

**CALIFORNIA CODE OF REGULATIONS
TITLE 3. FOOD AND AGRICULTURE
DIVISION 4. PLANT INDUSTRY
CHAPTER 2. FIELD CROPS
SUBCHAPTER 2. COMMERCIAL FEED
ARTICLE 11. INSPECTION TAX AND PLANT LICENSES**

INITIAL STATEMENT OF REASONS

Current funding for the California Department of Food and Agriculture's (CDFA) Feed Inspection Program is drawn from an annual commercial feed license fee and an inspection tonnage tax. The consolidation of the feed industry has created a discrepancy between the revenues raised from the licensing fees and the tonnage tax. The increase in the license fee is an attempt to remedy the disproportionate fiscal responsibility on the tonnage tax and share the costs of the Feed Inspection Program with the commercial feed licensees, while upholding the legislative intent of the program.

Food and Agricultural Code (FAC) Section 15051(a) requires that any person who manufactures, distributes, sells, or stores commercial feed shall obtain a license from the CDFA. Section 2571(a) of the California Code of Regulations (CCR) exempts any person who is engaged in retail sales of feed from the licensing requirement.

FAC Section 15053(a) gives CDFA's secretary the authority to set the specific commercial feed license fee between one hundred dollars (\$100) and six hundred dollars (\$600) upon recommendation of the Feed Inspection Advisory Board (FIAB).

FAC Section 14901(c) requires the Department to provide funds for the administration and enforcement of the commercial feed law by an inspection tonnage tax on commercial feed.

FAC Section 14903 gives the secretary the authority to establish good manufacturing practices, hazard analysis, and preventive control measures as the secretary determines are reasonably necessary to carry out the purposes of this chapter. The good manufacturing practices, hazard analysis, and preventive control measures, including verification and validation activities for all commercial feeds and additives, including medicated feed premixes and medicated feeds, shall be based upon federal food and drug laws and regulations, unless the secretary determines that the federal laws and regulations are not appropriate to the conditions that exist in this state.

On December 19, 2012, the FIAB created a working group to conduct a technical review of the Feed and Livestock Drugs program. This review included, but was not limited to: job task analyses and a review of staffing, job duties and alignment, database infrastructure and overall database effectiveness, program structure and organization, enforcement activities necessary to carry out the legislative intent of the laws and regulations, contract work for the US Food and Drug Administration, product sampling

and analyses, and a complete review of the program's revenue and expenditures, including an operational impact summary report and timeline, and an operations implementation timeline. On April 30, 2013, the FIAB accepted the working group's most pertinent working group recommendations. The FIAB voted to recommend the Department make necessary changes to the program in order to effectively carry out a strategic plan in the best interest of the program and to ensure food and feed safety to the global and California consumer. To minimize the impact, the program raised the tonnage tax from \$0.09 per ton to \$0.12 per ton, effective October 1, 2013. This assisted the program to some extent, but increasing the feed license fee is an attempt to remedy the disproportionate fiscal dependence on tonnage tax and share the cost of the Feed Inspection Program with the commercial feed licensees, while upholding the legislative intent of the program.

Recommendations of the FIAB Working Group:

1. Proposed optimal feed inspection program structure (i.e.: Process verification, enforcement and compliance, and outreach, education, and training)
2. Program sampling focus: 1200 samples; primary focus feed/food safety and secondary focus on label compliance
3. Program explore possibility to divert secondary samples to outside lab sources
4. Staffing levels for field operations: 1 field supervisor, 5 Special Investigators, and 5 Inspectors
5. Incorporate HACCP-like language (consistent with FSMA) into the Food and Ag code
6. Move forward with the appropriate mechanisms to adopt AAFCO definitions and standards, analytical variations, and FSMA regulations.
7. Establish a Technical Advisory Sub-Committee to the Feed Board
8. Use database to enhance information data gathering and transmission (Inspection, sampling, audits, and lab reports)
9. Continue participating in FDA Alliances and training
10. Continue outreach and education to Feed Industry through the SAFE program
11. Line item to be added within the current budget authority for laboratory equipment replacement; and annual approval of expenditures by the FIAB (\$250,000 per year for first three years, then to be reevaluated)
12. Program annually report to the board the evaluation of lab capacity to ensure timely sample analysis workload

