CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

CALIFORNIA CODE OF REGULATIONS
TITLE 3. FOOD AND AGRICULTURE
DIVISION 4. PLANT INDUSTRY
CHAPTER 2. FIELD CROPS
SUBCHAPTER 2. COMMERCIAL FEED

INITIAL STATEMENT OF REASONS

The Department's Commercial Feed Regulatory Program (CFRP) is responsible for the enforcement of California state law and regulations pertaining to the manufacturing, distribution and labeling of commercial livestock feed while preventing adulterated feed from being consumed by livestock. Inspectors and investigators located throughout the state conduct routine feed sampling and inspections, quality assurance inspections of feed manufacturing facilities, respond to consumer complaints, and enforce the laws and regulations that govern the manufacturing, distribution, and labeling of commercial feed. The work of the CFRP helps to ensure a clean and wholesome supply of milk and meat, as well as providing assurance that the product received by the consumer is the quality and quantity purported by the manufacturer.

SECTIONS AFFECTED

California Code of Regulations Title 3 (3 CCR), Division 4, Chapter 2, Subchapter 2, Articles 1, 3, 4, 5, 7, 11, and 13 Sections 2675, 2683, 2684, 2685, 2686, 2697, 2701, 2717, 2750, 2751, 2765, 2766, 2767, 2768, and 2769.

PROBLEM STATEMENT

There is a lack of clarity regarding terminology used in the Food and Agricultural Code (FAC) versus the CCR, including the terms "bulk" versus "packaged," formula feed" versus "mixed feed," and "special mix" versus "custom formula feed," resulting in confusion for the regulated industry.

The Department provides subsamples to firms upon request with the condition the requestor provides the results of analysis to the Department. However, firms that request subsamples rarely follow through with providing results. Current law and regulation lack clarity on the consequences of failing to provide subsample results, which has resulted in the Department continuing to provide subsamples to firms who do not comply with providing results.

FAC and CCR lack clarity regarding which firms shall pay tonnage tax for bulk versus packaged commercial feed, as well as penalties for the submission of delinquent tonnage reports, tax payments, and operating with an expired commercial feed license. This has resulted in confusion for the regulated industry and limited the Department's ability to pursue firms with delinquent tonnage reports, tax payments and license renewals.

FAC and CCR are also unclear that it is the licensee's responsibility to notify the Department if any of the information on their license application changes after the license is issued; this has resulted in the Department maintaining outdated contact information for licensees.

FAC Section 15071.1 states the department shall levy an administrative penalty against a person who violates 3 CCR Division 4, Chapter 2, Subchapter 2, or the regulations adopted pursuant to it, of not more than $5,000 for the first violation and not less than $5,000 for each subsequent violation. However, FAC lacks clarity on how to determine the penalty amount. FAC Section 15071.1 authorizes the Department to consider the severity, intent, and repeat nature of violations in issuing penalties, and the nature of the violation, the seriousness of the effect of the violation upon the effectuation of the purposes and provisions of this chapter, and the impact of the penalty on the violator in determining the amount of the penalty assessed for violations. However, FAC does not define what these factors mean. FAC Section 15071.1 also authorizes the secretary to issue a notice of warning, in lieu of an administrative penalty, upon a finding that a violation is minor or unintentional. However, FAC does not define what makes a violation minor or unintentional.

BENEFITS

Clarifying the terminology used in FAC versus CCR will reduce confusion for the regulated industry.

Specifying consequences for failure to provide subsample results to the Department will ensure the Department receives results to help validate our laboratory methods and does not have to continue providing results to noncompliant requestors.

Clarifying which firms shall pay tonnage tax for bulk versus packaged commercial feed will reduce confusion for the regulated industry. Specifying penalties for delinquent tonnage reports, tax payments, and operating with an expired commercial feed license will enable to Department to pursue delinquent tonnage reports, tax payments, and license renewals.

Clarifying that it is the licensee's responsibility to notify the Department if any of the information on their license application changes after the license is issued will ensure the Department maintains current contact information for licensees.

Defining severity, intent, and repeat nature of violations will provide clarity in determining when to issue penalties. Defining nature of the violation, the seriousness of the effect of the violation upon the effectuation of the purposes and provisions of this chapter, and the impact of the penalty on the violator will provide clarity in determining the amount of the penalty assessed for violations.

SPECIFIC PURPOSE AND NECESSITY

The following paragraphs provide the specific purpose, rationale, and summaries of these proposed changes to the CCR related to commercial feed.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section 2675. Definitions.

