

DEPARTMENT OF FOOD AND AGRICULTURE
Animal Health and Food Safety Services
INITIAL STATEMENT OF REASONS

SUBJECT MATTER OF PROPOSED REGULATIONS
Informal Hearings

SECTIONS AFFECTED
Sections 1310 and 1310.1

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL

The Department of Food and Agriculture (Department) proposes to amend sections 1310 and 1310.1 of Article 1, Chapter 9, Division 2 of Title 3 of the California Code of Regulations to add specified provisions of the Food and Agricultural Code to the Department's informal hearing process and make a technical change, as specified.

Food and Agricultural Code sections 9562 and 9570 authorize the State Veterinarian to quarantine animals or animal products if there is any serious threat to public health and safety, or the safety of the State's food supply. Sections 1301.2 and 1301.3 of Title 3 of the California Code of Regulations specify the informal hearing procedures for a person to contest a quarantine order issued by the State Veterinarian. For violations that do not result in an immediate quarantine order, the Department would serve a notice of adverse determination against an individual. Regulations currently exist, sections 1310–1310.3 of Title 3 of the California Code of Regulations, which allow a person to appeal such adverse determinations to the Department through an informal hearing process.

This proposal amends section 1310 to allow a person in violation of specified provisions of the Food and Agricultural Code the immediate access to an internal, informal hearing process, and provides the opportunity for a person to present and rebut evidence in a timely manner pursuant to Government code section 11445.10, et seq. This proposal also includes a technical change in section 1310.1 to update the mailing address of the Department.

Based on an initial evaluation, the Department does not believe that the proposed regulations are inconsistent or incompatible with existing state or federal regulations.

PROBLEMS INTENDED TO ADDRESS

Existing informal hearing procedures include only a partial listing of Food and Agricultural Code provisions pertaining to the authorities of the Animal Health and Food Safety Services where the Department provides an opportunity for immediate access to an internal, informal hearing process. This proposal adds more provisions of Food and Agricultural Code to the existing informal hearing regulations. The essential intent of the informal hearing process is to provide an opportunity for effective resolution of the issues, as specified, which can be carried out in an expeditious manner and in the absence of rigid procedures, which might unduly impede or protract the hearing process.

STATEMENT OF FACTUAL BASIS AND RATIONALE

The Department is responsible for promoting and protecting the agricultural industry of California. Further the Department seeks to enhance, protect and perpetuate the ability of the agricultural industry to produce food and fiber in a way that benefits the general agriculturally dependent rural communities in California (Food and Agricultural Code sections 401 and 401.5.)

The Department's Animal Health and Food Safety Services division includes four branches, the Animal Health Branch, Bureau of Livestock Identification, Meat, Poultry and Egg Safety Branch, and the Milk and Dairy Food Safety Branch.

The Animal Health Branch is the State's organized, professional veterinary medical unit that protects livestock populations, consumers, and California's economy from catastrophic animal diseases and other health or agricultural problems. It addresses diseases and other problems that cannot be successfully controlled on an individual animal or herd basis, but require statewide coordinated resources. The Branch is responsible for deterring any activities that have the potential to compromise California's abundant food supply or the safety of public and animal health. If an immediate threat to public health and safety occurs, the State Veterinarian will quarantine animals or animal products in an effort to protect healthy animals and protect the purity of the State's food supply.

The Bureau of Livestock Identification protects cattle owners in California against loss of animals by theft, straying or misappropriation. The branch's program consists of registration of cattle, horse, burro, and sheep permanent brands; inspection of cattle for lawful possession prior to movement, sale or slaughter, and recording of the information obtained by such inspections; and assisting local law enforcement with investigations and prosecutions involving cattle theft.

The Meat, Poultry and Egg Safety Branch provides inspection services to slaughterhouses and processing plants that are exempt from federal inspection, but require inspection in California. Branch inspectors ensure that only wholesome and properly labeled products are provided to consumers and ensure that meat and poultry products not intended for human or pet consumption are prevented from entering food channels. The Branch also provides inspection in pet food slaughter and processing plants, monitors rendering companies, and conducts an industry-funded program to assure compliance with state regulations pertaining to inedible kitchen grease. Additionally, the Branch inspects and monitors shell egg quality at production, wholesale, and retail levels to provide California consumers with eggs that are wholesome, properly labeled, refrigerated, and of established quality, while maintaining fair and equitable marketing standards in the California egg industry.

