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, 11, and 14, Sections 2675, 2675.1, 2750, 2751, 2789, 2802, and 2804.

UPDATE OF INITIAL STATEMENT OF REASONS

In response to comments received during the 45-day comment period (June 25, 2021 - August 9, 2021), 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 October 6, 2021 - October 21, 2021. The specific purpose and necessity of the modifications to the original proposed text are detailed below.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section 2675. Definitions.

Section 2675(k) is being adopted to define the term "manufacturing/processing." This definition is consistent with the definition for manufacturing/processing specified in Code of Federal Regulations Title 21, Part 507.3, April 1, 2021. This is necessary to ensure that licensees are aware of the specific manufacturing/processing activities that would make a human food by-product ineligible for the proposed licensing and tonnage tax incentives. This change has been made in response to comment.

ARTICLE 11. INSPECTION TAX AND PLANT LICENSES

Section 2750. Tax Payment.

Section 2750(c) is being amended to remove the phrase, "except as provided in Section 2750(c)." This reference is to the original Section 2750(c) regarding tonnage estimates, which was repealed in the original proposed text (reference the Initial Statement of Reasons for the specific purpose and necessity). Because the subsequent sections were renumbered, Section 2750(c) now references itself. This change has been made to correct this accidental omission in the original proposed text and is necessary for consistency and clarity.

Section 2750(e) is being amended to replace the phrase "processing or manufacturing" with "manufacturing/processing beyond what is stated in the ingredient definition." This is necessary for consistency with the term manufacturing/processing as it is used in Code of Federal Regulations Title 21, Part 117.3, April 1, 2021 and defined under proposed Section 2675(k). Clarifying language has also been added to specify that manufacturing/processing activities that are specifically included as part of an ingredient definition will not impact eligibility for the proposed tonnage tax incentives. However, any manufacturing/processing activities beyond those specifically stated within the ingredient definition will make the product ineligible for the proposed tonnage tax incentives. For example, the proposed definition for Restaurant Food Waste under Section 2804(b) states, "Processing and/or handling must remove any and all undesirable constituents including crockery, glass, metal, string, and similar materials." This means that Restaurant Food Waste that has been processed to remove undesirable constituents is eligible for the proposed tonnage tax incentives because that specific type of processing is stated in the ingredient definition. However, Restaurant Food Waste that has been mixed, formulated, or undergone any other type of manufacturing/processing defined under proposed Section 2675(k) and not specifically stated within the ingredient definition would not be eligible for the proposed tonnage tax incentives. This is necessary to ensure that licensees are aware of the specific manufacturing/processing activities that would make a human food by-product ineligible for the proposed tonnage tax incentives. This change has been made in response to comment.

Section 2751. Licensing.

Section 2751(c) is being amended to replace the phrase "processing or manufacturing" with "manufacturing/processing beyond what is stated in the ingredient definition." This is necessary for consistency with the term manufacturing/processing as it is used in Code of Federal Regulations Title 21, Part 117.3, April 1, 2021 and defined under proposed Section 2675(k). Clarifying language has also been added to specify that manufacturing/processing activities that are specifically included as part of an ingredient definition will not impact eligibility for the proposed licensing incentives. However, a licensee that manufactures/processes human food by-products beyond what is specifically stated within the ingredient definition will be ineligible for the proposed licensing incentives. For example, the proposed definition for Restaurant Food Waste under Section 2804(b) states, "Processing and/or handling must remove any and all undesirable constituents including crockery, glass, metal, string, and similar materials." This means that a licensee processing Restaurant Food Waste to remove undesirable constituents will be eligible for the proposed licensing incentives. However, a licensee that also mixes, formulates, or otherwise manufactures/processes feed or feed ingredients would not be eligible for the proposed licensing incentives. This is necessary to ensure that licensees are aware of the specific manufacturing/processing activities that would make them ineligible for the proposed licensing incentives. This change has been made in response to comment. In addition, CDFA wishes to clarify the necessity for the $100 license fee provided in the Initial Statement of Reasons. CDFA's intent is to

set the license fee at the lowest possible rate authorized by FAC Section 15053. The purpose of setting the fee at the lowest possible rate is to incentivize firms to become licensed. The language included in the Initial Statement of Reasons was not intended to suggest that it costs the Department $100 to cover the administrative costs of processing applications. The reduced licensing fee is necessary to encourage these firms to become licensed and is not directly based on costs.