Section 2675(l) is being adopted to define the term "bulk." This is necessary to define the term as used in the proposed revision to Section 2750(a) to better clarify who is required to pay tonnage tax. This definition is based on existing language in FAC Section 14517 for bulk fertilizer.

Section 2675(m) is being adopted to define the term "packaged." This is necessary to define the term as used in the proposed revision to Section 2750(a) to better clarify who is required to pay tonnage tax. This definition is based on existing language in FAC Section 14551 for packaged fertilizer.

Section 2675(n) is being adopted to define the term "mixed feed." The term mixed feed is used throughout the Commercial Feed Regulations (Subchapter 2 (commencing with Section 2675) of Chapter 2 of Division 4 of Title 3 of the California Code of Regulations) while the tern "formula feed" is used throughout the Commercial Feed Law (Chapter 6 (commencing with Section 14901) of Division 7 of the Food and Agricultural Code). This change is necessary to clarify that the terms are meant to be interchangeable and is a more straightforward solution than replacing every instance of the term "mixed feed" with "formula feed."

Section 2675(o) is being adopted to define the term “custom formula feed.” This is necessary for consistency with terminology now used by the commercial feed industry. Formulations previously known as “special mixes” are now developed by consulting nutritionists and are commonly referred to as custom formula feed. This is necessary to define the term as used in the proposed revision to Sections 2683-2686 and 2697.

ARTICLE 3. SPECIAL MIXES

The title of **Article 3** is being amended to change the term “special mixes” to “custom formula feed.” This is necessary for continuity with the newly defined term in proposed Section 2675(o).

The title of **Section 2683** is being amended to change the term “special mixes” to “custom formula feed.” This is necessary for continuity with the newly defined term in proposed Section 2675(o).

Section 2683. Special Mixes.

Section 2683(a), (a)(5), (b), and (c) are being amended to change the term “special mix” to “custom formula feed.” This is necessary for continuity with the newly defined term in proposed Section 2675(o).

Section 2684. Bulk Sale.

Section 2684 is being amended to add a subparagraph label and change the term “special mix” to “custom formula feed.” This is necessary for continuity and consistency with how other sections of the regulation are labeled.

Section 2685. Packaged Sale.

Section 2685 is being amended to add a subparagraph label and change the term “special mix” to “custom formula feed.” This is necessary for continuity and consistency with how other sections of the regulation are labeled.

Section 2686. Resale.

Section 2686 is being amended to add a subparagraph label, change the term “special mix” to “custom formula feed,” and change the term “Group 2” to “subchapter.” This is necessary for continuity, consistency with how other sections of the regulation are labeled, and to replace unclear terminology with the correct term that applies to these regulations (subchapter).

ARTICLE 4. LABELING AND USE REQUIREMENTS

Section 2697. Labeling for Special Purposes.

Section 2697(a) is being amended to change the term “special mix” to “custom formula feed.” This is necessary for continuity with the newly defined term in proposed Section 2675(o).

ARTICLE 5. COMMERCIAL FEEDS CONTAINING DRUGS AND SPECIAL PROVISIONS

Section 2701. Labeling of Feeds Containing Drugs.

Section 2701 is being amended to split the section into subparagraphs and relocate current Section 2766 to 2701(b). Current Section 2766 is currently the only provision listed under Article 13 Violations. The Department is proposing to relocate current Section 2766 to 2701(b) with the other provisions applicable to medicated feed. This is necessary for continuity and ease of reference.

ARTICLE 7. REPORTS OF INSPECTION AND ANALYSIS

Section 2717. Reports of Inspection and Analysis.

Section 2717(d) is being adopted to clarify that the Department shall provide subsamples to firms upon request with the condition that firms share the analytical results with the Department. The Department has historically provided subsamples to firms upon request; firms then have these subsamples analyzed by the laboratory of their choice and may use the results to contest the Department's laboratory analysis. Firms are asked to share subsample results with the Department but rarely follow through. The proposed revision will ensure the Department receives results when subsamples are provided. It costs the Department staff time, supplies, and postage to prepare and send subsamples. The Department is willing to do so if firms share their analytical results because they are valuable in helping our laboratories validate their methods. This language is based on 3 CCR Section 2314 which implements the same provision for fertilizer subsamples but extends the period to within 30 days of receipt and clarifies the Department reserves the right to refuse future subsample requests if results are not provided.

ARTICLE 11. INSPECTION TAX AND PLANT LICENSES

Section 2750. Tax Payment.