By adopting these recommendations, the program had to shift several program staff duties to include highly technical, food and feed safety related Process Verification (PV) inspections and quality assurance audits at all locations that manufacture or distribute animal feed. Inspection rates are based upon risk (high, medium, or low); PV inspections are conducted a minimum of one time yearly at all high risk firms. In 2014, over 60 PV inspections were completed by four special investigators. PV inspections take at least five days to complete, which does not include violation follow up inspections. Due to the frequency, importance, and length of these PV inspections,

other routine inspection work has suffered. This includes enforcement activities such as; violative product follow-up investigations, product quarantines, and technical label review. Until recently, the program was collecting approximately 1,200 animal feed samples per year. In 2014, the program was only able to collect 766 samples, a thirty five percent decrease compared to past years. By hiring an additional full time feed inspector, at a total annual cost of \$95,000, the program will be able to carry out the legislative intent of the laws and regulations, ensure the program meets annual sampling goals, and ensure enforcement activities are followed up in a timely manner and completed thoroughly. A greater percentage of samples obtained will be focused primarily on food and feed safety; this will mean the program will need to expand current laboratory contracts to include pesticide screening, Mycotoxins, and Microbiologicals (e-coli and Salmonella) analyses for an anticipated annual cost of \$30,000. The combination of increasing operating expenses and current revenue limitations prevent the program from fully carrying out its enforcement mandates (FAC Sections 15011 through 15042). As a result, the program will continue to see decreased sampling activities, postponements of PV inspections and complaint investigations, and will be unable to contract necessary food and feed safety related analyses. All of these efforts assist in ensuring a safe feed and food supply to the consumer, and promote equity in the marketplace. (Sections 14901(a)(b), 14961, and 15061(c)).

Additionally, fifteen percent of the tonnage taxes collected, or two hundred thousand dollars, whichever amount is greater, is used to fund the Safe Animal Feed Education (SAFE) program (FAC Section 15061(c)). Outreach efforts that focus on safe animal feed production issues, feed ingredient safety and efficacy; including proper inclusion rates, new ingredient research, and industry outreach and development of pre-requisite program materials for the feed industry; all are additional objectives that have been identified by the working group. Moreover, a Technical Advisory Sub-committee has been developed and will oversee the progress of several of these ongoing and recommended goals. The identified high priority SAFE and feed and food safety projects will cost an additional \$39,000 annually, and will require a full time staff member to dedicate fifty percent of their time to oversee these new duties.

The license fee increase of one hundred dollars (\$100) to the eighteen hundred (1,800) commercial feed licensees will generate \$180,000. Therefore, the Department, the FIAB, and the working group foresee the need to increase the annual commercial feed license fee from four hundred dollars (\$400) to five hundred dollars (\$500) annually.

The purpose of the proposed regulation is to increase the commercial feed license fee by one hundred dollars (\$100) annually to provide the program with the funds necessary to carry out the FIAB working group's recommendations. The program is in a critical transition period, moving away from end product testing and routine quality inspections; to a program that is focused on critical food and feed safety issues. With that said, the program must be able to effectively enforce state animal feed and food safety laws and regulations; analyze critical food safety issues; and provide outreach, research and education to the feed industry, as part of the strategic plan and ensure longevity of the program.

The following paragraphs provide the specific purpose, rationale, and summaries of the proposed changes.

Amend Section 2751(b) – The specific purpose for amending Section 2751(b) is to set the annual commercial feed license fee at five hundred dollars (\$500), effective July 1, 2015.

The proposed amendment is needed to provide the program with enough funds to fully carry out its mandate to ensure a safe feed and food supply, promote equity in the marketplace, and educate animal feed manufacturers on proper feed production practices.

Revenue generated by the amendment will contribute to the prevention of feed and food contamination issues. Contamination issues will be handled immediately by a fully staffed inspection program.

Current revenue intake is insufficient to effectively enforce state regulations in the coming years. The program raised the tonnage tax from nine cents (\$0.09) per ton to twelve cents (\$0.12) per ton in October 2013 to offset program costs. This increase provided the program with approximately \$600,000 additional revenue annually. This did not generate enough revenue; an increase in the commercial feed license fee is necessary.