ARTICLE 14. DEFINITIONS AND STANDARDS

Section 2802. Miscellaneous Products.

Section 2802(aa) is being adopted to define Salvage Pet Food. This language is consistent with the definition listed under section 60.108 of the Association of American Feed Control Officials (AAFCO) Official Publication, which is copied below:

> *60.108 Salvage Pet Food is a product resulting from pet food manufacturing. This product may consist of, but is not limited to, start-up and over-run product, unfinished pet food, pet food fines and other product not suitable for packaging for retail sale. If it contains, or may contain, any material identified by 21 CFR 589.2000 as prohibited from use in the feed of ruminant animals, or if it is no longer accompanied by a detailed label listing all of the ingredients in the salvage pet food, the label must contain the precautionary statement "Do not feed to cattle or other ruminants." It shall be free of foreign materials harmful to animals, suitable for the purpose for which it is being marketed, and properly labeled for its intended use.*

This definition is necessary to ensure that Salvage Pet Food used in commercial feed meets nationally accepted standards for safety and quality. The phrase "if it contains, or may contain" is used for consistency with Code of Federal Regulations Title 21, Part 589.2000. This change has been made in response to comment.

Section 2802(ab) is being adopted to define Distressed Pet Food. This language is consistent with the definition listed under section 60.109 of the AAFCO Official Publication, which is copied below:

> *60.109 Distressed Pet Food is a product resulting from pet food distribution, but which is no longer available for retail sale. This product may be pet food in, but not limited to, dented cans, torn bags, product past its sell-by date, or returned product that is suitable for use in feed. It may consist of a single formula, still in the original packaging, or a variety of formulas commingled into one bulk container and containing none of the original packaging or labeling. If it contains, or may contain, any material identified by 21 CFR 589.2000 as prohibited from use in the feed of ruminant animals, or if it is no longer accompanied by a detailed label listing all of the ingredients in the distressed product, the label must contain the precautionary statement "Do not feed to cattle or other ruminants." It*

> *shall be free of foreign materials harmful to animals, suitable for the purpose for which it is being marketed, and properly labeled for its intended use.*

This definition is necessary to ensure that Distressed Pet Food used in commercial feed meets nationally accepted standards for safety and quality. The phrase “if it contains, or may contain” is used for consistency with Code of Federal Regulations Title 21, Part 589.2000. This change has been made in response to comment.

Section 2804. Human Food By-Products.

Section 2804(a) is being amended to add language regarding use of human food by-product ingredients from mammalian origins. This language is consistent with the asterisk for section 40 of the AAFCO Official Publication that is applicable to human food by-products that may contain ingredients from mammalian origins, which is copied below:

> **Use of this ingredient, from mammalian origins, is restricted to non-ruminant feeds unless specifically exempted by 21 CFR 589.2000. Feeds containing prohibited material must bear the following label statement: “Do not feed to cattle or other ruminants.”*

This change is necessary to ensure that licensees are aware that any Wet Food Processing Waste from mammalian origins must comply with federal requirements regarding animal proteins prohibited in ruminant feed. This is necessary to ensure that Wet Food Processing Waste used in commercial feed meets nationally accepted standards for safety and quality. This change has been made in response to comment.

Section 2804(b) is being amended to add language regarding use of human food by-product ingredients from mammalian origins. This language is consistent with the asterisk for section 40 of the AAFCO Official Publication that is applicable to human food by-products that may contain ingredients from mammalian origins, which is copied below:

> **Use of this ingredient, from mammalian origins, is restricted to non-ruminant feeds unless specifically exempted by 21 CFR 589.2000. Feeds containing prohibited material must bear the following label statement: “Do not feed to cattle or other ruminants.”*

This change is necessary to ensure that licensees are aware that any Restaurant Food Waste from mammalian origins must comply with federal requirements regarding animal proteins prohibited in ruminant feed. This is necessary to ensure that Restaurant Food Waste used in commercial feed meets nationally accepted standards for safety and quality. This change has been made in response to comment.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ENDING AUGUST 9, 2021

COMMENT 1.01: The submitter asks what is considered “further processing” and if further processing Recovered Retail Food changes its type to “other.”