Section 2750(a) is being amended to further clarify who shall pay the inspection tonnage tax. This text was recently modified in OAL file Z2021-0615-07; however, additional clarification is needed. Current language only references the licensee named on the label; this is sufficient for packaged feed, but additional clarification is needed for bulk feed. This language is based on FAC Section 14611 regarding the mill assessment for fertilizing materials.

Section 2750(b)(1) is being adopted to specify late fees for the submission of delinquent tonnage reports. FAC Section 15062 authorizes the Department to set a fee as necessary to cover costs associated with delinquent tonnage reports. This section is being adopted to clarify this penalty shall be based on the amount of tonnage sold or distributed during the quarter.

Section 2750(b)(1)(A) is being adopted to specify that delinquent reports for zero tons of commercial feed sold or distributed during the quarter shall not be subject to a late fee. This is necessary because the Department does not believe it is appropriate to require firms to pay a late fee if they did not sell any commercial feed during the quarter. Approximately 61 percent of reports submitted in 2022 were for zero tons sold, which means a disproportionately large number of firms could be subject to a late fee even if they did not owe any tonnage tax.

Section 2750(b)(1)(B) is being adopted to specify that delinquent reports for less than 10,000 tons of commercial feed sold or distributed during the quarter shall be subject to a late fee of $100. This is necessary to discourage firms selling commercial feed from submitting delinquent reports and is consistent with the late fee assessed for delinquent license renewals. Approximately 35 percent of reports submitted in 2022 were for less

than 10,000 tons sold, which is a maximum payment of $1,200 at the current tax rate. The Department believes that a $100 late fee is high enough to encourage timely reporting for these firms while not being disproportionate to the amount of tax paid.

Section 2750(b)(1)(C) is being adopted to specify that delinquent reports for greater than or equal to 10,000 tons of commercial feed sold or distributed during the quarter shall be subject to a late fee of $500. This is necessary to discourage firms selling large quantities of commercial feed from submitting delinquent reports. Only four percent of reports submitted in 2022 were for greater than 10,000 tons sold; however, the maximum amount reported was nearly 800,000 tons. The Department believes that a $100 late fee is not sufficient to encourage timely reporting for this small number of high tonnage firms. The Department believes $500 is appropriate relative to the amount of tax paid while not exceeding the current commercial feed license fee.

Section 2750(b)(2) is being adopted to specify late fees for the submission of delinquent tonnage tax payments. FAC Section 15062 authorizes 15 percent penalty for past due payments, plus an additional 1 percent per month for payments more than 12 months delinquent. This language has been duplicated in proposed Section 2750(b)(2) for ease of reference for the regulated industry.

Section 2751. Licensing.

Section 2751(e) is being adopted to clarify a penalty of $100 shall be assessed for delinquent license renewals. FAC 15055 states that if a license is not renewed within one calendar month following its expiration, a penalty of one hundred dollars ($100) shall be added to the fee; this language has been duplicated in proposed Section 2751(e) for ease of reference for the regulated industry. This section also clarifies that licensees shall be required to pay all past due license fees, tonnage tax, and applicable penalties for each year the licensee conducted commercial feed business with an expired license before the Department will approve a license renewal. This is necessary to prevent licensees from operating with an expired license and then simply paying the $100 penalty when faced with enforcement action by the Department.

Section 2751(f) is being adopted to clarify that commercial feed licensees must notify the Department within thirty (30) calendar days if any of the information provided on the license application or renewal changes after the license is issued. The purpose of this change is to ensure current information is maintained for all licensees. This is necessary because many licensees submit their annual renewal without making crucial updates to their operations or contact information. This change is necessary to ensure the Department's licensee inventory is accurate and all licensees can be contacted in the event of an emergency or violation. This section also clarifies any notices issued by the Department will be sent to the address on record and shall be considered effective even if delivery is refused. This is necessary to ensure licensees cannot evade service by failing to provide updated information to the Department. This language is consistent with proposed Sections 2768(d) and (e) for hearing notices. The Department has

determined 30 calendar days to be an appropriate time period because it is consistent with other Department regulatory provisions and balances the Department's need for timely updates without inconveniencing licensees with an unnecessarily short deadline.

ARTICLE 13. VIOLATIONS AND ADMINISTRATIVE PENALTIES

Section 2765. Violations. [Repealed]

The title of **Section 2765** is being amended to remove the term "[Repealed]". This is necessary because provisions are being added to this section.

