

CALIFORNIA CODE OF REGULATIONS
TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
Division 4. Plant Industry
Chapter 2. Field Crops
Subchapter 2. Commercial Feed
Article 11. Inspection Tax and Plant Licenses
(Notice published March 8, 2013)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend Section 2751 of the regulations in Title 3 of the California Code of Regulations pertaining to Licensing.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written period.

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. Comments may also be submitted via facsimile (FAX) at (916) 900-5349 or by e-mail to gary.castro@cdfa.ca.gov. The written comment period closes at **5:00 p.m. on April 22, 2013**. The Department will only consider comments received at the Department by that time. Submit comments to:

Gary Castro, Branch Chief I
Feed, Fertilizer, and Livestock Drug Services Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5022; Fax: (916) 900-5349

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407 and 15051 of the Food and Agricultural Code, and to implement, interpret, or make specific Section 15053 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 15053 of the California Food and Agricultural Code authorizes the Secretary with recommendation from the Feed Inspection Advisory Board, to set the licensing fee between \$100 and \$600. Section 15053(b) allows the Secretary, with recommendation from the Feed Inspection Advisory Board, to reduce the inspection tonnage tax when the operating reserve exceeds 25 percent of the program's operating costs.

Within the authority of California Food and Agricultural Code, Section 15053, the Department is proposing to amend Section 2751 of the California Code of Regulations to set the commercial feed license fee at \$400 per year, effective July 1, 2013. Existing regulation: Section 2751(a) exempts retail stores who sell packaged commercial feed labeled by licensed feed manufacturers from the licensing requirement.

There is no existing, comparable federal regulation or statute regulating the commercial feed license fee. The Department is the only agency which can implement regulations pertaining to animal feed. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Benefits of the Proposed Action: This proposed regulatory action will benefit the regulated industry by ensuring that the operating reserve is maintained at 25 percent of the program's operating costs as required by Section 15053(b). Additionally, the increased funds will go towards inspection activities, focusing on feed safety issues (Section 14961) to ensure equity in the marketplace (Section 14901(a)(b)).

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 on local agencies: None.

Cost or savings in federal funding to the state: 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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has determined that the proposed increase in the commercial license fee will not have any impact on a person that makes only retail sales of commercial feed, or a person who manufactures feed exclusively for feeding to his or her own animals as they are exempt from obtaining a commercial feed license. (FAC Section §15051(b)(c)).

These regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.
- (4) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

Benefits of the Proposed Action: This proposed regulatory action will benefit the regulated industry by ensuring equity in the marketplace (Section 14901(a)(b)) and the increased funds will be focused on feed safety issues (Section 14961).

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action will directly affect businesses statewide, including small businesses, the Department concludes that the adverse economic impact, including the ability of California businesses to compete with business in other states, *will not* be significant.

Significant effect on housing costs: None.

SMALL BUSINESSES

The proposed regulations may affect small businesses.

CONSIDERATIONS OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency 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 during the written comment period or, if requested, at a scheduled hearing.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Gary Castro, Branch Chief I
Feed, Fertilizer, and Livestock Drug Services Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5022; Fax: (916) 900-5349

The backup contact person for these inquiries is:

Maria Tenorio Hicks
Feed, Fertilizer, and Livestock Drug Services Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5022; Fax: (916) 900-5349

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Maria Tenorio Hicks at the above address.

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

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at 2800 Gateway Oaks Drive, Sacramento, CA 95833. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and Feed Inspection Advisory Board meeting minutes dated September 6, 2012. Copies may be obtained by contacting Maria Tenorio Hicks at the address or phone number provided.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which 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 before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Maria Tenorio Hicks at the address provided. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Maria Tenorio Hicks at the address provided.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: <http://www.cdfa.ca.gov/is/regulations.html>.