The Milk and Dairy Food Safety Branch is charged with the mission and responsibility of ensuring that California's milk, milk products, and products resembling milk products are safe and wholesome, and meet microbiological and compositional requirements. The Department is the only state agency with comprehensive expertise, experience and training in dairy product processing and handling from farm to table, including milk pasteurization technology.

The State Veterinarian has the authority and oversight over the Animal Health and Food Safety Services division. Any immediate threat to public health and safety will result in a quarantine of animals and/or animal products in an effort to protect healthy animals and protect the purity of the State's food supply. For violations that do not result in an immediate quarantine order by the State Veterinarian, the Department serves a notice of an adverse determination on an individual.

For example, the Animal Health Branch may issue a notice of adverse determination to a person not complying with California's livestock health entry requirements when transporting animals into the State. The illegal movement may be a violation and deserve penalty, however the illegal movement may not be considered a serious disease risk and not warrant quarantine by the State Veterinarian. In this scenario, after official actions are taken by the Department,

the person to whom the action is directed is given the opportunity to contest the action and be heard, including the opportunity to present and rebut evidence, without having to proceed through the lengthy and sometimes costly civil court system or the State's administrative hearing process.

The existing informal hearing regulations establish uniform procedures satisfying the United States Constitution, the California Constitution, federal or state statute, or other forms of law that all persons are afforded. This proposal extends its availability to additional authorities of the Department. The intent is to further satisfy due process and public policy requirements in a manner that is simple and more expeditious than hearing procedures that may otherwise be required. Some current laws or regulations do not consistently provide the due process and public policy requirements in a manner that is easily accessible and manageable.

The Department is proposing to add to the informal hearing process for specified violations under Division 9 (Animals Generally), Division 10 (Cattle Protection), and Division 11 (Horses, Mules, Burros, Sheep, and Swine) of the Food and Agricultural Code. These portions of law pertain to the authorities of the Department's Bureau of Livestock Identification (Bureau). The Bureau's program consists of registration of livestock brands; inspection of cattle for lawful possession prior to transportation, sale, or slaughter, recording of information obtained by such inspections, and assisting local law enforcement with investigations and prosecutions involving cattle theft. The Bureau inspects nearly 3.5 million cattle annually and has approximately 23,000 registered livestock brands.

The intent of this proposal is to clarify the ability of the Department to seek civil penalties through the informal hearing process rather than initiate the civil penalty through the Attorney General's (AG) office with action initiated in Superior Court (Food and Agricultural Code section 16442) for violations relating to livestock. Although Food and Agricultural Code section 16442 requires the AG to bring action for civil penalties upon complaint by the Department, (if after examination of the complaint and evidence), violations for agriculture-related misdemeanors are typically small penalties (\$500 or less) and may be considered insignificant given other criminal caseload of the AG's office. Seeking prosecution by the Department through the AG's office is costly for misdemeanors and the time delay in developing a case through the AG's office for minor code violations reduces the deterrent effect.

Therefore, the Department believes identifying the use of the informal hearing procedures as an acceptable means for the imposition of a penalty for misdemeanors, as specified, is a benefit to both the public and Department. By way of the regulatory process, the Department can provide the opportunity for the public to utilize the informal hearing process to contest a civil penalty and be heard, including the opportunity to present and rebut evidence, without being required to proceed through the lengthy and sometimes costly civil court system.

The proposal is as follows:

Amend Section 1310. Scope of Coverage.

Add subsection (a)(6), requirements for animals at large pursuant to section 16441 including but not limited to, pedigree and proof of ownership requirements pursuant to sections 16501, 16521, 16522, 16522.5, 16523, 16524, 16525, 16526 and 16527: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to the (un)lawful use of an animal's pedigree and the false or fraudulent use of a registration certificate. Cattle

pedigrees combine ancestry, performance, and genetic information, and are common, industry-trusted documents, used when buying and selling animals. A violation of this section may include the use of false or fraudulent information to improve the lineage information and therefore the value of a particular animal. Additionally, the sections pertaining to proving ownership of animals, for example, a brand is a popular method of proving ownership of livestock. The Department may seek civil penalties with regard for proving ownership when a person refuses to turn over an animal or hide which is seized, for example while the Department determines ownership of an animal.

