

## **PROPOSED CHANGES IN THE REGULATIONS**

### **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

### **FINAL STATEMENT OF REASONS**

#### **UPDATE OF INITIAL STATEMENT OF REASONS/PLAIN ENGLISH POLICY STATEMENT OVERVIEW**

The Initial Statement of Reasons/Plain English Policy Statement Overview is still valid. A public hearing was not held or requested.

#### **SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ENDING MAY 18, 2015**

**COMMENT 1.1:** What is my company truly receiving for all the CDFA fees that we pay?

**RESPONSE:** The fees paid to the Department are used to enforce state law and regulations pertinent to the manufacturing, distribution and labeling of commercial livestock feed in California while preventing adulterated feed from being consumed by livestock and poultry.

This comment falls outside the scope of this proposed regulatory action, the above comment does regard some aspect or aspects of the subject proposed under this regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3).

**COMMENT 1.2:** Has the CDFA considered any sort of restructuring or reevaluation of how it operates, in lieu of raising the fee?

**RESPONSE:** In December 2012, the Feed Inspection Advisory Board (FIAB) created a technical working group to formulate a comprehensive plan to strategically review the program. In April 2013, the FIAB accepted the recommendations of the working group to restructure the feed program's operations to focus more on feed and food safety, including process verification inspections, hazard analysis, and preventative control measures. As part of the restructure, additional revenue was needed. Currently, 23 percent of the Feed program's revenue is generated from the annual license fee and 77 percent of the revenue is generated from the annual tonnage tax.

**COMMENT 1.3:** Why is there is no federal standard for the fertilizer industry? Is there any hope for a federal standard in the near future?

**RESPONSE:** This comment falls outside the scope of this proposed regulatory action.

**COMMENT 2.1:** Submitter contests the increase in the license fee, and proposes some sort of a sliding license scale – possibly based on sales.

**RESPONSE:** The Department did not consider assessing the licensing fees based on a sliding scale because FAC 15053 establishes the minimum license fee shall be one hundred dollars (\$100) for each location and the maximum license fee shall not exceed six hundred dollars (\$600), with the specific fee to be set by the secretary upon recommendation of the Feed Inspection Advisory Board. The law does not allow for a sliding scale fee system.

#### **AUTHORITY**

Authority cited: Sections 15051, 15053, 14901, and 14903, FAC.

#### **ESTIMATED COSTS OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES**

The Department has determined that no savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary 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 also determined that these proposed regulations do not impose a mandate on local agencies or school districts.

#### **SMALL BUSINESS IMPACT STATEMENT**

The Department has determined that the proposed changes in the regulations would result in approximately 800 small businesses being impacted. The impact to a small business is one hundred dollars (\$100) yearly.

#### **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 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 feed 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)).

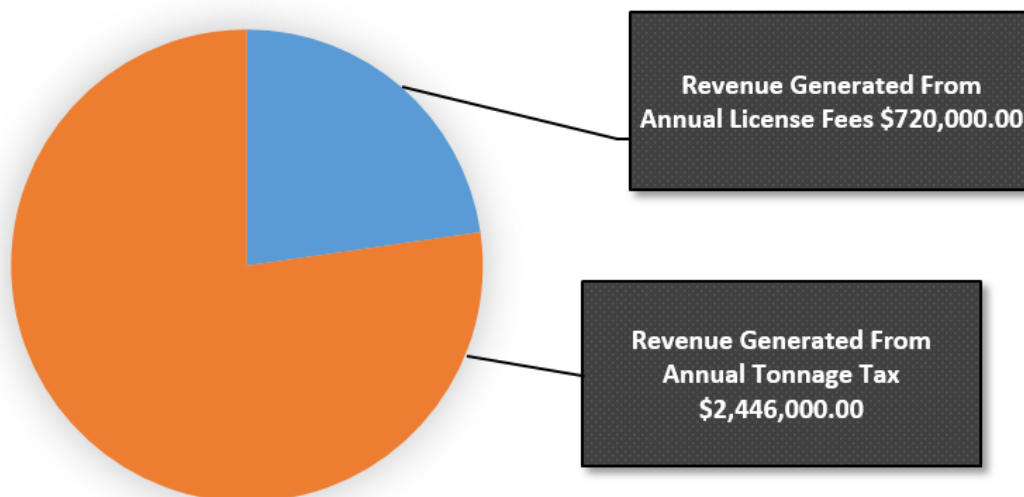
The Feed Inspection Program has sufficient funds to cover the current fiscal year expenditures. However, without an increase in revenue the program will have to scale back activities (e.g. sampling, outreach and education, and on-farm feed studies) in the near future.

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 nine cents (\$0.09) per ton to twelve cents (\$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:

- (1) Benefit 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 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 Program to conduct additional workshops (on-farm and classroom 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**

<b>Additional Expenses</b>	<b>Cost</b>
<b>One full-time inspector</b> -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.	\$95,000
<b>Outreach and Education</b> -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.	\$50,000

-Laboratory services (micro-biologics, food/feed safety analyses)	\$35,000
<b>TOTAL</b>	<b>\$180,000</b>

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 REGULATIONS AND THE DEPARTMENT'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.*

### **LOCAL MANDATE DETERMINATION**

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