

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
(Notice Published AUGUST 11, 2023)**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to adopt and amend regulations as described below within the 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.

PUBLIC HEARING

Any interested person or his or her duly authorized representative may request a public hearing on this proposed action by submitting a written request no later than 15 days before the close of the written comment period noted below.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department by mail or email. The written comment period will close on September 25, 2023. The Department will only consider comments received by that date. Submit written comments to:

Erika Lewis, Research Data Specialist II
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
1220 N Street
Sacramento, CA 95814
Email: feed_lvstk@cdfa.ca.gov

Following the written comment period or public hearing, if one is requested, and after considering all comments, objections, and recommendations regarding the proposed actions, the Department, at its own motion or at the request of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

The Department is proposing to adopt changes to 3 CCR, Division 4, Chapter 2, Subchapter 2 pursuant to the authority vested by Sections 407, 14902, 15071, 15071.1, and 15071.4 of the Food and Agricultural Code (FAC), and Section 11400.20 of the Government Code (GOV) to adopt, implement, and enforce these regulations. The

proposed regulations will implement, interpret, or make specific FAC Sections 14902, 14903, 14925, 14930, 14938, 14991, 14992, 14993, 14994, 15011, 15021, 15041, 15042, 15051, 15053, 15055, 15061, 15062, 15071, 15071.1, 15071.3, 15071.4, 15072, 15073, 15076, 15082, and 15092, and GOV Sections 11425.50, 11445.10, 11445.30, 11501, 11502, and 11503.

INFORMATIVE DIGEST / POLICY STATEMENT

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 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.

CFRP is proposing the adoptions and revisions to 3 CCR, Division 4, Chapter 2, Subchapter 2 described below.

Section 2675(l) is being adopted to define the term "bulk."

Section 2675(m) is being adopted to define the term "packaged."

Section 2675(n) is being adopted to define the term "mixed feed."

Section 2675(o) is being adopted to define the term "custom formula feed."

Article 3 and Section 2683 titles are being amended to change the term "special mixes" to "custom formula feed."

Section 2684, 2685, 2686, and 2697 are being amended to add a subparagraph label and change the term "special mix" to "custom formula feed."

Section 2701 is being amended to split the section into subparagraphs and relocate current Section 2766 to 2701(b).

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 and clarifies the Department reserves the right to refuse future subsample requests if results are not provided.

Section 2750(a) is being amended to further clarify that the inspection tonnage tax for packaged commercial feed shall be paid by the licensee named on the label and the

inspection tonnage tax for bulk commercial feed shall be paid by the last licensee selling or distributing the commercial feed to a consumer buyer

Section 2750(b)(1) is being adopted to specify the late fee for delinquent tonnage reports shall be based on the amount of tonnage sold or distributed during the quarter. Reports for zero tons sold or distributed shall not be subject to a late fee, less than 10,000 tons sold or distributed shall be subject to a late fee of \$100, and greater than or equal to 10,000 tons sold or distributed shall be subject to a late fee of \$500.

Section 2750(b)(2) is being adopted to specify the late fee for delinquent tonnage payments is 15 percent of the past due amount plus an additional 1 percent per month for payments more than 12 months delinquent.

Section 2751(e) is being adopted to clarify a penalty of \$100 shall be assessed for delinquent license renewals and 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.

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 and 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.

Section 2765(a) is being adopted to clarify that failure to comply with any provision of Chapter 6 (commencing with Section 14901) of Division 7 of the Food and Agricultural Code or 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 and 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.

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.

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.

Section 2765(b)(3) is being adopted to clarify that violations demonstrating severity, intent, and recurrence shall be classified as major.

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.

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.

Section 2765(b)(3)(C) is being adopted to clarify that recurrence is demonstrated by repeated violations.

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.

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.

Section 2766(a) is being adopted to clarify that violations classified as major shall be evaluated based upon 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 to determine the administrative penalty amount and that the total administrative penalty amount shall be calculated by adding together the applicable amount based on consideration of the defined factors.

