

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL PORK PRODUCERS
COUNCIL; AMERICAN FARM BUREAU
FEDERATION,

Plaintiffs-Appellants,

v.

KAREN ROSS, in her official capacity
as Secretary of the California
Department of Food & Agriculture;
TOMÁS J. ARAGÓN, in his official
capacity as Director of the California
Department of Public Health; ROB
BONTA,* in his official capacity as
Attorney General of California,

Defendants-Appellees,

and

THE HUMANE SOCIETY OF THE
UNITED STATES; ANIMAL LEGAL
DEFENSE FUND; ANIMAL EQUALITY;
THE HUMANE LEAGUE; FARM
SANCTUARY; COMPASSION IN

No. 20-55631

D.C. No.
3:19-cv-02324-
W-AHG

OPINION

* Rob Bonta is substituted for his predecessor, Xavier Becerra, as Attorney General of California; and Tomás J. Aragón is substituted for his predecessor, Sonia Angell, as Director of the California Department of Public Health. Fed. R. App. 43(c)(2).

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WORLD FARMING USA;
COMPASSION OVER KILLING,
Intervenor-Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Argued and Submitted April 14, 2021
Pasadena, California

Filed July 28, 2021

Before: Milan D. Smith, Jr. and Sandra S. Ikuta, Circuit
Judges, and John E. Steele, ** District Judge.

Opinion by Judge Ikuta

** The Honorable John E. Steele, United States District Judge for the
Middle District of Florida, sitting by designation.

SUMMARY***

Constitutional Law

The panel affirmed the district court's dismissal for failure to state a claim of an action filed by the National Pork Producers Council and the American Farm Bureau Federation, seeking declaratory and injunctive relief on the ground that California's Proposition 12 violates the dormant Commerce Clause in banning the sale of whole pork meat (no matter where produced) from animals confined in a manner inconsistent with California standards.

The panel held that the complaint did not plausibly plead that Proposition 12 violates the dormant Commerce Clause by compelling out-of-state producers to change their operations to meet California standards and thus impermissibly regulating extraterritorial conduct outside of California's borders. First, Proposition 12 does not dictate the price of a product and does not tie the price of in-state products to out-of-state prices. Further, the interconnected nature of the pork industry does not mean that Proposition 12's extraterritorial impact violates the underlying principles of the dormant Commerce Clause. The panel held that the complaint plausibly alleged that Proposition 12 has an indirect practical effect on how pork is produced and sold outside California, but such upstream effects do not violate the dormant Commerce Clause. The panel also held that California's promulgation of regulations to implement Proposition 12, which, as a practical matter, may result in the

*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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imposition of complex compliance requirements on out-of-state farmers, does not have an impermissible extraterritorial effect.

The panel further held that the complaint did not plausibly plead that Proposition 12 violates the dormant Commerce Clause by imposing excessive burdens on interstate commerce without advancing any legitimate local interest. The panel concluded that alleged cost increases to market participants and customers did not qualify as a substantial burden to interstate commerce for purposes of the dormant Commerce Clause.

COUNSEL

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OPINION

IKUTA, Circuit Judge:

In 2018, California voters passed Proposition 12, which bans the sale of whole pork meat (no matter where produced) from animals confined in a manner inconsistent with California standards. The National Pork Producers Council and the American Farm Bureau Federation (collectively referred to as “the Council”) filed an action for declaratory and injunctive relief on the ground that Proposition 12 violates the dormant Commerce Clause. Under our precedent, a state law violates the dormant Commerce Clause only in narrow circumstances. Because the complaint here does not plausibly allege that such narrow circumstances apply to Proposition 12, we conclude that the district court did not err in dismissing the Council’s complaint for failure to state a claim.

I

Proposition 12 amended sections 25990–25993 of the California Health and Safety Code to “prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers, and increase the risk of foodborne illness and associated negative fiscal impacts on the State of California.” Cal. Prop. 12, § 2 (2018). The relevant portion of Proposition 12 precludes a business owner or operator from knowingly engaging in a sale within California of various products, including the sale of “[w]hole pork meat” unless the meat was produced in compliance with specified sow confinement restrictions. Cal. Prop. 12, § 3(b) (2018); *see* Cal. Health & Safety Code §§ 25990(b)(1)–(2), 25991(e)(1)–(4).

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On December 5, 2019, the Council filed a complaint against California officials (referred to collectively as the California defendants) challenging Proposition 12 and seeking, among other things, a declaratory judgment that Proposition 12 is unconstitutional under the dormant Commerce Clause, and a permanent injunction enjoining the implementation and enforcement of Proposition 12.¹ The complaint alleged that Proposition 12 violates the dormant Commerce Clause in two ways. First, it impermissibly regulates extraterritorial conduct outside of California's borders by compelling out-of-state producers to change their operations to meet California standards. Second, it imposes excessive burdens on interstate commerce without advancing any legitimate local interest because it significantly increases operation costs, but is not justified by any animal-welfare interest and "has no connection to human health or foodborne illness."

