

TITLE 3. FOOD AND AGRICULTURE

PROPOSED REGULATIONS – INFORMAL HEARINGS

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 August 30, 2019 and ending at 5:00 p.m. on October 15, 2019**. 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 vest by section 407, Food and Agricultural Code; and section 11400.20, Government Code, and to implement, interpret or make specific the informal hearing process for Division 5 (commencing with section 9101), Division 8 (commencing with section 16001), Division 9 (commencing with section 18201), Division 10 (commencing with section 20001), Division 11 (commencing with section 24000), Division 12 (commencing with section 24501), and Division 15 (commencing with section 32501), Food and Agricultural Code, Chapter 4.5 (commencing with section 11400), and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, of the Government Code, the Department proposes to amend sections 1310, 1310.1, 1310.2, and 1310.3 and to adopt section 1310.4 of Article 1, Chapter 9, Division 2, of Title 3 of the California Code of Regulations, as described in the Informative Digest.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW/BENEFITS

Existing law, section 407 of the Food and Agricultural Code, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, section 11400.20 of the Government Code, specifies that an agency may adopt permanent regulations to govern an adjudicative proceeding under Chapter 4.5 (commencing with section 11400) or Chapter 5 (commencing with section 11500) of Part 1, Division 3, Title 2 of the Government Code.

For violations of the Food and Agricultural Code and/or any regulations implemented thereto, the Department would serve a notice of a citation or letter of impending action [generally referred to as a notice of adverse determination in this proposal] against an individual who violated specified statutes and regulations pertaining to animals and/or animal products.

Existing regulations under Title 3 of the California Code of Regulations, sections 1310 – 1310.3, allow a person to appeal adverse determinations to the Department through an informal hearing process.

This proposal amends the Department's existing informal hearing regulations under Title 3, sections 1310 – 1310.3. The purpose is to reorganize the formatting of the text, add specified sections of the Food and Agricultural Code where an informal hearing option may be utilized, extends the time frame for the Hearing Officer to issue a Decision and Order and adds new section 1310.4 to address enforcement matters that involve animals or animal products and time constraints may involve the health and safety of live animals or perishable food products. This proposal also makes technical changes for consistency and clarity purposes.

Anticipated Benefits of the Proposal: 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 and any regulations that implement said Code. It is a way to adjudicate specified offenses in a timely and cost-effective manner.

Consistency and Compatibility with Existing State Regulations: The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with existing State regulations. The Department may establish and implement, via regulation, informal hearing requirements in accordance with Chapter 4.5 (commencing with section 11400) of Part 1, Division 3, of Title 2 of the Government Code. Therefore, the Department is amending its regulations to update procedures and requirements so that the public may be aware of the specified Code violations where the informal hearing process may be utilized.

Documents Incorporated by Reference: None.

Documents Relied Upon in Preparing Regulations: None.

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 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. The determination is based on the fact that the proposal only affects persons found to be in violation of specified statutes (after examination of the complaint and the evidence presented) and does not impact businesses that operate in compliance with the law.

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. It pertains to persons or businesses who may be found to be in violation of specified statutes of the Food and Agricultural Code and any regulations implementing those statutes.

Persons/Businesses affected by this proposal:

- This proposal affects any person, whether they are required to be licensed or registered by the Department under its existing statutes or regulations or to any unlicensed or unregistered person who may be found conducting certain agriculture-related businesses in the State, or to any other person who is found, after investigation, to be in violation of the Department's statutes or regulations. Depending upon the facts presented in each case, the matter may be adjudicated using the Department's internal, informal hearing process. It is a way to adjudicate matters in a timely and cost-effective manner for all affected parties.

Anticipated compliance requirements as a result of this proposal:

- The proposal contains no specific record keeping, paperwork or reporting requirements. It provides information to persons who may be found in violation of specified statutes or regulations of the Department, and provides filing deadlines and procedures if they wish to contest an adverse action issued by the Department and request an informal hearing.

Effect on Housing Costs: None.

Effect on Small Businesses: The Department's proposal may affect small businesses as defined in Government Code section 11342.610, if they are found to be in violation of specified statutes and regulations implementing those statutes.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

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.

The Department has made a determination that this regulatory proposal:

- Will not have any significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations.
- Will not affect the creation of new businesses or the elimination of existing businesses within the State of California, and does not affect the expansion of businesses currently doing business within the State of California.
- Does not impact multiple industries.
- Will impact any person who is found, after investigation, to be in violation of statutes and regulations of the Department and they request an informal hearing to contest a notice of violation. The Department's proposal may affect small businesses if they are found, after complaint and investigation, to be in violation of specified statutes or regulations.
- 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 and any regulations that implement said Code. It is a way to adjudicate offenses in a timely and cost-effective manner.

- Benefits of the proposed regulation to the health and welfare of California residents, worker safety, and the State's environment: The proposed regulation does not directly impact human health and welfare, worker safety, and the environment. This regulatory proposal will provide clarity to the public as to the statutes that are included in the informal hearing process and any regulations implementing those statutes that would be reasonable to adjudicate via the informal hearing process. It is a timely and cost-effective manner which would benefit both the Department and the person who is contesting the adverse determination issued by the Department.

The above determinations are based on the fact this regulatory proposal is necessary to update the statute citations and the procedures for the implementation of the Department's informal hearing process in accordance with sections 407 of the Food and Agricultural Code and section 11400.20 of the Government Code.

Occupations/Businesses Impacted: The Department has made an initial determination that this regulatory proposal will impact any person who is found to be in violation of specified agriculture-related provisions of the Food and Agricultural Code and any regulations that implement said 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. Federal violations would be addressed by the federal authorities responsible for enforcement. Such enforcement could be administrative, civil, or criminal, depending upon the statutory authority of the program. Federal authorities would pursue such actions independent of the Department.

