

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 April 30, 2024)**

NOTICE OF A 15-DAY COMMENT PERIOD

NOTICE IS HEREBY GIVEN that pursuant to the requirements of Government Code Section 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Food and Agriculture (Department), is providing notice of changes made to the action described in the Informative Digest published in the California Regulatory Notice Register on August 11, 2023 [Notice File No. Z2023-0731-03, Register 2023, No. 32-Z] relating to administrative penalties for violations of the commercial feed law.

The Department is proposing to modify the originally proposed text for Sections 2675, 2701, 2717, 2733, 2750, 2751, 2766, 2767, 2768, and 2769 of Title 3, Division 4, Chapter 2, Subchapter 2, Articles 1, 5, 7, 9, 11, and 13 of the CCR. Only those portions of the originally proposed text that are indicated by double underline or ~~double strikethrough~~ have been modified. The remainder of the text remains the same as the originally proposed text.

The 45-day public comment period for the originally proposed text for this proposal began August 11, 2023, and ended on September 25, 2023. The Department is now publishing a notice of a 15-day comment period on the modified proposed text. The purpose is to allow interested persons time to review the modifications to the proposed text and submit written comments. The 15-day public comment period begins **April 30, 2024, and ends on May 15, 2024.**

Please note: Any written comments are to be restricted to the recent modifications as indicated in double underline or ~~double strikethrough~~ within the enclosed language. The Department is not required to respond to comments received in response to this notice on other aspects of the proposed regulation.

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 and 14902 of the Food and Agricultural Code (FAC) to adopt, implement, and enforce these regulations. The proposed regulations will implement, interpret, or make specific FAC Sections 14902, 14903, 14925, 14930, 14938, 14991, 15011, 15011, 15021, 15031, 15042, 15051, 15053, 15055, 15071, 15071.1, 15071.3, 15071.4, 15072, 15073, 15076, 15082, and

15092, and Government Code Sections 11425.50, 11445.10, 11445.30, 11501, 11502, and 11503.

SECTIONS AFFECTED

California Code of Regulations (CCR) Title 3, Division 4, Chapter 2, Subchapter 2, Articles 1, 5, 7, 9, 11, and 13, Sections 2675, 2701, 2717, 2733, 2750, 2751, 2766, 2767, 2768, and 2769.

ADDITIONAL INFORMATION

The Department wishes to clarify that the proposed late fees specified in Section 2750(b)(1) were developed to cover administrative costs associated with pursuing delinquent tonnage reports, which are proportional to the amount of tonnage sold or distributed by a firm. The Department spends more time and resources pursuing delinquent reports for firms that sell a high volume of commercial feed because these firms owe a greater amount of tonnage tax to the Department. These firms have a greater volume of commercial feed in the channels of trade, so it is vital for the Department to collect tonnage tax from these firms to support the inspection and sampling activities that ensure consumer safety and quality.

Section 2750(b)(1)(A) specifies that delinquent reports for zero tons of commercial feed sold or distributed during the quarter shall be subject to a late fee of \$100. The Department has determined this amount to be adequate to cover the administrative costs associated with pursuing delinquent reports for this quantity of tonnage. The associated administrative costs are estimated to be approximately four hours of staff time for an Office Technician at approximately \$25 per hour. Activities include pulling reports from the tonnage reporting system, phone calls, email correspondence, and assistance with report submission.

Section 2750(b)(1)(B) specifies 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 \$200. The Department has determined this amount to be adequate to cover the administrative costs associated with pursuing delinquent reports for this quantity of tonnage. In addition to four hours of staff time for an Office Technician at approximately \$25 per hour as described above, associated administrative costs are estimated to also include approximately two hours of field staff time for an Environmental Scientist, Special Investigator, and/or Senior Environmental Scientist (Specialist) at approximately \$50 per hour. Activities include phone calls and email correspondence.

Section 2750(b)(1)(C) specifies 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. The Department has determined this amount to be adequate to cover the administrative costs associated with pursuing delinquent reports for this quantity of

tonnage. In addition to four hours of staff time for an Office Technician at approximately \$25 per hour as described above, associated administrative costs are estimated to also include approximately eight hours of field staff time for an Environmental Scientist, Special Investigator, and/or Senior Environmental Scientist (Specialist) at approximately \$50 per hour. Activities include phone calls, email correspondence, and investigative/enforcement activities such as physical visits to the licensed location.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments regarding the newly proposed changes to the Department by mail or email. The written comment period will close on **May 15, 2024**. The Department will only consider comments received by that date.

