

TITLE 3. FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (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 October 26, 2012 and ending at 5:00 p.m., December 10, 2012. 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 section 407, Food and Agricultural Code and section 11400.20 of the Government Code, and to implement, interpret or make specific sections 9166 9641.5, 10341, 10342, 10610, 10721, 16101, 16151, 16152, 16153, 16154, 16501, 16521, 16522, 16522.5, 16523, 16524, 16525, 16526 and 16527, 16901, 16902, 16903, 16904, 16905, 16906, 16907, 16908, 16909, 17150, 17151, 17152, 17153, 17551, 17552, 17553, 20222, 20604, 20605, 20606, 20607, 20608, 20609, 20610, 20901, 20902, 20903, 20904, 20905, 20906, 21453, 21455, 21456, 21457, 21458, 21459, 21482, 21531, 21532, 21561, 21562, 21563, 21563.5, 21565, 21702, 21702.1, 21703, 21704, 21705, 21706, 21707, 21708, 21709, 21710, 21852, 21855, 21856, 21881, 21882, 21844, 21886, 22001, 22001.5, 22002, 22003, 22004, 22004.1, 22006, 22008, 22009, 22010, 23251, 23801, 23802, and 23981, Food and Agricultural Code; Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5, Food and Agricultural Code; 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, Food and Agricultural Code; 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, Food and Agricultural Code; Chapter 8 (commencing with section 24000), Division 11, Food and Agricultural Code; Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15, Food and Agricultural Code; and Article 4 (commencing with section 32761), Chapter 2, Part 1, Division 15, of the Food and Agricultural Code, the 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 read as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW/BENEFITS

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 to 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.

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.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 et seq. Require Reimbursement: None

Business Impact: The Department of Food and Agriculture (Department) has made an initial determination that the proposed regulatory action will not have any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation only affects persons found to be in violation (after examination of the complaint and evidence) of specified provisions of the Food and Agricultural Code pertaining to the authority of the Bureau of Livestock Identification (for example, violations for agriculture-related misdemeanors that are typically small penalties of \$500 or less).

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Department of Food and Agriculture (Department) has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation only affects persons found to be in violation (after examination of the complaint and evidence) of specified provisions of the Food and Agricultural Code pertaining to the authority of the Bureau of Livestock Identification (for example, violations for agriculture-related misdemeanors that are typically small penalties of \$500 or less).

As part of its Economic Impact Assessment, the Department has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, that it will not create or eliminate jobs or occupations. The Department's proposal does not impact multiple industries.

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

Occupations/Businesses Impacted: The Department has made an initial determination that this regulatory proposal will impact any person (after examination of a complaint and evidence) found to be in violation of specified agriculture-related provisions of the Food and Agricultural Code.

Business Reporting Requirement: The regulation does not require a report, which shall apply to businesses.

Comparable Federal Regulations: This proposal does not duplicate or conflict with federal regulations.

Documents Incorporated by Reference: None.

Document(s) Relied Upon in Preparing Regulations: Economic Impact Assessment

CONSIDERATION OF ALTERNATIVES

The Department of Food and Agriculture (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 or 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.

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 the 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:

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