Section 2765(a) is being adopted to clarify that failure to comply with any provision of the Commercial Feed Law (Chapter 6 (commencing with Section 14901) of Division 7 of the Food and Agricultural Code) or Regulations (Subchapter 2 (commencing with Section 2675) of Chapter 2 of Division 4 of Title 3 of the California Code of Regulations) constitutes a violation that is subject to administrative penalty as authorized under FAC Section 15071.1. FAC Section 15082(a) states that it is unlawful for any person to manufacture or distribute any commercial feed without complying with the Commercial Feed Law and Regulations. However, the Commercial Feed Law and Regulations also identifies specific sections as violations, including FAC Sections 14991(b), 15042, and 15056 and 3 CCR Sections 2734(b), 2766, and 2774.5. This may incorrectly imply these are the only sections for which the Department will pursue enforcement action. Clarification is needed to inform the regulated public that, pursuant to FAC Section 15082(a), failure to comply with any provision of FAC or CCR is a violation subject to enforcement action, which may include administrative penalties. This section also clarifies that in applying FAC Section 15071.1, the provisions of Article 13 shall be used to determine the violation class and penalty amount.

Section 2765(b) is being adopted to clarify the criteria for violations that will be classified as major and subject to administrative penalty. FAC Section 15071.1(b) allows the Department to issue a notice of warning for any violation that is minor. The Department believes the majority of commercial feed violations are minor and, in most cases, compliance can be achieved without the need for administrative penalties. Because most violations are minor, the proposed regulations define what makes a violation "not minor" (i.e., major) and therefore subject to penalty. All violations that do not meet the defined criteria for major shall be considered minor and receive a notice of warning.

The Department protects the safety and quality of commercial feed by working with licensees to achieve compliance. Because penalties alone do not resolve the root cause of noncompliance, the Department's goal is to use administrative penalties as an enforcement tool when noncompliance crosses the line to noncooperation. The Department's goal is to have penalties available as a last resort when violations cannot be resolved through consultation, or when a violation threatens health and safety or impedes the Department's ability to enforce the law. The nature of commercial feed

violations is complex, with many contributing factors that must be considered beyond the code section violated. For these reasons, a traditional matrix assigning penalty amounts per code section violated is not appropriate or in alignment with Department goals. Evaluating violations based on the criteria defined below will allow the Department to consider all relevant circumstances rather than code section alone.

Section 2765(b)(1) is being adopted to specify that violations deemed by the secretary to require immediate action to protect public or animal health and safety shall be classified as major. This is necessary to ensure the Department can assess an administrative penalty for violations that threaten health and safety, even if the violation does not demonstrate intent or recurrence as specified in FAC Section 15071.1(a) and defined below.

Section 2765(b)(2) is being adopted to specify that violations involving movement of quarantine without prior approval or denial of access for the purpose of inspection, sampling, or enforcement shall be classified as major. FAC Section 15075(b) prohibits the movement of any lot of commercial feed seized and held by the Department pursuant to FAC Section 15073. Pursuant to FAC Section 15021, the Department shall have free access at reasonable times to all premises used in the manufacture, transportation, importation, distribution, storage, or feeding of any commercial feed, as well as access to any lot or package of commercial feed for the purpose of sampling. This is necessary because movement of quarantine and denial of access may compromise or destroy evidence of violative commercial feed and impacts the Department’s ability to enforce the commercial feed law and regulations.

Section 2765(b)(3) is being adopted to clarify that violations demonstrating severity, intent, and recurrence shall be classified as major. FAC Section 15071.1(a) says the Department may consider the severity, intent, and recurrence of violations in determining whether to issue a penalty. The Department's goal is to protect feed safety and quality by helping licensees achieve compliance. In most cases, compliance can be achieved without the need for administrative penalties. It is not the Department's intention to assess administrative penalties for immaterial, unintentional, or initial violations (with the exception of rare cases as defined in proposed Section 2765(b)(1) and (2)) because penalties do not resolve the root cause of noncompliance while placing an unnecessary strain on program resources.

Section 2765(b)(3)(A) is being adopted to clarify that severity is demonstrated by the seriousness of the violation and the degree of noncompliance. Violations demonstrating severity may include, but are not limited to, risks to public or animal health and safety; involvement of drugs, food additives, harmful substances, unapproved ingredients, or any other substance in an amount specified as being unsafe; risk of consumer or competitive harm; or non-cooperation of the violator.

The phrase, "may include, but are not limited to" is necessary to ensure that any circumstances the Department has not yet identified may also be considered to

demonstrate severity. This is also necessary to clarify that a violation is not required to demonstrate all circumstances listed to be considered severe.