Submit 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

All written comments received by **May 15, 2024** which pertain to the newly indicated changes will be reviewed and responded to by the Department in the Final Statement of Reasons as part of the compilation of the rulemaking file. Please limit your comments to the newly proposed modifications to the text.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of materials regarding this proposal can be accessed through the Department's website: <https://www.cdfa.ca.gov/is/Regulations.html>.

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MODIFIED REGULATION TEXT

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

§ 2675. Definitions.

Unless otherwise apparent from the context, the following definitions apply to this ~~Group~~
subchapter:

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(d) "Official name" of ingredients means those defined in Article 14 of this ~~Group 2~~
subchapter, provided that in the absence of a definition, the common English name shall be used.

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(l) "Bulk" means commercial feed distributed in nonpackaged form or in a container containing more than 50 kilograms or 110 pounds.

(m) "Packaged" means commercial feed distributed in packaged form or in a container containing equal to or less than 50 kilograms or 110 pounds.

(n) "Mixed feed" has the same meaning as formula feed as defined under Food and Agricultural Code Section 14930.

(o) "Custom formula feed" means:

(1) Special mix as defined under Food and Agricultural Code Section 14938, or

(2) Any commercial feed which is manufactured, processed, or mixed pursuant to specifications which are agreed upon by the purchaser's nutritionist and the manufacturer.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14925, 14930, 14938, 14991, 14992(e), 15011 and 15042, Food and Agricultural Code.

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ARTICLE 3. ~~SPECIAL MIXES~~ CUSTOM FORMULA FEED

§2683. Special Mixes Custom Formula Feed.

(a) On or before the date of the first delivery of a load, each person that manufactures or prepares a ~~special mix~~ custom formula feed for another person shall furnish to the purchaser either a label that meets the conditions of section 2694 or the following information on an invoice or other document furnished to the purchaser:

...

(5) A ~~special mix~~ custom formula feed that contains a drug must be accompanied by all information required in section 2701 with each delivery.

(b) The shipping document that accompanies each subsequent delivery shall provide a label which meets the terms of section 2694, or shall plainly and prominently show the original ~~special mix~~ custom formula feed in the following manner: "Ingredient listings and guarantee of analysis accompanying formula number () applies to this delivery." The shipping document must also contain the name, address and telephone number of the purchaser. Whenever any change is made in the composition of the ~~special mix~~ custom formula feed the purchaser shall be supplied with a newly numbered formula showing the required information on or before the date of the first delivery. Upon request, the manufacturer must provide the above documentation as required by director.

(c) The seller shall retain a copy of each formula for any custom formula feed for one year subject to inspection by the director. No two formulas issued in one calendar year shall bear the same number.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14992(e), 14993 and 14994, Food and Agricultural Code.

§2684. Bulk Sale.

(a) The net weight of any ~~special mix~~ custom formula feed which is sold in bulk shall be affirmed by a weighmaster's certificate of weight and measure.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Section 14993, Food and Agricultural Code.

§2685. Packaged Sale.

(a) If packaged, each package of a ~~special mix~~ custom formula feed shall have attached to it a label with all the information required in Section 2683.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14991, 14992 and 14993, Food and Agricultural Code.

§2686. Resale.

(a) It is unlawful to resell a ~~special mix~~ custom formula feed unless properly labeled to meet the requirements of this ~~Group 2~~ subchapter.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14991 and 14994, Food and Agricultural Code

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ARTICLE 4. LABELING AND USE REQUIREMENTS

§2697. Labeling for Special Purposes.

(a) Each delivery of commercial feed, other than a ~~special mix~~ custom formula feed, shall be accompanied by a label containing the information required by section 2694.

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Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14903, 14993, 15011 and 15041, Food and Agricultural Code.

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ARTICLE 5. COMMERCIAL FEEDS CONTAINING DRUGS AND SPECIAL PROVISIONS

§2701. Labeling of Medicated Feeds ~~Containing Drugs~~.

(a) Without exception, each delivery of ~~commercial~~ medicated feed ~~containing drugs~~ must be accompanied by a label, invoice or delivery document stating in a prominent manner:

- (a) (1) The name and quantity of each drug and active ingredient.
- (b) (2) The purpose of each drug and active ingredient.
- (c) (3) The term "MEDICATED" prominently displayed immediately above or below the name of the feed.
- (d) (4) Adequate directions for use.
- (e) (5) Warnings against use of the feed under contra-indicated conditions, including danger to the health of the animal, and warnings against use of the animal or its products for particular purposes when necessary.
- (f) (6) Withdrawal warnings where necessary to assure compliance with residue limitations imposed by regulation.