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 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. This regulatory proposal is necessary to update the statute citations and the procedures for the implementation of the Department's informal hearing process in accordance with sections 407 of the Food and Agricultural Code and section 11400.20 of the Government Code. Any interested person may present statements or arguments orally or in writing relevant to this determination at the hearing (if a hearing is requested) or during the written public comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Department 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 in this Notice 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.

CONTACT PERSONS

Inquiries and any written comments concerning this proposal are to be addressed to the following:

Nancy Grillo, Associate Analyst
Department of Food and Agriculture
Animal Health & Food Safety Services
1220 N Street, Sacramento, CA 95814
Telephone (916) 900-5033
E-mail: nancy.grillo@cdfa.ca.gov

The backup contact person is:

Thamarah Rodgers, Associate Analyst
Department of Food and Agriculture
Animal Health & Food Safety Services
1220 N Street, Sacramento, CA 95814
Telephone (916) 900-5000
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>

**Department of Food and Agriculture
Animal Health and Food Safety Services
Proposed Regulations – Informal Hearings**

The Department of Food and Agriculture, Animal Health and Food Safety Services, proposes to update its informal hearing regulatory requirements under Article 1, Chapter 9, Division 2, of Title 3 of the California Code of Regulations, as specified below.

1) Amend sections 1310, 1310.1, 1310.2, and 1310.3 of Article 1, Chapter 9, Division 2, of Title 3 of the California Code of Regulations, to read as follows:

Section 1310. Scope of Coverage.

(a) ~~Any person~~ A respondent, or his or her duly authorized representative, may contest a notice of adverse determination ~~and request~~ by requesting an informal hearing as outlined in this article.

(b) The informal hearing proceedings outlined in this article pertain to a violation of any of the following sections of the Food and Agricultural Code or any regulations implemented thereto, including proceedings relating to any license, registration, permit, or certificate issued by the Department:

- ~~(1) Importation requirements for horses or other Equidae pursuant to section 9641.5.~~
- ~~(2) Brucellosis vaccination requirements pursuant to sections 10341, 10342 and Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5.~~
- ~~(3) Importation requirements for cattle pursuant to section 10610.~~
- ~~(4) Importation requirements for swine pursuant to section 10721.~~
- ~~(5) Approved processing or disposal of garbage aboard any vessel or aircraft in the state pursuant to sections 16101, 16151, 16152, 16153 and 16154.~~
- ~~(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, 16524, and 16525.~~
- ~~(7) Requirements for the transportation of animals pursuant to sections 16901, 16902, 16903, 16905, and 16908.~~
- ~~(8) Requirements for estrays pursuant to sections 17042, 17043, 17045, 17061, 17062, 17092, 17121, and 17122.~~
- ~~(9) Unlawful marking and branding requirements pursuant to sections 17551, 17552 and 17553.~~
- ~~(10) Requirements for processing inspectors pursuant to sections 18982, 18983, 18991, 19001 and 19002.~~
- ~~(11) Requirements pertaining to transporters of inedible kitchen grease pursuant to sections 19310, 19310.5, 19310.7, 19311, 19312, 19313, 19313.1, 19313.5, 19314, 19315, 19316, and 19317.~~
- ~~(12) Unrecorded, forfeited, or canceled brands requirements pursuant to section 20222.~~

~~(13) Requirements for enforcement of brand registration pursuant to sections 20604, 20605, 20606, and 20607.~~

~~(14) Requirements for cattle record brands pursuant to sections 20904 and 20906.~~

~~(15) Requirements for the inspection of cattle pursuant to sections 21051.5, 21052, 21058, 21060.7, 21062, 21064, 21066, 21081, 21082, 21172, 21173, 21174, 21175, 21204, 21205, 21208, 21231, 21232, 21236, 21237, 21238, 21281, 21281.5, 21282, 21283, 21283.5, 21285, 21288, and 21288.5.~~

~~(16) Requirements for the inspection of hides and carcasses pursuant to sections 21455, 21456, 21457, 21458, and 21459.~~

~~(17) Requirements for the sale and gift of cattle and their carcasses and hides pursuant to sections 21702, 21702.1, 21703, 21705, 21707, 21708, 21709 and 21710.~~

~~(18) Requirements relating to the slaughter of cattle pursuant to section 22001, 22006, 22008, 22009 and 22010.~~

~~(19) Requirements for brands and brand records pursuant to section 23251.~~

~~(20) Requirements for the sale or gift of an animal hide or carcass pursuant to section 23801.~~

~~(21) Requirements for the transportation of sheep pursuant to section 23981.~~

~~(22) Control of performance and disposition enhancing medications for horses in public horse shows, events, competitions, or sales pursuant to Chapter 8 (commencing with section 24000), Division 11.~~

~~(23) Inspection and sampling of milk, milk products, and products resembling milk pursuant to Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15.~~

~~(24) Testing of milk and milk products for the presence of drug residues pursuant to Article 4 (commencing with section 32761), Chapter 2, Part 1, Division 15.~~

(1) Division 5, Animal and Poultry Quarantine and Pest Control (commencing with section 9101) of the Food and Agricultural Code, excluding sections 9163, 9165, 9167, 9168, 9212, 9242, 9562, 9564, 9574, 9701, 9943, 9976, 9977, 10355, 10381, 10384, 10385, 10493, 10610(c)(1), 10782, 10783, 10784, 10786(b)(1); Article 7 (commencing with section 9261) of Chapter 1.5 of Part 1; Article 2 (commencing with section 9331) of Chapter 2 of Part 1; and Chapter 2 (commencing with section 10901) of Part 3 of Division 5 of the Food and Agricultural Code.