RESPONSE: CDFA has considered this comment and has partially incorporated it in the regulations by adding a definition for manufacturing/processing under Section 2675(k). CDFA has also revised Sections 2750(e) and 2751(c) to further clarify that the proposed incentives apply only to human food by-products as defined under Section 2804 without further manufacturing/processing beyond what is stated in the ingredient definition. This is to clarify that any manufacturing/processing specifically described in the ingredient definition (e.g., removal of packaging for Recovered Retail Food) is acceptable; however, manufacturing/processing in addition to what is described in the definition would make the by-product ineligible for the proposed incentives (e.g., further baking, grinding, mixing, etc.).

The submitter’s question regarding whether further processing Recovered Retail Food changes its type to “other” appears to be regarding how to report tonnage, which is outside the scope of the proposed regulations. CDFA is developing outreach materials regarding recent changes to tonnage reporting and encourages the submitter to contact our office at 916-900-5022 or ffldrs@cdfa.ca.gov for help with submitting tonnage reports.

COMMENT 1.02: The submitter asks if Recovered Retail Food is an ingredient in a feed, can a licensee split the tonnage and report the Recovered Retail Food separately from the other ingredients.

RESPONSE: The submitter’s question appears to be regarding how to report tonnage, which is outside the scope of the proposed regulations. However, CDFA would like to provide clarification to this comment. Tonnage must be reported as total tons of the product as it is sold; tonnage of mixed feed may not be split up and reported as individual feed ingredients. In addition, CDFA also wishes to clarify that only human food by-products as defined under Section 2804 without further manufacturing/processing beyond what is stated in the ingredient definition will be eligible for reduced inspection tonnage tax. Mixing a human food by-product with any other ingredient constitutes further manufacturing/processing, which would make the feed ineligible for the proposed reduced inspection tonnage tax.

COMMENT 1.03: The submitter asks how a licensee can report more than four types of commercial feed tonnage in the “other” category.

RESPONSE: The submitter’s question appears to be regarding how to report tonnage, which is outside the scope of the proposed regulations. CDFA is developing outreach materials regarding recent changes to tonnage reporting and encourages the submitter to contact our office at 916-900-5022 or ffldrs@cdfa.ca.gov for help with submitting tonnage reports.

COMMENT 1.04: The submitter asks if a licensee should report tonnage of pet foods and products containing beef, lamb, pork, poultry, fish, or shellfish in the "Other" category.

RESPONSE: The submitter's question appears to be regarding how to report tonnage, which is outside the scope of the proposed regulations. CDFA is developing outreach materials regarding recent changes to tonnage reporting and encourages the submitter to contact our office at 916-900-5022 or ffldrs@cdfa.ca.gov for help with submitting tonnage reports. However, CDFA wishes to clarify it has added definitions for Salvage Pet Food under Section 2802(aa) and Distressed Pet Food under Section 2802(ab), as well as clarifying language regarding material containing animal products under Section 2804.

COMMENT 1.05: The submitter states that the top part of the tonnage reporting form is listed by where the feed is going, "other types" is by where it came from, and the fees add the tons from both sections. The submitter asks if a licensee should not count the "other type" in the destination section.

RESPONSE: The submitter's question appears to be regarding how to report tonnage, which is outside the scope of the proposed regulations. CDFA is developing outreach materials regarding recent changes to tonnage reporting and encourages the submitter to contact our office at 916-900-5022 or ffldrs@cdfa.ca.gov for help with submitting tonnage reports.

COMMENT 1.06: The submitter states CDFA should allow licensees to report tonnage of human food by-products diverted to commercial feed and shipped out of state. The submitter states that compost derived from organic material diverted in California and then sold to non-California businesses will be counted towards diversion credit in California under Assembly Bill 1826 (Chesbro, Chapter 727, Statutes of 2014) and Senate Bill 1383 (Lara, Chapter 395, Statutes of 2016). The submitter states that the same should be true for animal feed.