On September 23, 2014, the Feed Inspection Advisory Board voted to recommend that the CDFA secretary set the annual commercial feed license fee at five hundred dollars (\$500).

Therefore, the Department proposes to amend CCR Section 2751(b) as submitted.

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

- Meeting Minutes from the December 19, 2012 FIAB Meeting
- Meeting Minutes from the April 30, 2013 FIAB Meeting
- Meeting Minutes from the December 10, 2013 FIAB Meeting
- Meeting Minutes from the September 23, 2014 FIAB Meeting

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

As of September 2014, there were approximately 1,800 commercial feed licensees. This number has remained fairly stable for a number of years and the Department does not anticipate a decrease in the number of licensees as a result of the proposed regulations.

The proposed regulatory action would cost each commercial feed licensee an additional one hundred dollars (\$100) per year to maintain a feed license to manufacture or distribute animal feed in California. The impact to the entire feed industry will be approximately \$180,000. 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)).

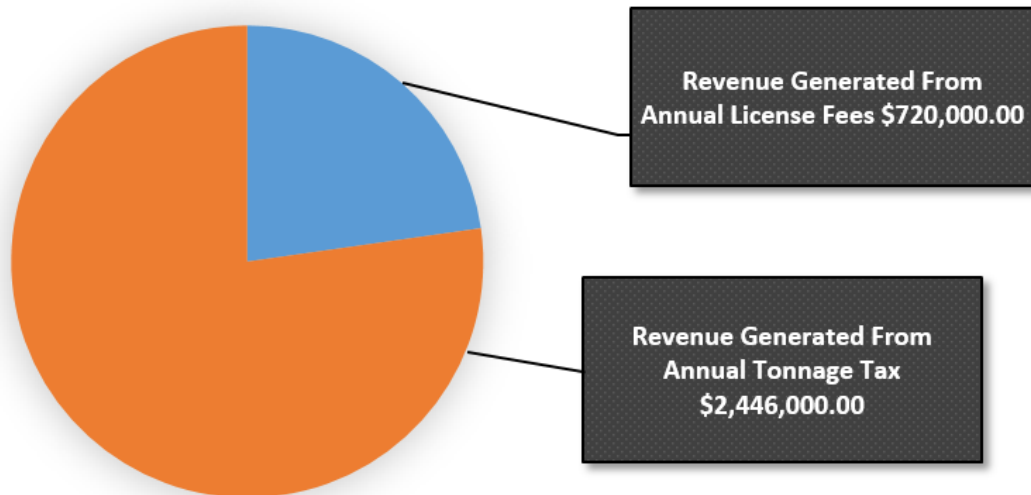
The Feed Inspection Program has sufficient funds to cover the current fiscal year expenditures. However, without an increase in revenue the program will have to scale back activities (e.g. sampling, outreach and education, and on-farm feed studies) in the near future.

A robust feed inspection program is a major contributor to a safe supply of animal feeds and plays an important role in the prevention of food borne illnesses. In addition, as demonstrated at the April 30, 2013 board meeting, the FIAB fully supports the restructured program and believes the people of California will greatly benefit from a more effective program.

The Department currently has approximately 800 licensees which qualify as small businesses in California, and the impact to these firms will be negligible. To minimize the impact, the program raised the tonnage tax from \$0.09 per ton to \$0.12 per ton, effective October 1, 2013. This assisted the program to some extent, but increasing the feed license fee is an attempt to remedy the unbalanced fiscal dependence on tonnage tax and share the cost of the Feed Inspection Program with the commercial feed licensees. All commercial feed licensees have services provided by the program through inspection; label review for any feed product sold, and is also provided outreach and educational services by the Safe Animal Feed Education (SAFE) Program. The feed program does not require registration fees on labeling. Currently 650 firms pay the annual license fee and report and pay the tonnage tax, this accounts for over two thirds of the total Program's revenue. Most Licensees (1150) do not report nor pay the tonnage tax.

The graph below details the revenue generation between firms who exclusively pay for a license, and those firms who pay for a license and report tonnage, which makes up the \$3,166,000 of current annual program revenue.