(2) Division 8, Vessel and Aircraft Garbage (commencing with section 16001) of the Food and Agricultural Code.

(3) Part 3, Slaughtered Animals (commencing with section 18201) of Division 9 of the Food and Agricultural Code, excluding sections 18221, 19242, 19262, 19282, 19322; Chapter 4 (commencing with section 18650), Chapter 4.1 (commencing with section 18940), Chapter 4.5 (commencing with section 19051); Article 2 (commencing with section 19220), Article 6 (commencing with section 19300), Article 6.5 (commencing with section 19310), and Article 13 (commencing with section 19440) of Chapter 5 of Part 3 of Division 9 of the Food and Agricultural Code.

(4) Division 10, Cattle Protection (commencing with section 20001) of the Food and Agricultural Code, excluding sections 20791, 20792, 20793, 20794, 20795, and 20796; Article 4 (commencing with section 20221), Article 5 (commencing with section 20251), and Article 6 (commencing with section 20281) of Chapter 2; Article 2 (commencing with section 20432) of

Chapter 3; and Article 1 (commencing with section 21851) of Chapter 9 of Division 10 of the Food and Agricultural Code.

(5) Chapter 8, Drugging of Horses (commencing with section 24000) of the Food and Agricultural Code, excluding section 24007(a).

(6) Division 12, Poultry, Rabbits, Eggs, and Egg Products (commencing with section 24501) of the Food and Agricultural Code, excluding sections 24541, 24750, 24751, 25061, 25062, 26441, 26681, 26981; Article 2 (commencing with section 24681) of Chapter 2 of Part 1; Article 2 (commencing with section 24991) of Chapter 3 of Part 1; Chapter 2 (commencing with section 25551) of Part 2; and Part 4 (commencing with section 27501) of the Food and Agricultural Code.

(7) Division 15, Milk and Milk Products Act of 1947 (commencing with section 32501) of the Food and Agricultural Code, excluding sections 32811, 32812, 32813, 33297, 35193; Article 1 (commencing with section 32701) of Chapter 2 of Part 1; Article 4 (commencing with section 33141) and Article 8 (commencing with section 33251) of Chapter 4 of Part 1; Article 1 (commencing with section 35281) of Chapter 13 of Part 1; Article 7 (commencing with section 35921) of Chapter 2 of Part 2; Article 2 (commencing with section 36631) of Chapter 1 of Part 3; Article 6 (commencing with section 37261) of Chapter 3 of Part 3; and Article 9 (commencing with section 38991) of Chapter 6 of Part 3 of Division 15 of the Food and Agricultural Code.

Note: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: ~~Sections 9166, 9641.5, 10341, 10342, 10610, 10721, 16101, 16151, 16152, 16153, 16154, 16441, 16501, 16521, 16524, 16525, 16901, 16902, 16903, 16905, 16908, 17042, 17043, 17045, 17061, 17062, 17092, 17121, 17122, 17551, 17552, 17553, 17951, 18982, 18983, 18991, 19001, 19002, 19310, 19310.5, 19310.7, 19311, 19312, 19313, 19313.1, 19313.5, 19314, 19315, 19316, 19317, 20222, 20251, 20604, 20605, 20606, 20607, 20904, 20906, 21051.5, 21052, 21058, 21060.7, 21062, 21064, 21066, 21081, 21082, 21172, 21173, 21174, 21175, 21204, 21205, 21208, 21231, 21232, 21236, 21237, 21238, 21281, 21281.5, 21282, 21283, 21283.5, 21285, 21288, 21288.5, 21455, 21456, 21457, 21458, 21459, 21702, 21702.1, 21703, 21705, 21707, 21708, 21709, 21710, 22001, 22006, 22008, 22009, 22010, 23251, 23801, 23981, and 24007, Food and Agricultural Code; and Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5, 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, Food and Agricultural Code Division 5 (commencing with section 9101), Division 8 (commencing with section 16001), Division 9 (commencing with section 18201), Division 10 (commencing with section 20001), Division 11 (commencing with section 24000), Division 12 (commencing with section 24501), and Division 15 (commencing with section 32501), Food and Agricultural Code.~~

Section 1310.1. Filing Deadlines and Procedures.

(a) The respondent may contest a notice of adverse determination for any violation specified in section 1310 and may request an informal hearing by written correspondence to the California Department of Food and Agriculture, Legal Office of Hearings and Appeals, 1220 "N" Street, Suite 400 315, Sacramento, California 95814.

(b) The respondent ~~must~~ shall submit a request for an informal hearing to the Department's Legal Office of Hearings and Appeals in writing, within 30 days from the date of receipt of the notice of adverse determination. ~~If the notice of adverse determination requires the holding of animals or animal products at a site specified, the respondent must submit the request by mail, facsimile, or by telephone within 72 hours of the date of the notice of adverse determination.~~

(c) ~~The respondent may request a formal hearing in lieu of an informal one. The respondent must do so within the filing deadlines for requesting an informal hearing set forth in subsection (b). Any request must be accompanied by a written statement in support of it. The hearing officer shall determine whether to proceed with an informal hearing or whether a formal hearing or other appropriate administrative proceeding may be required by statute pursuant to Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code. The respondent will be expected to waive the time constraints of this article on the record if any administrative proceeding other than an informal hearing is requested by respondent or required by the Department. Any request for an informal hearing shall include a copy of the notice of adverse determination and may state the grounds for the appeal.~~

(d) 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.

~~(d)~~ (e) Failure to ~~present~~ 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 shall may be denied by the Department.

~~(e) If the notice of adverse determination places a hold on a product or animal, or requires a person to cease operations, the notice of adverse determination shall remain in effect pending the outcome of the informal hearing.~~

Note: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: ~~Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code~~ 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.