RESPONSE: CDFA would like to provide clarification in response to this comment. California Food and Agricultural Code (FAC) Section 15061(a) requires an inspection tonnage tax to be paid on each ton of feed sold by any person who distributes commercial feed to a consumer-buyer in this state, and FAC Section 15062 requires every person subject to payment of the inspection tonnage tax to make tonnage reports. At this time, CDFA has no statutory authority to require licensees to submit tonnage reports for commercial feed sold to a consumer-buyer outside the state of California. CDFA recognizes the value of capturing this data to support meeting diversion goals and is currently exploring options for voluntary reporting.

COMMENT 1.07: The submitter states CDFA should allow licensees to report tonnage of free and donated commercial feed, including human food by-products.

RESPONSE: CDFA would like to provide clarification in response to this comment. FAC Section 15061(a) requires an inspection tonnage tax to be paid on each ton of feed sold by any person who distributes commercial feed to a consumer-buyer in this state, FAC Section 15062 requires every person subject to payment of the inspection tonnage tax to make reports and payments, FAC Section 14927 defines "distribute" as offer for sale, sell, exchange or barter, and FAC Section 14926 defines "consumer-buyer" as a person who purchases commercial feed from a manufacturer or distributor to feed to animals. At this time, CDFA has no statutory authority to require licensees to submit tonnage reports for commercial feed that is donated or given away free of charge. CDFA recognizes the value of capturing this data to support meeting diversion goals and is currently exploring options for voluntary reporting.

COMMENT 1.08: The submitter states they believe CDFA should allow licensees to report the gross tonnage of human food by-products diverted to commercial livestock feed rather than only reporting the net tonnage sold. The submitter states that the tonnage tax should only apply to the net tonnage sold; however, licensees should capture and report the gross tonnage of human food by-products diverted to support meeting diversion goals. The submitter goes on to state that composters will likely report gross tonnage of by-products diverted and not the final net tonnage of compost sold as their diversion numbers.

RESPONSE: CDFA would like to provide clarification in response to this comment. FAC Section 15061(a) requires an inspection tonnage tax to be paid on each ton of feed sold by any person who distributes commercial feed to a consumer-buyer in this state, and FAC Section 15062 requires every person subject to payment of the inspection tonnage tax to make tonnage reports. At this time, CDFA has no statutory authority to require licensees to submit tonnage reports on the gross tonnage of human food by-products diverted commercial feed, only on the net tonnage sold to a consumer-buyer in this state. CDFA recognizes the value of capturing this data to support meeting diversion goals and is currently exploring options for voluntary reporting.

COMMENT 2.01: The submitter states that companies that are new to the diversion of human food by-products to animal feed may not be aware of their responsibilities under the Food Safety Modernization Act (FSMA). The submitter recommends that CDFA review the U.S. Food and Drug Administration's "Guidance for Industry #239: Human Food By-Products For Use As Animal Food" to ensure that the proposed amendments and guidance are aligned.

RESPONSE: CDFA would like to provide clarification in response to this comment. CDFA has reviewed "Guidance for Industry #239: Human Food By-Products For Use As Animal Food" and ensured the proposed amendments are aligned. The by-product handling requirements described under proposed Section 2675.1(a) align with FSMA requirements specified in Code of Federal Regulations, Title 21, Part 507.28, as specified in the Initial Statement of Reasons. CDFA recognizes that companies that are new to the diversion of human food by-products to animal feed may not be aware of FSMA requirements. For this reason, CDFA's Safe Animal Feed Education (SAFE)

Program will be conducting outreach to ensure new companies entering this space are aware of their responsibilities under FSMA.

COMMENT 2.02: The submitter recommends integration of the “safe and suitable for animal feed” requirement into the proposed general provisions at Section 2675.1(a) to address the safety and suitability of all by-products destined for animal feed.

RESPONSE: CDFA has considered this comment and has not incorporated it in the regulations. All feed sold in the state of California is already required by law and regulation to be safe and suitable; any feed that is not safe and suitable would be considered adulterated under FAC Section 15041 and 3 CCR Section 2734. Proposed Section 2675.1(a)(1) states that by-products used in commercial feed must not bear or contain any substance which may render it injurious to health; CDFA believes adding the terms safe and suitable would be redundant.