Pursuant to FAC Section 14901(a), the Department shall work to ensure a clean and wholesome supply of meat, milk, and eggs for the benefit of the consumer. For this reason, the Department believes it is necessary to consider feed safety in determining whether a violation demonstrates severity. The phrase, "risks to public or animal health and safety" refers to violations that could have caused animals or humans to become sick or die. The phrase, "involvement of drugs, food additives, harmful substances, unapproved ingredients" refers to high risk ingredients that require additional controls, or ingredients that are not approved for use in animal feed. The phrase, "any other substance in an amount specified as being unsafe" refers to ingredients that may not be considered high risk but are present or absent to an unsafe degree. When laboratory analysis determines the amount of an ingredient in a product is more or less than the amount stated on the label, it is known as a guarantee violation. The vast majority of guarantee violations do not present a risk to animal or human health; however, some guarantee violations can present a risk depending on the ingredient, concentration, and intended species. For example, excess sodium would not be an issue for many species but may be lethal in poultry feed, depending upon the concentration.

Pursuant to FAC Section 14901(b), the Department shall work to provide assurance that all commercial feed purchased is of the quality and quantity represented by the manufacturer. For this reason, the Department believes it is necessary to also consider feed quality when determining whether a violation demonstrates severity. The phrase, "risk of consumer harm" refers to violations that could have caused consumers to be defrauded by overpaying for inferior quality product. The phrase, "risk of competitive harm" refers to violations that could have limited the ability of other companies to compete in the marketplace by selling mislabeled product at an inappropriate price point.

The consideration of risk posed to both feed safety and feed quality is necessary to allow the Department to take action to prevent harm from being caused (i.e., preventing risk from becoming result).

The phrase, "non-cooperation of the violator" means the extent to which the violator has refused to cooperate with the Department. Violations that do not present a risk to feed safety or feed quality may demonstrate severity if the violator refuses to cooperate with the Department to achieve compliance. Evidence of non-cooperation may include, but is not limited to, failure to accept responsibility for assuring compliance, failure to cease noncompliant actions despite awareness of requirements, failure to implement requested corrections, failure to participate in requested meetings, or failure to provide requested records.

Section 2765(b)(3)(B) is being adopted to clarify that intent is demonstrated by the degree to which the violator failed to prevent noncompliance. Violations demonstrating

intent may include, but are not limited to, events that did not occur accidentally, involuntarily, or in a manner beyond the control of the violator; voluntary or knowing concealment, misrepresentation, or fraud; or negligence in attempting to prevent a violation.

The phrase, "may include, but are not limited to" is necessary to ensure that any circumstances the Department has not yet identified may also be considered to demonstrate intent. This is also necessary to clarify that a violation is not required to demonstrate all circumstances listed to be considered intentional.

The phrase, "events that did not occur accidentally, involuntarily, or in a manner beyond the control of the violator" refers to violations that were caused voluntarily or intentionally as a result of deliberate actions.

The phrase, "voluntary or knowing concealment, misrepresentation, or fraud" refers to the obstruction or distortion of facts by the violator, and/or deceitful actions to gain profit or unfair advantage. Refusing to make production records or other evidence available during the investigation of a violation would be considered knowing concealment. Providing false or conflicting records or statements during the investigation of a violation would be considered misrepresentation. Refusing to correct a violation that financially benefits the violator would be considered fraud. These actions demonstrate intent because they are deliberate acts by the violator.

The phrase, "negligence in attempting to prevent a violation" refers to violations caused by the inaction of the violator. Examples may include, but are not limited to, failure to implement corrections requested by the Department, failure to develop standard operating procedures or quality assurance plans, and failure to maintain documentation showing procedures and plans are followed. Except in rare cases as defined in proposed Section 2765(c)(2) and (3), the Department works with violators to achieve compliance using written warnings, violation investigations, focused sampling, and compliance meetings. Inaction demonstrates intent because the violator has deliberately failed to make corrections requested by the Department.

Failure to create and maintain production records may also constitute negligence in attempting to prevent a violation. Pursuant to 3 CCR Section 2694(q), products must have adequate identification to facilitate tracing complete manufacturing and distribution history; pursuant to FAC Section 14995, licensees may be required to submit information and records pertinent to product claims or guarantees to the Department. It is the responsibility of licensees to create and maintain production records and to make these records available to the Department; the types of records maintained may vary depending on each licensee's operations but must be sufficient to support a violation traceback investigation. Failure to maintain production records constitutes negligence in attempting to prevent a violation because it results in insufficient information to determine the cause of a violation to prevent it from happening again. This is another

example of inaction demonstrating intent because the violator has deliberately failed to make corrections requested by the Department.