Section 2766(a)(1) is being adopted to clarify that nature of the violation means the potential risk posed and the actions of the violator, as well as specify the criteria for high (\$500) and low (\$250) penalty amounts.

Section 2766(a)(2) is being adopted to clarify that the effect of the violation upon the effectuation of the purposes and provisions of this chapter means how the violation impacted consumers, as well as specify the criteria for high (\$1,000) and low (\$500) penalty amounts.

Section 2766(a)(3) is being adopted to clarify that the impact of the penalty on the violator means the deterrent effect on future violations and deterrent effect on noncooperation, as well as specify criteria for high (\$1,000) and low (\$500) penalty amounts.

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.

Section 2766(c) is being adopted to clarify that the Department is entitled to reimbursement of investigative costs, which 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 to request a hearing to contest a penalty.

Section 2768 is being adopted to specify hearing scheduling and notification requirements.

Section 2769 is being adopted to clarify hearing procedures.

Anticipated Benefits of the Proposed Regulations:

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 late fees 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.

Determination of Inconsistency/Incompatibility with Existing Regulations:

The Department evaluated the proposed regulations and made several determinations required by Government Code Section 11346.5(a)(3)(A) to 11346.5(a)(3)(D). The Department determined that there are no existing state laws or regulations related directly to the proposed action and the effect of the proposed action; the proposed regulations are not inconsistent or incompatible with existing state regulations.

PLAIN ENGLISH REQUIREMENT

The Department prepared the proposed regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2, subdivision (a)(1). The proposed regulations are written to be easily understood by the individuals that will use them.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed upon local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

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

Significant effect on housing costs: None.

RESULTS OF THE 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 a broad economic or fiscal impact to the commercial feed industry. The proposed regulations will not:

- (1) Require any additional ongoing expenses for compliant individuals or businesses
- (2) Create or eliminate jobs within the state
- (3) Create new businesses or eliminate existing businesses within the State of California
- (4) Affect the expansion of businesses currently operating within the State of California

- (5) The proposed regulations will benefit the health and welfare of California residents utilizing feed for their livestock by adding clarity to the regulated industry terminology, compliance expectations and subsequent consequences for industry licensees as it pertains to tonnage type, reporting, and payments; tax and licensure responsibilities, providing subsampling results, and defining severity of consequences by violation type.
- (6) The proposed regulations are not expected to affect worker safety, or the state's environment

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will affect small businesses but will not have an economic impact on those businesses. The proposed actions do not involve any area that would increase fees or result in any increased costs to these businesses. The only small businesses potentially affected by the proposed regulations would be non-compliant firms that are delinquent in submitting tonnage reports, payments, or license renewals, or receive violations for violating laws and/or regulations, thereby receiving penalties.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative it has 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. The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Written comments and inquiries concerning the substance of the proposed regulation, initial statement of reasons, proposed actions, location of the rulemaking file, or a request for a public hearing should be directed to:

Erika Lewis, Research Data Specialist II
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
1220 N Street
Sacramento, CA 95814
Email: feed_lvstk@cdfa.ca.gov
Phone: 916-900-5022

The backup contact person for these inquiries is:

Ashley James, Research Data Analyst II
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
1220 N Street
Sacramento, CA 95814
Email: feed_lvstk@cdfa.ca.gov
Phone: 916-900-5022

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. A copy of this notice, the proposed regulation text, and the initial statement of reasons may be obtained by contacting Erika Lewis at the address provided in the “Contact Persons” section.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the notice of proposed action, the initial statement of reasons, and the proposed regulation text in underline and strikethrough can be accessed through the Department’s website: <https://www.cdfa.ca.gov/is/Regulations.html>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received during the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which differ, but are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days prior to amendment. Please send requests for copies of any modified regulations to the attention of Erika Lewis at the address provided in the “Contact Persons” section. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the final statement of reasons may be obtained by contacting Erika Lewis at the address provided in the “Contact Persons” section.