COMMENT 2.03: The submitter notes that the proposed definitions of Wet Food Processing Waste and Restaurant Food Waste do not exclude animal products. The submitter goes on to state that because the proposed incentives apply only to by-products diverted without further manufacturing/processing, the proposed definitions seem to imply that raw or uncooked animal products can be diverted to animal feed. The submitter recommends that the definitions be amended to specify that only cooked animal products are eligible for the proposed diversion incentives.

RESPONSE: CDFA has considered this comment and has partially incorporated it in the regulations. However, rather than specifying that only “cooked” animal products are eligible, CDFA has added language regarding ingredients from mammalian origins to the proposed definitions for Wet Food Processing Waste and Restaurant Food Waste. CDFA believes that specifying animal products must be “cooked” would not provide adequate detail and that referencing the requirements specified under Code of Federal Regulations Title 21, Part 589.2000 is more thorough.

COMMENT 2.04: The submitter recommends that the proposed definition for Restaurant Food Waste be amended to include food waste collected from food preparation at retail facilities to address by-product produced by food preparation at retail stores.

RESPONSE: CDFA has reviewed this comment and did not incorporate it into the regulations. The proposed definition for Restaurant Food Waste already includes “food waste collected from other institutes of food preparation,” which includes by-product produced by food preparation at retail stores.

COMMENT 2.05: The submitter notes that the proposed definition for Recovered Retail Food excludes pet food from the proposed diversion incentives. The submitter believes retail facilities will want to divert wholesome, suitable, and safe pet food to animal feed and away from disposal; for example, products that are discontinued or past the

manufacturer's "sell by" date. The submitter believes pet food in these situations should be allowed under the Recovered Retail Food definition.

RESPONSE: CDFA has reviewed this comment and has partially incorporated it in the regulations by adding a definition for Salvage Pet Food under Section 2802(aa) and Distressed Pet Food under Section 2802(ab). However, CDFA wishes to clarify that the purpose of the proposed regulations is to incentivize the diversion of human food by-products; because pet food is not a human food by-product, it is not eligible for the proposed incentives.

COMMENT 2.06: The submitter encourages the program to work with the CDFA Secretary's Feed Inspection Advisory Board to evaluate the best methods for licensees to capture the gross tonnage of human food by-products diverted as well as the net tonnage that is ultimately sold as feed. The submitter notes that the gross tonnage diverted will be an important data point for local governments, as they are responsible for reporting the quantity of organics diverted from landfill in their jurisdictions.

RESPONSE: CDFA would like to provide clarification in response to this comment. FAC Section 15061(a) requires an inspection tonnage tax to be paid on each ton of feed sold by any person who distributes commercial feed to a consumer-buyer in this state, and FAC Section 15062 requires every person subject to payment of the inspection tonnage tax to make tonnage reports. At this time, CDFA has no statutory authority to require licensees to submit tonnage reports on the gross tonnage of human food by-products diverted to commercial feed, only on the net tonnage sold to a consumer-buyer in this state. CDFA recognizes the value of capturing this data to support meeting diversion goals for human food by-products and is currently exploring options for voluntary reporting in the future.

COMMENT 2.07: The submitter notes that California licensed renderers collect the animal products excluded in the proposed definitions, as well as inedible kitchen grease from food processors, restaurants and retail facilities, for conversion into animal feed. The submitter encourages the program to evaluate the best methods for renderers that are licensed as feed manufacturers to report tonnage of human food by-products diverted to animal feed.

RESPONSE: CDFA would like to provide clarification in response to this comment. CDFA recognizes the value of capturing this data to support meeting diversion goals for human food by-products and is currently exploring options for voluntary reporting in the future. However, CDFA wishes to clarify that animal products and inedible kitchen grease converted by renderers into animal feed will not be eligible for the proposed human food by-product diversion incentives because rendering is considered further manufacturing/processing.

SUMMARY AND RESPONSE TO WRITTEN COMMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD ENDING OCTOBER 21, 2021

No comments were received during the 15-day public comment period ending on October 21, 2021.