Section 1310.2. Informal Hearing Schedule and Notification.

~~(a) Supplemental to any procedures set forth in Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code, t~~The Department shall schedule an informal hearing within 30 days from the receipt of the request from the respondent. If the notice of adverse determination requires the holding of animals or animal products at a site specified, the Department shall schedule the hearing within 72 hours of the receipt of the request for an informal hearing.

~~(b) Formal hearings shall be scheduled by the Department consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code, and any applicable regulations enacted pursuant to these provisions.~~

~~(e)~~ (b) At least 10 business days prior to the informal hearing, T~~he~~ 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; ~~and,~~

~~(4) Any other information or documentation relative to the adverse determination.~~

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

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

(e) 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.

Note: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: ~~Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code 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.

Section 1310.3. Conduct of Informal Hearings.

~~(a) If a formal hearing is requested by the respondent or otherwise required by statute or regulation, it shall be conducted consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code.~~

~~(b) Informal hearings shall be conducted pursuant to Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2 of the Government Code and shall be conducted as follows:~~

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

(2) (b) 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.

~~(3) (c) Hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30~~ A teleconference line shall be made available at every hearing.

(d) 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.

(4) (e) ~~Subject to the provisions of Government Code section 11425.50, t~~The decision of the hearing officer shall be in writing, with a brief statement of the conclusion and findings to support the conclusion. The decision may be handwritten issued within 30 days after the conclusion of the hearing, and shall be effective immediately upon issuance.

~~(5) The decision shall be issued within 14 days after the conclusion of the hearing and may be issued orally at the conclusion of the hearing subject to written confirmation.~~

~~(6) The decision shall be served on the respondent either by personal service or, if available, by facsimile transmission.~~

~~(7) The hearing officer's decision shall be effective immediately upon first articulation under subsection (b)(4) or (b)(5) above, and shall be final.~~

~~(8) (f) 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 provisions of the Code of Civil Procedure subject to the statutes relating to the Department section 1094.5.~~

~~(9) The Department shall provide a copy of the decision to any interested party upon written request.~~

Note: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: ~~Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code~~ 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.

2) Adopt section 1310.4 of Article 1, Chapter 9, Division 2, of Title 3 of the California Code of Regulations, to read as follows:

Section 1310.4. Violations Involving the Holding of Animals or Animal Products.

(a) A respondent may contest a notice of adverse determination that places a hold on a product or animal, or requires a person to cease business operations.

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

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

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

(e) Informal hearings procedures conducted under this section shall be held in accordance with section 1310.3 above.

Note: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Sections 9562 and 9570, Food and Agricultural Code; 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.

DEPARTMENT OF FOOD AND AGRICULTURE

Animal Health and Food Safety Services

INITIAL STATEMENT OF REASONS

SUBJECT MATTER OF PROPOSED REGULATION

Informal Hearings

SECTIONS AFFECTED

Sections 1310, 1310.1, 1310.2, 1310.3, and 1310.4

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL

Existing law, section 407 of the Food and Agricultural Code, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, section 11400.20 of the Government Code, specifies that an agency may adopt permanent regulations to govern an adjudicative proceeding under Chapter 4.5 (commencing with section 11400) or Chapter 5 (commencing with section 11500) of Part 1, Division 3, Title 2 of the Government Code.

For violations of the Food and Agricultural Code and/or any regulations implemented thereto, the Department would serve a notice of a citation or letter of impending action [generally referred to as a notice of adverse determination in this proposal] against an individual who violated specified statutes and regulations pertaining to animals and/or animal products.

Existing regulations under Title 3 of the California Code of Regulations, sections 1310 – 1310.3, allow a person to appeal adverse determinations to the Department through an informal hearing process.

This proposal amends the Department's existing informal hearing regulations under Title 3, sections 1310 – 1310.3. The purpose is to reorganize the formatting of the text, add specified sections of the Food and Agricultural Code where an informal hearing option may be utilized, extends the time frame for the Hearing Officer to issue a Decision and Order, and adds new section 1310.4 to address enforcement matters that involve animals or animal products and time constraints involve the health and safety of live animals or perishable food products. This proposal also makes technical changes for consistency and clarity purposes.

The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with existing State regulations. The Department may establish and implement, via regulation, informal hearing requirements in accordance with Chapter 4.5 (commencing with section 11400) of Part 1, Division 3, of Title 2 of the Government Code. Therefore, the Department is amending its regulations to update procedures and requirements so that the public may be aware of the specified Code violations where the informal hearing process may be utilized.

PROBLEM(S) INTENDED TO ADDRESS

Existing informal hearing regulations contain a partial listing of the Food and Agricultural Code sections pertaining to the authorities of the Animal Health and Food Safety Services Division, where the Department provides an opportunity for the immediate access to an internal, informal hearing process. This proposal reorganizes the statutes cited and provides for a general clean-up to update the statutes referenced that the Department may issue any notices of an adverse determination [a general term used to mean any citation or notice of a violation] against an individual who may be found in violation of the statutes, which would include any regulations adopted pursuant to the statutes cited. It also authorizes the use of an informal hearing for those Food and Agricultural Code sections included in regulation section 1310 under which the Department may deny, revoke, or suspend a license, registration, or certification. It also updates procedures for the conduct of the informal hearings and includes a new section to address violations that involve the holding of animals or animal products where time may be an issue in adjudicating such matters. The essential intent of the informal hearing process is to provide an opportunity for effective resolution of the issues, which can be carried out in an expeditious and cost-effective manner in the absence of rigid procedures which might unduly impede or protract the hearing process.

