

**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 April 3, 2015)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend Section 2751(b) 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 jenna.areias@cdfa.ca.gov. The written comment period closes at **5:00 p.m. on May 18, 2015**. The Department will only consider comments received at the Department by that time. Submit comments to:

Jenna Areias, Agriculture Program Supervisor
Feed, Fertilizer, and Livestock Drug Regulatory 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 (FAC), proposes to amend regulations in Title 3 of the California Code of Regulations and to implement, interpret, or make specific Section 15053 of the Food and Agricultural Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 15053 of the California FAC authorizes the Secretary, with recommendation from the Feed Inspection Advisory Board, to set the feed license fee between \$100 and \$600 annually.

Within the authority of the California FAC, Section 15053, the Department is proposing to amend Section 2751(b) of the California Code of Regulations, effective July 1, 2015, to increase the feed license fee from four hundred dollars (\$400) to five hundred dollars (\$500) annually. 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 licensing. The additional funds will be used to hire staff necessary to maintain acceptable inspection frequency rates, feed sample collection levels, and expand feed safety outreach and education activities (Section 14961) to industry and farmers, and ensure the program reserve funds are maintained at a minimum of 25 percent as mandated in Food and Agriculture Code, Section 15053(b).

Benefits of the Proposed Action: This proposed regulatory action will benefit the regulated industry by ensuring the program is effective and properly funded 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. These regulations will contribute to a clean and wholesome supply of milk, meat, and eggs, as well as providing assurance that the product received by the consumer is of the quality and quantity purported by the manufacturer.

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: \$100 yearly.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

The Department has determined that the proposed increase in the commercial license fee will cost each commercial feed licensee one hundred dollars (\$100) per year to manufacture and/or distribute feed in California; hence the impact to the entire feed industry will be approximately \$180,000. The Department 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 Department has approximately 800 licensees which qualify as small businesses in California, and the impact to these firms will be negligible. The program raised the tonnage tax from \$0.09 per ton to \$0.12 per ton effective October 1, 2013, to minimize the impact of the license fee increase. This provided some assistance, but increasing the 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 are also provided outreach and educational services by the Safe Animal Feed Education (SAFE) Program. Cost saving measures by the program include: reassigning staff to areas where animal feed production is greater, thereby minimizing travel distances and response times, and utilizing seasonal employees to assist in high feed tonnage reporting areas throughout the state.

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) Affect 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 will affect approximately 800 small businesses by one hundred dollars (\$100) annually by increasing in the commercial feed license fee.

CONSIDERATIONS OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it has 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 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 provide a clean and wholesome supply of milk, meat, and eggs and provide assurance that product received by consumers is of the quality and quantity purported by the manufacturer.

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 effective as and less burdensome to affected private persons than the proposed regulations.

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:

Jenna Areias, Agriculture Program Supervisor
Feed, Fertilizer, and Livestock Drugs Regulatory 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, Agriculture Program Supervisor
Feed, Fertilizer, and Livestock Drugs Regulatory 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 Jenna Areias 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 December 19, 2012, April 30, 2013, December 10, 2013, and September 23, 2014. Copies may be obtained by contacting Jenna Areias 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 Jenna Areias 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 Jenna Areias at the address provided above.

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>.