(g) (7) Each batch or production run of medicated feed shall be identified with its own individual batch or production run number, code, date or other suitable identification. Bulk feed shall have this information stated on the label, invoice or ~~shipping~~ delivery document. Sacked or packaged feed shall have the lot number applied to the label, sack or package. This identification shall be adequate to facilitate the tracing of the complete manufacturing and distribution history of the product.

(b) It is unlawful to use any medicated feed except in compliance with all directions on the tag or label, invoice or delivery document.

NOTE: Authority cited: Sections 407 and 14902, Food and Agricultural Code.
Reference: Sections 14903, 14992(f), ~~and~~ 15011, and 15073 Food and Agricultural Code.

ARTICLE 7. REPORTS OF INSPECTION AND ANALYSIS

§2717. Reports of Inspection and Analysis.

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(d) Subsamples shall be provided to financially interested parties upon request after laboratory analysis by the Department, with the condition that the requesting party agrees to provide analytical results of the subsample to the Department within 30 days of receipt. If results are not provided within 30 days of receipt, the Department reserves the right to shall refuse future subsample requests.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14902, ~~and~~ 15021, and 15076, Food and Agricultural Code.

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ARTICLE 9. MISBRANDING ADULTERATION

§2733. Misbranding.

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(b) If it purports to be or is represented as a commercial feed, or if it purports to contain or is represented as containing a feed ingredient or ingredients, unless the commercial feed or feed ingredients conform to the definitions prescribed in this ~~Group 2~~ subchapter.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Section 15031, Food and Agricultural Code.

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ARTICLE 11. INSPECTION TAX AND PLANT LICENSES

§ 2750. Tax Payment.

(a) ~~Each commercial feed licensee whose name appears on a commercial feed label shall pay the inspection tonnage tax as required in section 15062 of the Food and Agricultural Code. The inspection tonnage tax on packaged commercial feed sold or distributed in California shall be paid by the licensee whose name appears on the label as the manufacturer, guarantor, or distributor. The inspection tonnage tax on bulk commercial feed sold or distributed in California shall be paid by the last licensee selling or distributing the commercial feed to a consumer buyer.~~

(b) Reports of taxable sales shall be made quarterly to the director not later than one calendar month after March 31, June 30, September 30, and December 31 on a form furnished by the director. Quarterly reports and payments become delinquent on May 1, August 1, November 1, and February 1, for the respective preceding quarter.

(1) Delinquent reports shall be subject to the following late fees based on the amount of tonnage sold or distributed during the quarter.

(A) Delinquent reports for zero tons sold or distributed shall not be subject to a late fee. shall be subject to a late fee of \$100.

(B) Delinquent reports for less than 10,000 tons sold or distributed shall be subject to a late fee of \$100200.

(C) Delinquent reports for greater than or equal to 10,000 tons sold or distributed shall be subject to a late fee of \$500

(2) Delinquent payments shall be subject to a late fee of 15 percent of the amount past due. Payments more than 12 months delinquent shall be assessed an additional late fee of one percent per month of the amount past due.

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Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 15061 and 15062, Food and Agricultural Code.

§ 2751. Licensing.

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(e) If a license is not renewed within one calendar month following its expiration, a late fee of one hundred dollars (\$100) shall be added to the fee. To renew an expired

license, a licensee shall be required to pay all past due license fees, tonnage tax, and applicable late fees for each year the licensee conducted commercial feed business with an expired license.

(f) A commercial feed licensee shall 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.

(g) The Department shall send any notices to the address provided on the license application, or renewal or provided to the Department pursuant to (f), whichever is most current. Any notices issued shall be considered effective, even if delivery is refused or if the notice is not accepted at the address provided.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 15051, ~~and 15053,~~ and 15055, Food and Agricultural Code.

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ARTICLE 13. VIOLATIONS AND ADMINISTRATIVE PENALTIES

§2765. Violations. [Repealed]

(a) 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 subject to Food and Agricultural Code Section 15071.1. In applying Section 15071.1, the provisions of this section shall be used to determine the violation class.

(b) Violations meeting any of the following criteria shall be classified as major and subject to an administrative penalty.

(1) Violations deemed by the secretary to require immediate action to protect public or animal health and safety.

(2) Violations involving the unauthorized movement, distribution, or sale of all or part of any lot, parcel, or package of commercial feed that has been quarantined by the secretary, or denial of access for the purpose of inspection, sampling, or enforcement.

(3) Violations demonstrating severity, intent, and recurrence.

(A) 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, such as 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.

(B) 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, such as refusing to provide production records or other evidence, providing false or conflicting records or statements, or refusing to correct a violation that financially benefits the violator; or negligence in attempting to prevent a violation, such as failure to implement requested corrections, failure to develop standard operating procedures or quality assurance plans, failure to maintain documentation showing procedures and plans are followed, or failure to create and maintain production records.

