed investigation into a livestock or human health illness or disease outbreak would require inquiry into records up to, but no longer than, the period of five (5) years. These requirements are not anticipated to incur increased costs to businesses as recordkeeping is an existing standard business practice for persons involved in cattle husbandry or marketing in California; in most cases, the maintaining of records for a period of two (2) years is an existing federal requirement. The maintenance and reference to records and related documents provides an additional mechanism for disease traceability that is critical to solving and ceasing livestock and human health illness or disease events which will protect the health and welfare of the public.

- *Reporting Requirement:* The Department is proposing the reporting of specified information for the purposes of disease control and traceability as follows:
 - Veterinarians using vaccines for brucellosis calfhood vaccination and eartags used for identification must report specified information to the Department within 14-

days. The Department provides veterinarians with the Report of Heifer Calves Vaccinated – Brucellosis, AHB Form 76-026 (Rev. 10/15), to report specified information about the vaccination event, however use of the form is not a requirement.

- USDA accredited and state-licensed veterinarians or other persons or entities distributing official eartags, or any person applying official eartags to animals on behalf of the owner must report to the Department the name and address of the veterinary clinic or facility distributing or applying tags; name of veterinarian or person distributing or applying tags; and veterinary license number, if applicable; reporting year and reporting quarter (March, June September, or December); starting and ending tag numbers; date of tag distribution or application; and premises or owner name; physical address, city, zip and telephone number where tags were distributed to or location of animals when tagged. The Department makes available on our Internet website or by contacting the Animal Health Branch, the Report of Official Ear Tags Distributed or Applied, AHB Form 76-210 (Est. 10/15), for reporting the above information, however use of this form is not a requirement.
- Any licensed veterinarian, any person operating a diagnostic laboratory, or any person who has been informed, recognizes or should recognize, by virtue of education, experience, or occupation, that any animal or animal product is or may be affected by, has been exposed to, or may be transmitting or carrying any condition specified in the "List of Reportable Conditions for Animals and Animal Products," must report to the Department all known information required by the Department within the time specified in the "List of Reportable Conditions for Animals and Animal Products" pursuant to Title 3, California Code of Regulations, section 797. The List is available from the Department's Internet website or by contacting the Animal Health Branch.
- California-licensed veterinarians spaying heifers after arrival in California must report specified information about the event using the Report of Heifers Spayed After Arrival, AHB Form 76-203 (Rev. 10/15), and submit the record either by mail or electronically to the Department's Animal Health Branch within seven (7) days after spaying the animals.
- Owners/operators of Approved Tagging Sites must report to the Department within 30 days, any change in management at the facility.

The Department believes the reporting requirements of this proposal do not adversely affect businesses engaged in cattle husbandry or marketing in California. The Department believes the reporting of specified information is necessary and reasonable as information reported to the Department will assist investigations into any livestock or human health illness or disease outbreak. These reporting requirements are not anticipated to adversely incur increased costs to businesses as the reporting requirements can occur on forms provided by the Department, or in some instances where allowable, businesses may choose to use their own form to report the required information, any of which may be returned (reported) to the Department electronically or by U.S. Postal Service, or in some cases where specified, the reporting of information can take place over the telephone. Any business owner choosing to report the required information through

the use of forms sent via the U.S Postal Service, will incur standard business mailing expenses, of which the Department is unable to determine the economic impacts of because we cannot foresee the number of instances these costs will occur. The required reporting of information on forms or other means provides an additional mechanism for disease traceability that is critical to solving and ceasing livestock and human health illness or disease events which will protect the health and welfare of the public.

The Department has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposal. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- Consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standard rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

Cost Impacts on Representative Private Persons or Businesses: The estimated dollar cost for implementation of new and amended provisions proposed by the Department is estimated at \$469,651 annually for California's dairy industry (~1,500 dairies) as a result of the requirement for the official identification of all dairy cattle (both male and female) when leaving their birth premises, and \$232,750 for California's beef industry (~10,925 beef operations) as a result of the requirement for trichomonosis testing at change of ownership, including the application of the trichomonosis tag. The Department is also proposing recordkeeping and reporting requirements for persons or business moving and marketing cattle in California, however has determined there are no adverse increased costs associated with these actions. Therefore, the total estimated dollar cost as a result of this action is \$702,401 annually for California's beef and dairy industries.

Effect on Housing Costs: None.

Effect on Small Businesses: The Department's proposal may affect small businesses.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Department has determined that this regulatory proposal:

- May have a significant impact on the creation of new businesses or elimination of existing businesses within the State and the expansion of businesses currently doing business within the State.
- May have significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Will not create or eliminate jobs or occupations.
- Does not impact multiple industries.

- Impacts persons marketing cattle in the State.

This initial determination is based on the fact that the proposed regulation imposes new requirements on beef and dairy producers marketing and moving cattle within California. Due to the identified cost impacts, producers may choose to not market or move cattle within the State.