Section 2765(b)(3)(C) is being adopted to clarify that recurrence is demonstrated by repeated violations. Violations demonstrating recurrence may include, but are not limited to, multiple violations of the same code section within twelve months. The phrase, "may include, but are not limited to" is necessary to ensure that any circumstances the Department has not yet identified may also be considered to demonstrate recurrence. The phrase, "multiple violations of the same code section within twelve months" refers to subsequent violations of one section of the Commercial Feed Law (Chapter 6 (commencing with Section 14901) of Division 7 of the Food and Agricultural Code) or Regulations (Subchapter 2 (commencing with Section 2675) of Chapter 2 of Division 4 of Title 3 of the California Code of Regulations) that occur within 12 months from the date a notice of warning was issued. This is necessary to ensure penalties are only used as an enforcement tool for recurrent violations that have not been resolved through consultation, with the exception of rare cases as defined in proposed Section 2765(b)(1) and (2).

Section 2765(c) is being adopted to specify that violations that do not meet the criteria specified in subparagraph (b) shall be classified as minor and receive a notice of warning in lieu of an administrative penalty. FAC Section 15071.1(b) allows the Department to issue a notice of warning for any violation that is minor. This is necessary to ensure that immaterial, unintentional, or initial violations that do not present an immediate risk to public or animal health and safety or involve movement of quarantine or denial of access can be resolved through consultation. The Department's goal is to protect feed safety and quality by helping licensees achieve compliance. In most cases, compliance can be achieved without the need for administrative penalties. This will ensure the Department can work to resolve the root cause of noncompliance rather than issuing penalties for minor violations and placing an unnecessary strain on program resources.

Section 2766. Medicated Feed.

The title of **Section 2766** is being amended to replace “medicated feed” with “administrative penalties.” This is necessary because the provision applicable to medicated feed is being relocated to Section 2701 and this section will now be applicable to administrative penalties.

Section 2766 is being amended to move existing language regarding unlawful use of medicated feed to Section 2701 with the other provisions applicable to medicated feed. This is necessary for continuity and ease of reference.

Section 2766(a) is being adopted to clarify that violations classified as major shall be evaluated based upon a defined set of factors to determine the administrative penalty amount. FAC Section 15071.1(a) says the Department shall consider the nature of the

violation, the effect of the violation upon the effectuation of the purposes and provisions of this chapter, and the impact of the penalty on the violator in deciding administrative penalty amounts. The proposed adoption is necessary to define what nature of the violation, effect of the violation upon the effectuation of the purposes and provisions of this chapter, and impact of the penalty on the violator mean with respect to violations. The proposed revision also clarifies that the total administrative penalty amount shall be calculated by adding together the applicable amount based on consideration of the nature of the violation, effect of the violation, and impact of the penalty on the violator.

Section 2766(a)(1) is being adopted to define nature of the violation as the potential risk posed and the actions of the violator. Violations that pose a risk to public or animal health and safety; involve drugs, food additives, harmful substances, unapproved ingredients, or any other substance in an amount specified as being unsafe; involve voluntary or knowing concealment, misrepresentation, or fraud; or involve movement of quarantine or denial of access shall have $500 added toward the total penalty amount. This is necessary to ensure violations that are high risk, fraudulent, or impact the Department's ability to enforce the commercial feed law and regulations are assessed a higher penalty to discourage subsequent violations and prevent harm from being caused (i.e., preventing risk from becoming result). Violations that do not meet the criteria specified in this subparagraph shall have $250 added toward the total penalty amount.

Section 2766(a)(2) is being adopted to define effect of the violation upon the effectuation of the purposes and provisions of this chapter as how the violation impacted consumers. Violations that negatively impacted public or animal health and safety, defrauded consumers, or limited the ability of other companies to compete in the marketplace shall have $1,000 added toward the total penalty amount. This is necessary to consider the actual impact resulting from the violation and ensure violations that caused people or animals to become sick or die, or caused economic harm are assessed a higher penalty. Violations that do not meet the criteria specified in this subparagraph shall have $500 added toward the total penalty amount.

Section 2766(a)(3) is being adopted to define impact of the penalty on the violator as the deterrent effect on future violations and deterrent effect on noncooperation. Violators that refuse to cooperate with the Department or that have been assessed an administrative penalty within the previous 36 months shall have $1,000 added toward the total penalty amount. This is necessary to ensure the penalty has a deterrent effect on future violations, as specified in FAC Section 15071.1(a). Violations that do not meet the criteria specified in this subparagraph shall have $500 added toward the total penalty amount.