Annual License Fee Revenues Versus Annual Tonnage Tax Revenues



Cost saving measures by the program include: reassigning staff to areas where animal feed production is greater, thereby minimizing travel distances and response times.

These regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within the State of California; or
- (3) Affect the expansion of businesses currently doing business within the State of California.

These regulations will:

- (4) Benefits the health and welfare of California residents, worker safety, and the state's environment. As a robust feed inspection program is a major contributor to a safe supply of animal feeds and plays an important role in the prevention of food borne illnesses. This will be demonstrated by the hazard analyses identification and monitoring, as well as the verification and validation procedures implemented and identified in the FAC section 14093 of the Feed Law. In addition, as demonstrated at the April 30, 2013 board meeting, the FIAB fully supports the restructured program and believes the people of California will greatly benefit from a more effective program

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

The Department has initially determined that the proposed action *will* directly affect businesses statewide, including small businesses. The Department concludes that the economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant. There are 1,800 feed licensees, and the current annual license fee is set at four hundred dollars (\$400). The proposed regulations would increase the feed license fee by one hundred (\$100) annually. The increase will cost the feed industry, as a whole, \$180,000, and will ensure the program has sufficient funds to carry out the legislative intent of the program to ensure a safe food and feed supply.

One full time feed inspector would collect feed samples and assist feed investigators with feed related duties and inspections. The annual cost to the program is approximately \$95,000 (salary/benefits, operating expenses, and equipment).

The additional revenue will assist the Safe Animal Feed Education (SAFE) Program to conduct additional workshops (on farm and class room venues) throughout the state.

The program will also conduct food and feed safety sampling (including micro-biologicals) that will be analyzed by a Federal Emergency Response Network (FERN) accredited laboratory.

Additional revenue needed to support program activities.

Additional Expenses	Cost
<p>One full-time inspector -Salary/Benefits -Operational Expenses Duties include: Collect animal feed samples throughout the state, assist investigators perform Process Verification inspections on feed manufacturing facilities, and assist in outreach and education activities throughout the state.</p>	\$95,000
<p>Outreach and Education -Increase the number of on-farm education workshops on the proper use of medicated feeds, biosecurity and proper handling and use of concentrated feed supplements. Create interactive media tools, along with feed related handouts to place with industry and farmers.</p>	\$50,000
-Laboratory services	\$35,000

(micro-biologics, food/feed safety analyses)	
TOTAL	\$180,000

Additionally, no savings or increased costs to any state agency, no costs under Part 7, Division 4, commencing with Section 17500 of the Government Code to local agencies or school districts requiring reimbursement, no other non-discretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations.

The Department has determined that these proposed regulations do not impose a mandate on local agencies or school districts.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

The Department considered leaving the feed license fee at the current annual rate of four hundred dollars (\$400) annually. If the fee remained the same, the program will not have sufficient funds to maintain and carry out the legislative intent of the program to ensure a safe food and feed supply. Additionally, the increased funds are necessary to support increased: enforcement and investigational activities, outreach and education, and laboratory services.

The Department additionally considered raising the tonnage tax modestly, to a rate of \$0.13 per ton which, at 19 million tons of feed sold would cost the industry \$190,000. However, like the alternative option above, only a small subset of the licensees pays the tonnage tax. This would place an unnecessary burden on a very small sector of the industry that is already paying a high percent of the overall tonnage tax to the program.

The Department also considered raising the tonnage tax to its maximum rate of \$0.15 per ton. However, only a small subset of the licensee's pays the tonnage tax, and the Department raised the tonnage tax from nine cents (\$0.09) per ton to twelve (\$0.12) per ton in October 2013. This increase assisted the program in increasing revenue, but would be a disproportionate increase to only one sector of the industry. If the program raised the tonnage tax to fifteen cents (\$0.15), it would cost the industry, as a whole, \$570,000. The significant increase would be disproportionate to the needs of the program. Furthermore, it would place an unnecessary burden on a small sector of the industry that pays the tonnage tax to the program.

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective as and less burdensome to affected private persons than the proposed regulations.

Pursuant to Government Code section 11346.9(a)(4), the Department has determined that no alternative considered by the agency 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 regulations, 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.