(C) 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.

(c) 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.

Note: Authority cited: Sections 407, and 14902, 15071, and 15071.4, Food and Agricultural Code. Reference: Sections 15071.1, 15071.4, 15072, 15082, and 15092, Food and Agricultural Code.

§2766. Medicated Feed. Administrative Penalties.

~~It is unlawful to use any medicated feed except in compliance with all directions on the tag or label.~~

~~Note: Authority cited: Sections 407, and 14902, Food and Agricultural Code. Reference: Section 15073, Food and Agricultural Code.~~

(a) In applying Section 15071.1, the provisions of this section shall be used to determine the penalty amount for major violations. Administrative penalty amounts shall be determined based upon consideration of the following factors and shall be calculated by adding together the applicable amount from each subparagraph below:

(1) Nature of the violation, meaning 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. Violations that do not meet the criteria specified in this subparagraph shall have \$250 added toward the total penalty amount.

(2) Effect of the violation upon the effectuation of the purposes and provisions of this chapter, meaning 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. Violations that do not meet the criteria specified in this subparagraph shall have \$500 added toward the total penalty amount.

(3) Impact of the penalty on the violator, meaning 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. Violations that do not meet the criteria specified in this subparagraph shall have \$500 added toward the total penalty amount.

(b) Subsequent major violations of the same statutory or regulatory section 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 within twelve months from the date an administrative penalty was assessed shall be subject to an administrative penalty in the amount of \$5,000 per violation.

(c) Pursuant to Food and Agricultural Code Section 15071.3, the Department is entitled to reimbursement for reasonable attorney's fees and other related costs, including, but not limited to, investigative costs. The amount to be reimbursed shall be added to the administrative penalty amount determined by subparagraph (a) or (b).

Note: Authority cited: Sections 407, 14902, and 15071.4, Food and Agricultural Code. Reference: Sections 15071.1, 15071.3, 15071.4, 15072, 15082, and 15092, Food and Agricultural Code.

§2767. Filing Deadlines and Procedures.

(a) A respondent may contest a notice of adverse determination, including a notice to deny a right, authority, license or privilege or the renewal thereof, for any violation within 30 calendar days from the date of the notice of proposed action by submitting a written request to the Legal Office of Hearings and Appeals of the Department of Food and Agriculture, 1220 N Street, Room 315, Sacramento, California 95814. 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.

(b) Failure to present a timely request for a hearing constitutes a waiver of the respondent's right to contest the notice of an adverse determination.

(c) If the notice of adverse determination places a hold on a commercial feed product, 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: Section 15071, 15071.1, Food and Agricultural Code; and Section 11445.30, Government Code.

§2768. Hearing Schedule and Notification.

(a) The Legal Office of Hearings and Appeals shall schedule an informal hearing within 30 days from the receipt of a written request from the respondent.

(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.

(c) The Department shall provide a notice of the informal hearing to the respondent containing the following information:

(1) Date, location, and time of the informal hearing;

(2) Departmental contact information including applicable telephone and facsimile numbers;

(3) Subject matter of the adverse determination; and,

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

(d) The notice of hearing shall be sent to the address of the ~~person charged~~ respondent, as provided ~~by any license or registration issued by the Department~~, on the license application, renewal or provided to the Department pursuant to Section 2751(f), whichever is most current.

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

Note: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Sections 11445.30, 11501, 11502 and 11503, Government Code.

§2769. Hearing Procedures.

(a) Hearings shall be presided over and conducted by a Hearing Officer designated by the secretary.

(b) The standard of proof to be applied by the Hearing Officer shall be the preponderance of the evidence.

(c) Hearings may be conducted by telephone, at the discretion of the Hearing Officer.

(d) The decision of the Hearing Officer shall be in writing. It may be handwritten.

(e) The written decision shall be issued within 30 days after the conclusion of the hearing ~~and may be issued orally at the conclusion of the hearing subject to written confirmation.~~

(f) The written decision shall be served on the respondent either by personal service, facsimile transmission, or email.

(g) The Hearing Officer's decision shall be effective immediately ~~upon first articulation under subsection (e)~~ and shall be final and not appealable to the secretary or any other officer of the Department.

(h) ~~The owner~~ respondent may challenge the Hearing Officer's decision by filing a writ of administrative mandamus in the appropriate court pursuant to Code of Civil Procedure Section 1094.5 within 30 days of the date of the decision.

(i) Hearings shall be recorded.

Note: Authority cited: Sections 407, 14902, 15071, and 15071.1, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Sections 15071, 15071.1, and 15082, Food and Agricultural Code; and Sections 11425.50 and 11445.10, Government Code.