STATEMENT OF FACTUAL BASIS AND RATIONALE

The Department's Animal Health and Food Safety Services Division is comprised primarily of four Branches that may utilize the informal hearing process under existing sections 1310 – 1310.3 of Title 3 of the California Code of Regulations. The four branches of the Division are as follows:

- 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.
- The Bureau of Livestock Identification protects cattle owners against loss of animals by theft, straying or misappropriation. The branch has a brand registration program for cattle, horses, burros and sheep. They inspect cattle brands for lawful possession and proof of ownership prior to movement, sale, or slaughter, and recording of the information obtained by such inspections. They assist local law enforcement with investigations and prosecutions involving primarily cattle theft, as well as other livestock.
- The Meat, Poultry and Egg Safety Branch provides inspection services to slaughterhouses and processing plants that are exempt from federal inspection, but require inspection under California law. 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. The Branch inspects and monitors shell egg food safety and 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 supply and milk products are safe and wholesome, and meet microbiological and compositional requirements consistent with state and federal laws and regulations. The Branch is the sole state authority with the expertise, experience, and training in dairy product processing and handling from farm to table, including milk pasteurization technology to ensure safe milk and milk products are provided to consumers.

All four Branches of the Division may utilize the Department's informal hearing process as set forth in the proposed text for regulation section 1310. The Department is now seeking to update its existing informal hearing provisions to make organizational and technical changes, as outlined below.

Section 1310. Scope of Coverage.

Amend subsections (a) and (b). The Department is splitting existing subsection (a) and adding subsection (b) to add clarifying language. Subsection (a) is necessary to provide for who can contest a notice of adverse determination. Subsection (b) clarifies that the informal hearing proceedings pertain to a person who may be found in violation of the Food and Agricultural Code as cited in the reformatted subsections (b)(1) through (b)(7). This is necessary to notify the public that any violations of the applicable statutes, which would include the regulations implemented pursuant to the statutes cited, may be adjudicated under the informal hearing process.

Delete subsections (b)(1) through (b)(24). The Department is deleting these subsections for reformatting and organizational purposes, and to update the Food and Agricultural Code citations. The appropriate Code sections where the Department may utilize the informal hearing process is now cited under new subsections (b)(1) through (b)(7).

Adopt subsections (b)(1) through (b)(7). The Department is reformatting this section for clarity purposes and believes it is more accessible to the public and easier to understand by clearly providing a list of Food and Agricultural Code citations that may be handled through the administrative informal hearing process. It also lists the statutes that are excluded, meaning, sections of law that the Department would not handle through the informal hearing process as the Food and Agricultural Code requires they be handled through a different process.

The purpose of the updated format is to provide a complete list of all the applicable sections of the Food and Agricultural Code where, if a notice of adverse determination is issued due to a violation, an informal hearing can be requested to contest the notice of adverse determination. The Food and Agricultural Code sections exempt from this proposal are listed under each subsection. This is necessary to inform the regulated public that those sections listed as exempt are not eligible to use the informal hearing procedures set forth in this proposal.

This same format is used throughout subsections (b)(1) through (b)(7).

Subsection (b)(1) provides a list of the excluded sections found in Division 5 (commencing with section 9101) of the Food and Agricultural Code, which encompasses a wide range of provisions dealing with the movement of animals into California and animal and poultry quarantine to protect the livestock of the State from infectious and contagious diseases. This subsection is necessary to inform the public that those sections listed as exempt are not eligible to use the informal hearing procedures set forth in this proposal.

Subsection (b)(2) provides the Food and Agricultural Code sections found in Division 8 (commencing with section 16001), which deals with vessel and aircraft garbage. This

subsection is necessary to inform the public that those sections listed are eligible to use the informal hearing procedures set forth in this proposal.

Subsection (b)(3) provides a list of the excluded sections found in Part 3 (commencing with section 18201) of Division 9 of the Food and Agricultural Code, which encompasses the requirements relating to meat and poultry inspection and slaughter. This subsection is necessary to inform the public that those sections listed as exempt are not eligible to use the informal hearing procedures set forth in this proposal.

Subsection (b)(4) provides a list of the excluded sections found in Division 10 (commencing with section 20001) of the Food and Agricultural Code which encompasses a wide range of provisions relating to requirements for livestock brand inspection and registration. This subsection is necessary to inform the public that those sections listed as exempt are not eligible to use the informal hearing procedures set forth in this proposal.

Subsection (b)(5) provides the Food and Agricultural Code sections found in Chapter 8 (commencing with section 24000) of Division 11, which involves the laws regarding the enforcement of the equine medication rules. This subsection is necessary to inform the public that those sections listed are eligible to use the informal hearing procedures set forth in this proposal.

Subsection (b)(6) provides a list of the excluded sections found in Division 12 (commencing with section 24501) of the Food and Agricultural Code, which encompasses poultry and egg food safety requirements, the standards for inspection, sanitation, reinspection, preparation, processing, buying, selling, transporting, storing, identification, recordkeeping, registration, and labeling to ensure a safe and wholesome food product is available to consumers. This subsection is necessary to inform the public that those sections listed as exempt are not eligible to use the informal hearing procedures set forth in this proposal.

Subsection (b)(7) provides a list of the excluded sections found in Division 15 (commencing with section 32501) of the Food and Agricultural Code, which encompasses the enforcement of the Milk and Milk Products Act of 1947. It pertains to the inspection and licensing of dairy farms and plants, the usages of milk, the composition and labeling of dairy products, dairy beverages, products resembling milk products, and the advertisement of such products. This subsection is necessary to inform the public that those sections listed as exempt are not eligible to use the informal hearing procedures set forth in this proposal.

Authority and reference citations: The Department is also amending the authority and reference citations for the section pursuant to Government Code section 11349.1 and section 14 of Title 1 of the California Code of Regulations to conform the “Note” portion to the revised regulation text to reflect the appropriate Code sections.