Section 2766(b) is being adopted to specify that subsequent major violations of the same section within twelve months from the date an administrative penalty was assessed shall be subject to an administrative penalty in the amount of $5,000. This is necessary for consistency with FAC Section 15071.1(a). The Department determined

$5,000 to be an appropriate amount because it is the minimum possible amount allowed by statute. If $5,000 is not sufficient to induce compliance, the Department can revoke the violator's commercial feed license pursuant to FAC Section 15071 or initiate civil prosecution pursuant to FAC Section 15091.

Section 2766(c) is being adopted to clarify that the Department is entitled to reimbursement of investigative costs pursuant to FAC Section 15071.3 and that these costs shall be added to the administrative penalty amount determined by subparagraph (a) or (b).

Section 2767 is being adopted to specify filing deadlines and procedures. This is standard Department language and is necessary for consistency.

Section 2767(a) is being adopted to specify how a respondent may contest a notice of adverse determination including informing that they have 30 calendar days from the date of the notice of proposed action and that the appeal must be in writing. It further provides the name of the office and the office address where appeals must be sent to request an informal hearing. This is necessary to make the respondent aware of the timeframe in which they can file an appeal, that the appeal must be in writing, and what office and address to send a request for an appeal to. Section 2767(a) is also being adopted 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.

Section 2767(b) is being adopted to specify that a respondent who fails to request a hearing within the specified deadline waives their right to contest the notice of adverse determination. This is necessary to ensure respondents are aware that they cannot contest a notice of adverse determination if they do not request a hearing within the timeframe specified in Section 2767(a).

Section 2767(c) is being adopted to specify that the notice of adverse determination shall remain in effect pending the outcome of the informal hearing. This is necessary to prevent violative commercial feed product from continuing to be sold when a hearing is requested.

Section 2768 is being adopted to specify hearing scheduling and notification requirements. This is standard Department language and is necessary for consistency.

Section 2768(a) is being adopted to specify that informal hearings shall be scheduled within 30 days from the receipt of a written request from the respondent. This is necessary to inform respondents of the scheduling timeframe for informal hearings.

Section 2768(b) is being adopted to specify that 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. This is necessary to ensure respondents are aware of the procedures the Department must use to schedule formal hearings.

Section 2768(c) is being adopted to specify the Department shall provide a notice of the informal hearing to the respondent. This is standard Department language included for consistency and is necessary to ensure due process.

Section 2768(c)(1), (2), (3), and (4) are being adopted to specify the Department's notice of the informal hearing shall contain the date, location, and time of the informal hearing; Departmental contact information including applicable telephone and facsimile numbers; subject matter of the adverse determination; and any other information or documentation relative to the adverse determination. This is necessary to ensure respondents are aware of the information the Department must include on the hearing notice.

Section 2768(d) is being adopted to specify that the Department shall send a notice of informal hearing to the address of the person charged, as provided by any license or registration issued by the Department. This is necessary to inform respondents where the notice of informal hearing will be sent and to clarify that the address associated with their commercial feed license shall be the address of record.

Section 2768(e) is being adopted to specify that a notice of informal hearing shall be considered effective, even if refused or not accepted at the address specified in Section 2768(d). This is necessary to ensure that respondents cannot evade service by failing to update the contact information provided to the Department as required by proposed Section 2761(f).

Section 2769 is being adopted to clarify hearing procedures. This is standard Department language and is necessary for consistency.

Section 2769(a) is being adopted to specify that hearings shall be presided over and conducted by a Hearing Officer designated by the secretary. This is necessary to inform respondents how the Hearing Officer shall be designated.

Section 2769(b) is being adopted to specify that the standard of proof shall be the preponderance of the evidence. This is necessary to inform respondents which standard of proof shall be applied to hearings.

Section 2769(c) is being adopted to specify that hearings may be conducted by telephone at the discretion of the Hearing Officer. This is necessary to inform

respondents that hearings are not required to be held in person and the format of the hearing shall be decided by the Hearing Officer.

Section 2769(d) is being adopted to specify that the decision shall be in writing and may be handwritten. This is necessary to inform respondents how decisions shall be issued.

Section 2769(e) is being adopted to specify that the decision shall be issued within 30 days and may be issued orally at the conclusion of the hearing subject to written confirmation. This is necessary to inform respondents that oral decisions are subject to written confirmation and to specify the timeframe for issuing written decisions.