DOCUMENTS RELIED UPON

The AAFCO Official Publication was referenced in the Initial Statement of Reasons as the basis for Sections 2804(a), (b), (c), and (d). This document is commonly available to industry and was available from CDFA upon request during the rulemaking process. Relevant sections from this document are included in the rulemaking record.

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

CDFA considered not defining by-product and manufacturing/processing under Section 2675 or listing the requirements for diverting by-products under Section 2675.1. This alternative was rejected because it would not be more effective in carrying out the purpose for which the action is proposed, would not be as effective and less burdensome to affected private persons than the proposed action, nor would it be more cost effective to affected private persons while being equally effective in implementing the statutory policy or other provision of law. Without the proposed additions, the regulations lack clarity on requirements for by-products diverted to commercial feed. The addition of these provisions is not burdensome to affected private persons and has no associated cost.

CDFA considered not revising Section 2750(a) to clarify which licensee is responsible for paying tonnage tax. This alternative was rejected because it would not be more effective in carrying out the purpose for which the action is proposed, would not be as effective and less burdensome to affected private persons than the proposed action, nor would it be more cost effective to affected private persons while being equally effective in implementing the statutory policy or other provision of law. Without the proposed revision, the regulations lack clarity on which licensee is required to pay tonnage tax. Existing regulation states that each person holding a commercial feed license shall pay the tonnage tax; this is a source of confusion because commercial feed often passes between several license holders before sale to the end user. This confusion has historically led to a small number of licensees paying most of the state tonnage tax - approximately 60% of the tonnage tax collection is from the same 10 companies each

year, which is 85 licenses out of 2,225 total licenses. Although the addition of this provision may be considered burdensome and not cost effective by some affected private persons (e.g., licensees that will be required to pay tonnage tax), it is more effective in implementing the statutory policy. In addition, it is more cost effective for other affected private persons (e.g., licensees that are currently paying the majority of tonnage tax).

CDFA considered not adding additional language to Section 2750(e) specifying tonnage tax incentives and Section 2751(c) specifying a reduced license fee. This alternative was rejected because it would not be more effective in carrying out the purpose for which the action is proposed, would not be as effective and less burdensome to affected private persons than the proposed action, nor would it be more cost effective to affected private persons while being equally effective in implementing the statutory policy or other provision of law. By-products are essential to the California animal agriculture industry and replace higher cost imported feed ingredients while also decreasing contributions to landfills. Human food by-products are generally lower margin than traditional feed ingredients and the existing license and tonnage fees may be prohibitively expensive. CDFA believes the lower license fee will encourage more companies to become licensed and the lower tax rate will encourage licensees to fully report tonnage of these products, thereby building capacity and supporting the state's diversion goals. The addition of these provisions will result in cost savings and is not burdensome to affected private persons because the licensing and tax requirements already exist.

CDFA considered not defining human food by-products under Section 2804. This alternative was rejected because it would not be more effective in carrying out the purpose for which the action is proposed, would not be as effective and less burdensome to affected private persons than the proposed action, nor would it be more cost effective to affected private persons while being equally effective in implementing the statutory policy or other provision of law. Without the proposed additions, the regulations lack clarity on the products that will be eligible for the reduced tonnage tax rate and license fee. The definitions are also needed to clarify ingredient labeling requirements to ensure businesses know what products can be labeled with these terms. The addition of these provisions is not burdensome to affected private persons and has no associated cost.

Pursuant to Government Code section 11346.9(a)(4), CDFA 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 CDFA's reasons for rejecting any proposed alternatives.

DUPLICATION OF STATUTES AND REGULATIONS

The definition of manufacturing/processing under proposed Section 2675(k) purposely duplicates the definition provided in Code of Federal Regulations Title 21, Part 507.3. Notwithstanding the Administrative Procedures Act's nonduplication standard in Government Code Section 11349.1(a)(6), CDFA's duplication of this section of the Code of Federal Regulations is necessary to satisfy the clarity standard in Government Code Section 11349.1(a)(3). This duplication is necessary for the benefit of industry understanding, enforcement, and ease of reading. If the proposed regulations merely provided a reference to the Code of Federal Regulations, both industry and CDFA would be required to cross-reference the definition to determine eligibility for the proposed human food by-product diversion incentives.