Add subsection (a)(7), requirements for the transportation of animals pursuant to sections 16901, 16902, 16903, 16904, 16905, 16906, 16907, 16908 and 16909: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to the transportation of animals and animals along or on railways and public roadways. An example of a violation of these provisions to which the Department may impose civil penalties include confining an animal on a motor truck or in a trailer for more than 28 consecutive hours from when the animal was last fed and watered.

Add subsection 1310(a)(8), requirements for strays under Article 2 (commencing with section 17041), Article 3 (commencing with section 17061), Article 4 (commencing with section 17091) and Article 5 (commencing with section 17121 of Chapter 7, Part 1, Division 9: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to violations of the rules for the caring of and taking into possession any bovine, horse, mule, sheep, swine or burro whose owner is unknown or cannot be located. Additionally included in this are provisions for the disposal of any live animal or carcass thereof, the sale of any animal or carcass, and the establishment of boundaries within specified counties with regard to grazing animals. Violations of these provisions may also include taking into possession an estray animal, even on one's own property, in a county declared as a grazing county, unless the property is entirely enclosed with a good substantial fence, as specified.

Add subsection 1310(a)(9), unlawful marking and branding requirements pursuant to sections 17551, 17552 and 17553: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to violations of the codes relating to the unlawful marking or branding of specified animals. Violations of this nature may include when a person with the intent to steal an animal alters a brand or brands an animal with another brand in an attempt to identify the animal as belonging to someone different than the lawful owner. The Department is authorized under section 17951 to impose a civil penalty; however, as stated previously, the Department believes that by way of the regulatory process, it can provide the opportunity for the public to utilize the informal hearing process to contest the civil penalty and be heard, including the opportunity to present and rebut evidence, without having to proceed through the lengthy and sometimes costly civil court system as authorized in section 17952 to impose civil penalties.

Add subsection 1310(a)(10), unrecorded, forfeited, or canceled brands requirements pursuant to section 20222: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of this section of the Food and Agricultural Code. This section of law pertains to the imposition of civil penalties for violations of the unlawful use of a brand, specifically an unrecorded, forfeited, or canceled brand. The Bureau of Livestock Identification (Bureau) has the authority to require the registration and recording of all brands

used in the State for cattle, horses, burros, sheep, and swine in accordance with Food and Agricultural Code sections 20691-20701. The Bureau maintains the California Brand Book¹, published annually, for use by Department inspectors and the public when identifying stray animals, and to identify animals being sold as the property of an owner offering those animals for sale. Maintaining brand registrations is a vital component of the Bureau as brands demonstrate changes in ownership of the brands and animals, and serve as a source of historical reference. A violation of section 20222 may include the use of a brand that has been “given-up” or canceled by an owner and subsequently used by another person who has not had the “ownership” of the brand transferred into their name. This would be considered a violation, and under this section would be subject to administrative penalties as specified.

Add subsection 1310(a)(11), requirements for enforcement of brand registration pursuant to sections 20604, 20605, 20606, 20607, 20608, 20609, and 20610: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to the imposition of civil penalties for violations of the requirements for brand registration and inspections. A cattle record brand is a form of identifying ownership of the cattle. The intent of this subsection is to clarify the ability of the Department to seek civil penalties through the informal hearing process as an option instead of solely initiate the civil penalty through an AG-initiated action in Superior Court pursuant to Food and Agricultural Code section 20252.

Add subsection (a)(12), requirements for cattle record brands pursuant to sections 20901, 20902, 20903, 20904, 20905 and 20906: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to a cattle record brand that is a form of identifying a particular breed of dairy cattle, and the location of the brand may be placed upon the right hip rather than upon the loin.

Add subsection (a)(13), requirements for the Inspection of cattle under Article 1 (commencing with section 21051), Article 2 (commencing with section 21081), Article 3 (commencing with section 21111), Article 4 (commencing with section 21141), Article 6 (commencing with section 21201), Article 7 (commencing with section 21231), Article 9 (commencing with section 21281) and Article 10 (commencing with section 21321) of Chapter 6, Division 10: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to specified requirements for brand inspections, brand uses, and modifying brands; feedlot registration; the requirements for a brand inspection when moving cattle in and out of feedlots, or to a salesyard or slaughter plant; the unlawful use of a brand that has not been recorded with the Department, and related inspections as specified.