Section 1310.1. Filing Deadlines and Procedures.

Amend subsection (a) to update the name of the office and the office address where appeals need to be sent to request for an informal hearing. This is necessary so the correct office name and correct address are listed in the regulation.

Amend subsection (b) to change the word “must” to “shall”. This is necessary so this subsection reads consistently with the rest of the regulations covered in this proposal. Further, this subsection is amended to update the name of the office where appeals are sent. This is necessary so the correct office is listed in the regulation. Additionally, this subsection is amended to change the time frame in

which a respondent must submit a request from 30 days from the date of the notice of adverse determination to 30 days from the date of the receipt of the notice of adverse determination. This amendment is necessary to ensure the respondent is given a full 30 days to appeal and their time to appeal is not shortened if the mail is delayed for any reason. Lastly, this subsection is amended by deleting the information relating to the holding of animals or animal products and moving it into new regulation section 13101.4 for clarity and organizational purposes. This deletion is necessary to avoid duplication as the Department created a new section 1310.4 to cover these types of appeals.

Amend subsection (c) to delete unnecessary text as subsection (d) provides for how an objection to the Department's selection of the informal hearing procedures can be made. This deletion is necessary so there is not duplicative information regarding making an objection to the Department's use of the informal hearing procedures. Further, this subsection is amended to provide information to a respondent that any requests made to the Department for an informal hearing shall include a copy of the notice of adverse determination and may state the grounds for the appeal. This requirement of including a copy of the notice of adverse determination is necessary so the Legal Office of Hearings and Appeals is able to process the respondent's appeal and request for an informal hearing. The amendment that the request for an informal hearing may state the grounds for appeal is necessary so the respondent is provided the opportunity to provide additional information to the Legal Office of Hearings and Appeals to aid in processing the respondent's request. It is necessary to use the word "may" so that the respondent is aware that it is optional. The Department does not want to have to deny a request for an informal hearing based solely on a respondent's inability to state the grounds for the appeal.

Add new subsection (d) to inform a respondent of how to make an objection to the Department's selection of the informal hearing process. This amendment is necessary to make a respondent aware that they can make an objection to the Department's selection of the informal hearing process and that any objection made will be resolved by the Hearing Officer prior to the hearing pursuant to Government Code section 11445.30.

Re-letter former subsection (d) to read (e) and amend the text for grammatical purposes by replacing the word "present" to "submit" in relation to a respondent submitting a timely request for a hearing to the Department. These amendments are necessary so the lettering is sequential and for clarity. This subsection additionally amends the regulation text by changing "shall" to "may" so it reads that untimely requests for a hearing "may" be denied by the Department. This amendment is necessary to allow a case by case determination by the Department. This amendment is necessary in order to make the hearing process more accessible to people and to not prevent the Department from accepting an untimely request under an unusual or extraordinary set of circumstances.

Delete former subsection (e) relating to the holding of animals or animal products since that information is moved to new regulation section 1310.4 for clarity and organizational purposes. This deletion is necessary to avoid duplication as the Department created a new section 1310.4 to cover these types of appeals.

Authority and reference citations: The Department is also amending the authority and reference citations for the section pursuant to Government Code section 11349.1 and section 14 of Title 1 of the California Code of Regulations for clarity purposes. This amendment is necessary so the authority and reference sections reflect the appropriate Code sections.

Section 1310.2. Informal Hearing Schedule and Notification.

Amend the heading for clarity, adding "informal" to the section. This amendment is necessary so the title clearly reflects the contents of the section as the section pertains to informal hearings.

Amend subsection (a) to delete unnecessary text related to Chapter 4.5 (commencing with section 11400) of Part 1, Division 3, Title 2 of the Government Code. This deletion is necessary because the Department is drafting its own informal hearing regulations through this rulemaking package under Government Code section 11400.20 and the text being deleted is not necessary. This amendment also deletes text relating to the holding of animals or animal products since that information is moved to new regulation section 1310.4 for clarity and organizational purposes. The deletion is necessary to avoid duplication as the Department created a new section 1310.4 to cover these types of appeals.

Delete subsection (b) as it contains unnecessary information relating to formal hearing procedures when this proposal only specifies informal hearing procedures. This amendment is necessary because this rulemaking proposal is setting forth regulations that cover informal hearings only.

Amend subsection (c) to read (b) and to provide a time frame in which the Department will notify the respondent of the scheduled informal hearing, which is 10 business days prior to the hearing. This time frame means after the Department receives a request for an informal hearing and the hearing is scheduled, then the Department will notify the respondent at least 10 business days prior to the scheduled hearing of the date, location, and details of the hearing. This is necessary to ensure the respondent is given adequate notice of the time and place the hearing will be held.

Subsection (b)(4) is deleted in this proposal since no other information or documentation would be provided to a respondent relative to the adverse determination, so this subsection was deleted due to lack of necessity.

Add new subsection (c) to specify that the notice of an informal hearing shall be sent to the address of the person charged, as provided by any application, license, registration, certificate or permit on record with the Department. If for some reason the Department does not have the current address of record, the Department's investigators may contact the Department of Motor Vehicles for an address. The Department believes this is sufficient to serve a notice of the informal hearing to a respondent because the address used would either be one provided to the Department by the respondent or one provided by the Department of Motor Vehicles. This is necessary to notify the public where the Department will obtain their address for the purposes of mailing the notice of informal hearing.

Add new subsection (d) to specify that a notice that is sent to the address of record as described in subsection (c), will be considered received, even if delivery is refused or if the notice is not accepted at that address. This section is necessary to inform the public that even if delivery is refused or it is not accepted if the notice of informal hearing was sent to the address of record on file with the Department or as obtained from the Department of Motor Vehicles, the notice will be considered effective.

