

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**

FINAL STATEMENT OF REASONS

SECTIONS AFFECTED

California Code of Regulations (CCR) Title 3, Division 4, Chapter 2, Subchapter 2, Articles 1, 3, 4, 5, 7, 11, and 13, Sections 2675, 2683, 2684, 2685, 2686, 2697, 2701, 2717, 2733, 2750, 2751, 2765, 2766, 2767, 2768, and 2769.

UPDATE OF INITIAL STATEMENT OF REASONS

After the initial public comment period ending on September 25, 2023, the California Department of Food and Agriculture (CDFA) made substantive modifications to this rulemaking. To ensure consistency with the Administrative Procedures Act, CDFA provided notice of the modifications to all interested persons and provided a 15-day public comment period from April 30, 2024 – May 15, 2024. The specific purpose and necessity of the modifications to the original proposed text are detailed below.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

§2675. Definitions.

Section 2675 is being amended to replace the term Group 2 with subchapter. This is necessary to replace unclear terminology with the correct term that applies to these regulations (subchapter).

Section 2675(d) is being amended to replace the term Group 2 with subchapter. This is necessary to replace unclear terminology with the correct term that applies to these regulations (subchapter).

ARTICLE 3. CUSTOM FORMULA FEED

Section 2683(b) is being amended to add the word “the” to the last sentence. This is a nonsubstantive grammatical change that is necessary to correct an accidental omission.

ARTICLE 5. COMMERCIAL FEEDS CONTAINING DRUGS AND SPECIAL PROVISIONS

§2701. Labeling of Feeds Containing Drugs.

The title of **Section 2701** is being amended to replace the term “Feeds Containing Drugs” with “Medicated Feeds.” This is necessary for continuity and consistency with terminology used in other sections of the regulation (medicated feeds).

Section 2701(a) is being amended to replace the term “Feeds Containing Drugs” with “Medicated Feeds.” This is necessary for continuity and consistency with terminology used in other sections of the regulation (medicated feeds).

Section 2701(a)(7) is being amended to replace the term “shipping document” with “delivery document.” This is necessary for continuity and consistency with terminology used in Section 2701(a).

Section 2701(b) is being amended to replace the term “tag” with “invoice or delivery document.” This is necessary for continuity and consistency with terminology used in Section 2701(a).

ARTICLE 7. REPORTS OF INSPECTION AND ANALYSIS

§2717. Reports of Inspection and Analysis.

Section 2717(d) is being amended to specify subsamples shall be provided to financially interested parties upon request. This is necessary to clarify who may request subsamples from the Department and when subsamples shall be provided. This section is also being amended to replace the phrase “reserves the right to refuse” with “shall refuse.” This is necessary to clearly and consistently define when the Department will refuse future subsample requests.

ARTICLE 9. MISBRANDING ADULTERATION

§2733. Misbranding.

Section 2733(b) is being amended to replace the term Group 2 with subchapter. This is necessary to replace unclear terminology with the correct term that applies to these regulations (subchapter).

ARTICLE 11. INSPECTION TAX AND PLANT LICENSES

§ 2750. Tax Payment.

Section 2750(b)(1) is being amended to change the phrase “a late fee” to “the following late fees.” This is necessary because more than one late fee is specified.

Section 2750(b)(1)(A) is being amended to replace the phrase “shall not be subject to a late fee” with “shall be subject to a late fee of \$100.” This is necessary to cover the administrative costs associated with pursuing delinquent zero reports. 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) is being amended to increase the fee for delinquent reports for less than 10,000 tons sold or distributed from \$100 to \$200. This is necessary 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 in Section 2750(b)(1)(A), 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.

§ 2751. Licensing.

Section 2751(g) is being adopted to split Section 2751(f) into two subsections. Subsection (f) now specifies that licensees shall notify the Department of changes to contact information within 30 days and new subsection (g) specifies where the Department shall send notices. Subsection (g) has also been amended to clarify that notices shall be sent to the address provided on the license application, renewal or provided to the Department pursuant to (f), whichever is most current. This is necessary to clarify that the Department will send notices to the most current address provided by the licensee rather than the address provided on the application or renewal, which may be outdated.

ARTICLE 13. VIOLATIONS AND ADMINISTRATIVE PENALTIES

§2766. Administrative Penalties.

Section 2766(a) is being amended to add the phrase “for major violations.” This is necessary to clarify that only major violations shall be subject to administrative penalties.

Section 2766(b) is being amended to specify subsequent violations must be 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. This is necessary to clarify that this provision refers to subsequent violations of both the Food and Agricultural Code as well as the California Code of Regulations. This section is also being amended to remove the phrase “within twelve months from the date an administrative penalty was assessed.” This is necessary because FAC Section 15071.1 requires an administrative penalty for each subsequent violation and does not specify a time period. This section is also being amended to specify subsequent administrative penalties shall be assessed per violation. This is necessary to clarify that each

subsequent violation of the same statutory or regulatory section will be assessed a separate \$5,000 penalty.

§2767. Filing Deadlines and Procedures.

Section 2767(c) is being amended to remove the term informal. This is necessary because the provisions of this section do not pertain to informal hearings.

Section 2767 Note is being amended to add FAC Section 15071 to the reference section. This is necessary because this section clarifies filing deadlines and procedures for the hearing request procedure described in FAC Section 15071.

§2768. Hearing Schedule and Notification.

Section 2768(d) is being amended to replace the term person charged with respondent. This is necessary for consistency because the term respondent is used throughout this section. This section is also being amended to replace the phrase “by any license or registration issued by the Department” with “on the license application, renewal or provided to the Department pursuant to Section 2751(f), whichever is most current.” This is necessary for consistency made with changes to Section 2751(g) to ensure the most current information submitted to the Department is used for contact purposes.

Section 2768 Note is being amended to add Government Code Section 11445.30 to the reference section. This is necessary because Section 2768 is further clarifying the process for informal hearings described in Government Code Section 11445.30 for violations of the commercial feed law and regulations.

§2769. Hearing Procedures.

Section 2769(e) is being amended to specify the decision must be written and to remove the option for the decision to be issued orally at the conclusion of the hearing subject to written confirmation. Because this section states that the decision is subject to written confirmation, the Department believes including the option for an oral decision is unnecessary.

Section 2769(g) is being amended to remove the phrase “upon first articulation under subsection (e).” This is necessary because the option for an oral decision was removed from subsection (e).

Section 2769(h) is being amended to replace the term owner with respondent. This is necessary for consistency with the terminology used in this section. This section is also being amended to specify the writ of administrative mandamus must be filed within 30 days of the date of the decision. This is necessary for consistency with the filing deadlines provided in Code of Civil Procedure Section 1094.5.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ENDING SEPTEMBER 25, 2023

No comments were received during the 45-day public comment period ending on September 25, 2023.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD ENDING MAY 15, 2024

No comments were received during the 15-day public comment period ending on May 15, 2024.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

None.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

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

No reasonable alternatives to the proposed regulations were identified that would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome 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.

DUPLICATION OF STATUTES AND REGULATIONS

The proposed regulations duplicate FAC Sections 15055 and 15062 pertaining to late fees for delinquent license renewals and tonnage tax payments. This is necessary to ensure all late fees are specified in the regulations for clarity and ease of reference for the regulated industry.