Add subsection (a)(14), requirements for the inspection of hides and carcasses pursuant to sections 21453, 21455, 21456, 21457, 21458, 21459, 21482, 21531, 21532, 21561, 21562, 21563, 21563.5, and 21565: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to the improper disposal of an animal, hide or carcass pending an investigation to determine ownership or entitlement. It includes a violation transporting of an animal to a slaughter facility without having a certificate of inspection, or

¹ “California Brand Book (2010)”, published by the California Department of Food and Agriculture, available online for downloading or ordering at: http://www.cdffa.ca.gov/ahfss/Livestock_ID/Brand_Book.html

refusing to exhibit a copy of the certificate when asked by a peace officer or any investigator. The penalty for such an offence would not exceed \$50 for each animal. As this penalty is very small, affording a person the right to an informal hearing rather than pursuing penalty through the AG's office is a benefit to both the Department and the person in violation.

Add subsection (a)(15), requirements for the sale and gift of cattle and their carcasses and hides pursuant to sections 21702, 21702.1, 21703, 21704, 21705, 21706, 21707, 21708, 21709 and 21710: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to brand inspections required by the Department whenever cattle or carcasses are sold or ownership is transferred to another person. It is unlawful for any person to buy, sell or accept any animal unless the seller or donor gives, and the buyer or donee receives, at the time of the delivery of the animal, a written bill of sale or written instruction from the owner, or agent, that gives the number, kind, breed, and sex, and if branded, the brand and location of the brand on each animal.

Add subsection (a)(16), requirements relating to the slaughter of cattle pursuant to section 22001, 22001.5, 22002, 22003, 22004, 22004.1, 22006, 22008, 22009 and 22010: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to the slaughter of cattle, such as, a producer slaughtering cattle of his own production on his own premises, in small numbers; the licensure of a mobile slaughter operator; and requirements for a licensed frozen food locker plant or processor to receive animal carcasses.

Add subsection (a)(17), requirements for brands and brand records pursuant to section 23251: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. This section of law pertains to a person who wants to use a brand on horses, mules, burros, or sheep, that they shall comply with the same requirements for cattle branding, as specified.

Add subsection (a)(18), requirements for the sale or gift of an animal hide or carcass pursuant to sections 23801 and 23802: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of these sections of the Food and Agricultural Code. These sections of law pertain to the requirements for buying, selling or accepting a horse, mule, burro, or sheep, or the carcass of any such animal, as specified.

Add subsection (a)(19), requirements for the transportation of sheep pursuant to section 23981: The Department believes that the informal hearing process is a reasonable option for persons found to be in violation of this section of the Food and Agricultural Code. This section of law pertains to the requirements for a person transporting sheep, that the load must be accompanied by a bill of lading which shows the name of the owner of the sheep, and the destination of the sheep, as specified.

Subsection (a)(6) is renumbered to (a)(20) and no changes to the text are proposed at this time.

Subsection (a)(7) is renumbered to (a)(21) and no changes to the text are proposed at this time.

Subsection (a)(8) is renumbered to (a)(22) and no changes to the text are proposed at this time.

Amend Section 1310.1. Filing Deadlines and Procedures.

Amend subsection(a) to update the Department's central mailing address. No other changes to section 1310.1 are proposed at this time.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT

- Economic Impact Assessment

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF REASONABLE ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed regulation.

REASONABLE ALTERNATIVES THE DEPARTMENT HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Department has not identified any reasonable alternatives to the proposed action and no adverse impacts to small businesses are expected as a result of this proposed action.

BENEFITS

This proposal benefits both the Department and the public. The purpose is to provide the informal hearing process to persons found to be in violation of specified provisions of the Food and Agricultural Code who are issued adverse determinations by the Department. The intent is to handle certain, less grievous offences in a cost effective and timely manner.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

No facts, evidence, documents, testimony, or other evidence of any significant adverse economic impact on business have been identified.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATION

This proposal does not duplicate or conflict with Federal regulations.