This proposal benefits the health and welfare of California residents by enhancing the Department's ability to trace animal disease more quickly and efficiently, and reduce or eliminate its potential spread into a greater number of livestock populations and ultimately, to prevent human health disease events or illnesses. This proposal does not specifically impact worker safety or the State's environment as it amends existing disease control requirements and implements new animal disease traceability requirements for cattle moving into and within California.

The above determinations are based on the fact this regulatory proposal is necessary to reorganize and update existing disease control regulations, and implement interstate and intrastate movement requirements for purposes of animal disease traceability in accordance with Food and Agricultural Code sections 407, 9932, 10324 and 10610.

BUSINESS REPORTING REQUIREMENT

The Department is proposing the reporting of specified information for businesses engaging in the marketing and movement of cattle within the State for purposes of disease control and traceability. These reporting requirements do not adversely affect businesses engaged in cattle husbandry or marketing in California, however, are necessary for the health, safety and welfare of the people in the State as information reported to the Department will provide valuable information during traceback investigations into any livestock or human health illness or disease outbreak event.

These reporting requirements are not anticipated to adversely incur increased costs to businesses as the reporting requirements can occur on forms provided by the Department, or in some instances where allowable, the public may choose to use their own form to report the required information, any of which may be returned (reported) to the Department electronically or by U.S. Postal Service, or in some cases where specified, the reporting of information can take place over the telephone. Any person choosing to report the required information through the use of forms sent via the U.S. Postal Service, will incur standard business mailing expenses, of which the Department is unable to determine the economic impacts of because we cannot foresee the number of instances these costs will occur. The required reporting of information on forms or other means provides an additional mechanism for disease traceability that is critical to solving and ceasing livestock and human health illness or disease events which will protect the health and welfare of the public.

Therefore, the Department finds that is necessary for the health, safety and welfare of the people of this State that the proposed regulations, which requires a report, apply to businesses.

DOCUMENTS RELIED UPON IN PREPARING REGULATIONS

- Federal Register, Volume 78, Number. 6, January 9, 2013, pages 2071-2075.
- Animal Health Branch district office map.
- CA brucellosis vaccination tag sample.
- CA Electronic Identification Device sample.
- United States Bovine Brucellosis Affected Herd Investigations and Designated Surveillance Areas map, September, 2015.
- Cattle Health Advisory Task Force Meeting Minutes dated April 22, 2015.
- California Cattlemen’s Association petition letter dated December 16, 2013 and Notice of Decision on Petition for Rulemaking, California Regulatory Notice Register 2014, Volume No. 5-Z, pages 209-210.
- California Cattlemen’s Association petition letter dated January 16, 2015 and Notice of Decision on Petition for Rulemaking, California Regulatory Notice Register 2015, Volume No. 10-Z, pages 411-413.
- WA Department of Agriculture – tag order form, trichomonosis tag sample and Bovine Trichomonosis in Washington State brochure.
- California Animal Health and Food Safety laboratory system Trichomonas Submission Form and Trichomonas/*Tritrichomonas foetus* testing protocol.
- USDA Process Verified Program, GVD 1001 Procedure, October 26, 2015.
- USDA Quality Systems Verification Program GVD 1002, March 4, 2004.
- USDA, Animal Disease Traceability, General Standards, January 2, 2015, Version 2.4.
- USDA, APHIS, Regulatory Impact Analysis & Final Regulatory Flexibility Analysis, July 2012.
- UC Davis, Veterinary Medicine, California Animal Health and Food Safety Laboratory System, Select List of Tests Performed on Beef Cattle at CAHFS.
- 2012 Census of Agriculture – State Data, USDA, National Agricultural Statistics Service.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered or that has otherwise been identified and brought the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. This proposal is necessary to reorganize and update existing disease control regulations, and implement interstate and intrastate movement requirements for purposes of animal disease traceability in accordance with Food and Agricultural Code sections 407, 9932, 10324 and 10610.

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The Department of Food and Agriculture has prepared an Initial Statement of Reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all information upon which the proposal is based, may be obtained by contacting the persons named below or by accessing the Department of Food and Agriculture's website as indicated below in this Notice.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

Any person may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the contact persons named below or by accessing the website listed below.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations, or any written comments concerning this proposal are to be addressed to the following:

Rachelle Kennedy, Research Scientist I
Department of Food and Agriculture
Animal Health and Food Safety Services
Animal Health Branch
Mailing: 1220 N Street
Sacramento, CA 95814
(916) 900-5043
E-mail: rachelle.kennedy@cdfa.ca.gov
The backup contact person is:

Thamarah Rodgers, Associate Analyst
Department of Food and Agriculture
Animal Health and Food Safety Services
Mailing: 1220 N Street
Sacramento, CA 95814
(916) 698-3276
E-mail: thamarah.rodgers@cdfa.ca.gov

Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <http://www.cdfa.ca.gov/ahfss/regulations.html>