Add new subsection (e) to specify that any documents to be considered by the hearing officer must be received by the Department's Legal Office of Hearings and Appeals, at least three business days prior to the scheduled hearing. This requirement is necessary so that a respondent will know of the time frame for submitting any documentation relevant to the violation(s) that is to be considered during the informal hearing proceedings. It is also necessary to ensure there is enough time to distribute any documents submitted to all parties and the Hearing Officer prior to the hearing. This subsection is also amended to state that any documents not timely submitted may be considered at the discretion of the hearing officer. This is necessary because the Department doesn't want to be precluded from allowing evidence in at a hearing merely because the deadline wasn't met and it allows the Hearing Officer discretion to determine, on a case by case basis, whether the evidence should be accepted for the hearing if the deadline was not adhered to.

Authority and reference citations: The Department is also amending the authority and reference citations for the section pursuant to Government Code section 11349.1 and section 14 of Title 1 of the California Code of Regulations, for clarity purposes. This amendment is necessary so the authority and reference sections reflect the appropriate Code sections.

Section 1310.3. Conduct of Informal Hearings.

Amend the heading to include specify “informal” hearings as this is what the section pertains to. This amendment is necessary so that the title clearly reflects the contents of the section, as the section pertains to informal hearings.

Delete subsection (a) because it contains unnecessary information relating to formal hearings. This deletion is necessary because the Department is drafting its own informal hearing regulations through this rulemaking package under Government Code section 11400.20 and the text being deleted is not necessary as it pertains to formal hearings.

Delete subsection (b) because it contains unnecessary information and the information is reorganized for clarity purposes. This deletion is necessary because the Department is drafting its own informal hearing regulations through this rulemaking package under Government Code section 11400.20.

Subsection (b)(1) is relettered to read (a) and contains a change for clarity, in that the Secretary of the Department would designate a hearing officer. This amendment is necessary to clarify that it is the Secretary who designates a hearing officer.

Subsection (b)(2) is relettered to read subsection (b) and contains no further amendments.

Subsection (b)(3) is relettered to read subsection (c) and the information is updated that a teleconference line shall be made available at every hearing. This change is necessary to ensure a respondent will have access to the informal hearing process even if they are not able to travel to the hearing location based on each individual circumstance, or if some unforeseen occurrence prevents a respondent from attending the hearing in person.

Add new subsection (d) to specify that the hearings shall be recorded by the Department and that a transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request. This subsection is necessary for purposes of maintaining the administrative record and for clarity purposes so that a respondent, or any interested person, will know that the Department will record the hearing, and that it will be available to any interested party.

Subsection (b)(4) is relettered to read subsection (e) and deletes the reference to Government Code section 11425.50 and deletes the provision that decisions issued at the conclusion of the hearing may be handwritten. These amendments are necessary because the Department is drafting its own informal hearing regulations through this rulemaking package under Government Code section 11400.20, which specifies how the decision of the hearing officer is to be issued. This subsection also is amended to add that the hearing officer’s decision will be issued within 30 days after the conclusion of the hearing. The original time frame provided was 14 days, however, amending this to 30 days is necessary to provide the hearing officer with adequate time to review the evidence presented and arguments made at the hearing and to write a decision for the matter and to inform the respondent that a decision will be made within 30 days after the hearing. This subsection is further amended to state that the hearing officer’s decision shall be effective immediately upon

issuance. This was moved from another section and this amendment is necessary for organizational purposes and to notify the respondent that the hearing officer's decision is effective once it is issued.

Subsection (b)(5) is deleted and merged with subsection (e). This amendment is necessary to better organize the section. The original time frame of issuing a decision within 14 days after the conclusion of the hearing as discussed above this was amended to be 30 days to provide the hearing officer with adequate time to review the evidence presented and arguments made at the hearing and to write a decision for the matter.

Delete subsection (b)(6) that states the decision shall be served on the respondent either by personal service or, if available, by facsimile transmission. This amendment is necessary so the Department is able to serve the decision on a respondent in other ways such as mailing it to the respondent or by electronic mail.

Delete subsection (b)(7) as this subsection is not necessary because it was moved to a different section. This amendment is necessary for clarity and organizational purposes.

Subsection (b)(8) is relettered to read subsection (f) to provide the specific Code citation for appealing the hearing officer's decision and order. This amendment is necessary in order to notify the respondent on how they can appeal the hearing officer's decision and order and provide them with the specific Code section governing that appeal.

Authority and reference citations: The Department is also amending the authority and reference citations for the section pursuant to Government Code section 11349.1 and section 14 of Title 1 of the California Code of Regulations for clarity purposes. This amendment is necessary so the authority and reference sections reflect the appropriate Code sections.

Adopt new Section 1310.4. Holding of Animals and Animal Products.

This information was previously included in the prior sections of the informal hearing regulations and this new section is added to address the holding of animals and animal products. Any enforcement actions involving live animals must be adjudicated in a timely manner if the health of the animals may be a factor. The same with any perishable products, such as milk and dairy products, time is of the essence in enforcement matters or the products will need to be disposed of in a safe and sanitary manner.

Subsection (a) describes the scope of the section. This is necessary to inform the public of the scope of section 1310.4.

Subsection (b) provides the deadline of three business days from the date of receipt of the notice of adverse determination for a respondent to request an appeal from the Department utilizing the informal hearing process. This subsection is necessary in order to ensure matters involving the holding of live animals or perishable meat or dairy food products be promptly appealed.

Subsection (c) provides clarity to a respondent to let them know the adverse determination shall remain in effect until the informal hearing can be held and a decision rendered by the Department. This language was moved from another section [1310.1(e)] and is necessary to clarify that the notice of adverse determination will remain in effect pending the outcome of the informal hearing.