Section 2769(f) is being adopted to specify that the written decision shall be served on the respondent either by personal service, facsimile transmission, or email. This is necessary to inform respondents of the acceptable methods that may be used by the Department to issue written hearing decisions.

Section 2769(g) is being adopted to specify that the decision shall be effective immediately upon first articulation, is final, and is not appealable to the secretary or any other officer of the Department. This is necessary to inform respondents that they cannot appeal the Hearing Officer's decision to the Department.

Section 2769(h) is being adopted to specify that the decision may be challenged by filing a writ of administrative mandamus pursuant to Code of Civil Procedure Section 1094.5. This is necessary to inform respondents how they can challenge a Hearing Officer's decision.

Section 2769(i) is being adopted to specify that hearings shall be recorded. This is necessary to inform respondents that they shall be recorded while participating in a hearing.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR OTHER DOCUMENTS RELIED UPON

None.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

California Government Code Section 11346.3 requires state agencies to assess the potential economic impacts on California businesses and individuals when proposing to adopt or amend any administrative regulation. The Department has initially determined that the proposed regulatory action will not have an economic impact on any compliant business. The majority of the proposed regulatory actions are technical in nature and will provide clarity to the regulated industry. These clarifying changes will not have an

economic or fiscal impact on the commercial feed industry, related businesses, or the general public.

It is expected that the commercial feed industry will comply with all applicable laws and regulations; for this reason, the introduction of administrative penalties will not have an economic impact on the industry. Firms with violations that require immediate action to protect public or animal health and safety; involve movement of quarantine without prior approval or denial of access for the purpose of inspection, sampling, or enforcement; or are severe, intentional, and recurrent may have an economic impact resulting from administrative penalty. However, firms assessed a penalty will still have the right to due process through a hearing. It is critical to address this proposed regulatory action would not financially impact any compliant firm.

The Department concludes that these regulations will not:

(1) Create or eliminate jobs within California.

(2) Create new businesses or eliminate existing businesses within the State of California.

(3) Affect the expansion of businesses currently doing business within the State of California.

(4) Affect the health and welfare of California residents, worker safety, and the state's environment.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Sections 2675, 2683, 2684, 2685, 2686, 2697, 2701, 2717, 2750(a), and 2751(f) have no economic impact as they are definitions to help explain and clarify terms, as well as amendments that are technical in nature.

Section 2750(b)(1) has no economic impact on firms that are compliant with the FAC and CCR. It is expected that the commercial feed industry will comply with all applicable laws and regulations. Firms that submit delinquent tonnage tax reports and payments must pay the specified late fees; the amount will vary depending on the number of tons reported, the amount of tonnage tax owed, and the amount of time the payment has been delinquent. However, this proposed regulatory action would not financially impact any compliant firm.

Section 2751(e) has no economic impact on firms that are compliant with the FAC and CCR. It is expected that the commercial feed industry will comply with all applicable laws and regulations. Firms that fail to renew their commercial feed license within one calendar month following its expiration will have one hundred dollars ($100) added to

the license fee. In addition, firms shall be required to pay past due license fees, tonnage tax, and applicable penalties for each year the licensee conducted commercial feed business with an expired license. The amount will vary depending on the amount of tonnage tax owed, the amount of time the payment has been delinquent, and the number of years the licensee conducted commercial feed business with an expired license. However, this proposed regulatory action would not financially impact any compliant firm.

Sections 2765 and 2766 have no economic impact on firms that are compliant with the FAC and CCR. It is expected that the commercial feed industry will comply with all applicable laws and regulations. Firms with violations that require immediate action to protect public or animal health and safety; involve movement of quarantine without prior approval or denial of access for the purpose of inspection, sampling, or enforcement; or are severe, intentional, and recurrent will be assessed an administrative penalty of $1,250-$2,500 for an initial penalty and $5,000 for a subsequent penalty. However, firms assessed a penalty will still have the right to due process through a hearing. This proposed regulatory action would not financially impact any compliant firm.

Sections 2766, 2767, and 2768 have no economic impact as they are technical in nature relating to filing deadlines and procedures to request a hearing, hearing schedule and notification, and hearing procedures.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

Pursuant to Government Code Section 11346.9(a)(4), the Department has determined that no alternative considered by the agency would be more effective and less burdensome or costly to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative is considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Pursuant to Government Code section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting forth the Department's reasons for rejecting any proposed alternatives.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations do not duplicate or conflict with federal regulations.