Subsection (d) provides the deadline for the Department to schedule an informal hearing after a timely request for the informal hearing is received from the respondent. This subsection is necessary

in order to ensure informal hearings involving live animals or perishable meat or dairy products are promptly scheduled.

Subsection (e) provides clarity on how the informal hearing shall be conducted. To avoid duplication of the procedures, this section references section 1310.3 of the informal hearing procedures as specified in this proposal. This subsection is necessary so the public is aware of how the informal hearing involving animals or animal products will be conducted.

Authority and reference citations: The Department is adding the authority and reference citations for the section pursuant to Government Code section 11349.1 and section 14 of Title 1 of the California Code of Regulations. This is necessary so the authority and reference sections reflect the appropriate Code sections.

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

No technical, theoretical, or empirical study, report, or similar document was used in formulating this proposal.

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 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 informal hearing regulations in accordance with Food and Agricultural Code section 407 and section 11400.20 of the Government Code.

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. This proposal is necessary to reorganize and update existing informal hearing regulations in accordance with Food and Agricultural Code section 407 and section 11400.20 of the Government Code.

BENEFITS OF THIS REGULATORY ACTION

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 and any regulations that implement said Code. It is a way to adjudicate specified offenses in a timely and cost-effective 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. This proposal is necessary to reorganize and update

existing informal hearing regulations in accordance with Food and Agricultural Code section 407 and section 11400.20 of the Government Code. It would only affect persons or businesses who have allegedly violated specified provisions of the Food and Agricultural Code and any regulations implementing said Code.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

This proposal does not duplicate or conflict with federal regulations. Federal violations would be addressed by the federal authorities responsible for enforcement. Such enforcement could be administrative, civil or criminal, depending upon the statutory authority of the program. Federal authorities would pursue such actions independent of the Department.

ECONOMIC IMPACT ASSESSMENT

Business Impact

- The Department has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states by making it more costly to produce goods or services.
- It will not create or eliminate jobs or occupations.
- The proposal does not affect the creation of new businesses or the elimination of existing businesses within the State of California, and does not affect the expansion of businesses currently doing business within the State of California.
- This proposal does not impact multiple industries.
- The proposal does not directly impact human health, worker safety, or the State's environment. This regulatory proposal will provide clarity to the public as to the statutes that are included in the informal hearing process and any regulations implementing those statutes that would be reasonable to adjudicate in a timely and cost-effective manner which would benefit both the Department and the person who is contesting an adverse determination issued by the Department.

The above determinations are based on the fact this regulatory proposal only affects persons who are found, after investigation and the evidence presented, to be in violation of specified statutes and regulations relating to animal health and food safety. It pertains to violations of specified sections of the Food and Agricultural Code that can be adjudicated internally by the Department via its informal hearing process. This proposal is necessary to reorganize and update existing informal hearing regulations in accordance with Food and Agricultural Code section 407 and section 11400.20 of the Government Code.

Economic Impact Assessment Conclusion

The Department has made an initial determination that the proposed regulatory action will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. The proposal does not affect the creation of new businesses or the elimination of existing businesses within the

State of California, and does not affect the expansion of businesses currently doing business within the State of California. The proposed regulation does not directly impact human health, worker safety, and the environment. It provides clarity to the public as to the statutes that are included in the informal hearing process and any regulations implementing those statutes that would be reasonable to adjudicate in a timely and cost-effective manner which would benefit both the Department and the person who is contesting an adverse determination issued by the Department. The essential intent of the informal hearing process is to provide an opportunity for effective resolution of the issues, which can be carried out in an expeditious and cost-effective manner in the absence of rigid procedures which might unduly impede or protract the hearing process. This proposal is necessary to reorganize and update existing informal hearing regulations in accordance with Food and Agricultural Code section 407 and section 11400.20 of the Government Code.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME CA Department of Food and Agriculture	CONTACT PERSON Nancy Grillo, Associate Analyst	EMAIL ADDRESS nancy.grillo@cdfa.ca.gov	TELEPHONE NUMBER 916-900-5033
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Informal Hearings			NOTICE FILE NUMBER Z2019-0820-01

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below): |

Updates Code citations; makes formatting & technical changes.

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.**If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- ☐ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☐ Between \$25 and \$50 million
- ☐ Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total
businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: ☐ Statewide
☐ Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with
other states by making it more costly to produce goods or services here? ☐ YES ☐ NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____
 - a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - d. Describe other economic costs that may occur: _____
2. If multiple industries are impacted, enter the share of total costs for each industry: _____
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____
4. Will this regulation directly impact housing costs? ☐ YES ☐ NO
 If YES, enter the annual dollar cost per housing unit: \$ _____
 Number of units: _____
5. Are there comparable Federal regulations? ☐ YES ☐ NO
 Explain the need for State regulation given the existence or absence of Federal regulations: _____
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____
2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?
 Explain: _____
3. What are the total statewide benefits from this regulation over its lifetime? \$ _____
4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?
- ☐
- YES
- ☐
- NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.**California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.*

1. Will the estimated costs of this regulation to California business enterprises
- exceed \$10 million**
- ?
- ☐
- YES
- ☐
- NO

*If YES, complete E2. and E3**If NO, skip to E4*

Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

☐ YES ☐ NO*If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.*

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT**A. FISCAL EFFECT ON LOCAL GOVERNMENT** *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided in _____
Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____
- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____
Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____
Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☐ 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:☐ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any State agency or program.☐ 4. Other. Explain _____**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____**FISCAL OFFICER SIGNATURE**

Nathan Johnson, Budget Officer

DATE

7/2/19

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY

Dr. Annette Jones, State Veterinarian & Director

DATE

8/12/19

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

DATE