On April 27, 2020, the district court granted the California defendants' motion to dismiss and the intervenors' motion for judgment on the pleadings. The district court held that Proposition 12 did not impermissibly control extraterritorial conduct and did not impose a substantial burden on interstate commerce. Although the district court had granted the Council leave to amend, the Council instead moved for entry of judgment, and the district court dismissed the complaint with prejudice. The Council timely appealed.

We have jurisdiction under 28 U.S.C. § 1291, and review de novo the district court's order granting a motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal

¹ On January 9, 2020, several nonprofit organizations were granted intervention as defendants (referred to collectively as the intervenors).

Rules of Civil Procedure, *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009), and the district court’s order granting a motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure, *Lyon v. Chase Bank USA, N.A.*, 656 F.3d 877, 883 (9th Cir. 2011). At the motion to dismiss stage, we take as true the facts plausibly alleged in the complaint. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

II

The Constitution grants Congress the power to “regulate Commerce . . . among the several States.” U.S. Const. art. I, § 8, cl. 3. The Commerce Clause does not, on its face, impose any restrictions on state law in the absence of congressional action. Nonetheless, “[f]rom early in its history,” the Supreme Court has interpreted the Commerce Clause as implicitly preempting state laws that regulate commerce in a manner that is disruptive to economic activities in the nation as a whole. See *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2090 (2018); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 200–01 (1824). In its most recent consideration of the scope of the dormant Commerce Clause, the Court stated there are “two primary principles that mark the boundaries of a State’s authority to regulate interstate commerce.” *Wayfair*, 138 S. Ct. at 2090. “First, state regulations may not discriminate against interstate commerce; and second, States may not impose undue burdens on interstate commerce.” *Id.* at 2091. Although “State laws that discriminate against interstate commerce face ‘a virtually *per se* rule of invalidity,’” *id.* (quoting *Granholm v. Heald*, 544 U.S. 460, 476 (2005)), “State laws that ‘regulat[e] evenhandedly to effectuate a legitimate local public interest . . . will be upheld unless the burden imposed on such commerce

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is clearly excessive in relation to the putative local benefits,” *id.* (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)). *Wayfair* indicated that these two principles are “subject to exceptions and variations.” *Id.* Among other things, *Wayfair* cited an earlier decision holding that a state law may violate the dormant Commerce Clause when it has extraterritorial effects. *Id.* (citing *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573 (1986)).

The Council does not argue that the complaint has plausibly pleaded that Proposition 12 discriminates against out-of-state interests, and so has foregone the first principle recognized in *Wayfair*. Instead, it argues the second *Wayfair* principle, that Proposition 12 places an undue burden on interstate commerce, and the *Brown-Forman* variation, that Proposition 12 has an impermissible extraterritorial effect. At the motion to dismiss stage, we must determine whether the Council has plausibly pleaded a dormant Commerce Clause claim under its theories.

A

The Council’s primary argument is that the complaint adequately alleges that Proposition 12 has an impermissible extraterritorial effect.

1

In making this claim, the Council relies primarily on three historical Supreme Court cases that first delineated when a state law violates the dormant Commerce Clause by impermissibly regulating prices in other states. *See Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935); *Brown-Forman*, 476 U.S. at 579; *Healy v. Beer Inst., Inc.*, 491 U.S. 324

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(1989). In *Baldwin*, the Court struck down a New York law that required a dealer selling milk in New York to pay an out-of-state milk producer the minimum price set by New York law in order to equalize the price of milk from in-state and out-of-state producers. 294 U.S. at 518–19. As the Court later explained, the New York law in *Baldwin* was “aimed solely at interstate commerce attempting to affect and regulate the price to be paid for milk in a sister state, [which] amounted in effect to a tariff barrier set up against milk imported into the enacting state.” *Milk Control Bd. of Pa. v. Eisenberg Farm Prods.*, 306 U.S. 346, 353 (1939). In *Brown-Forman*, the Court invalidated a New York law requiring every liquor distiller or producer selling to wholesalers within the state to affirm that the prices charged for every bottle or case of liquor were no higher than the lowest price at which the same product would be sold in any other State during the month covered by the particular affirmation. 476 U.S. at 576. The Court concluded that the price-affirmation law was invalid because it had the “practical effect” of requiring “producers or consumers in other States to surrender whatever competitive advantages they may possess,” by forcing them to sell their product in-state for a set price. 476 U.S. at 580, 583. Last, *Healy* struck down a Connecticut price-affirmation statute that, in interaction with the laws in the neighboring states, had the practical effect of controlling prices in those states, causing an anti-competitive result. 491 U.S. at 337–39.

These cases used broad language. For instance, *Healy* states that the extraterritoriality principle “protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State,” and “precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether

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or not the commerce has effects within the [regulating] State.” *Id.* at 336–37 (cleaned up). But such broad statements are “so sweeping that most commentators have assumed that these cases cannot mean what they appear to say.” Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*, 84 *Notre Dame L. Rev.* 1057, 1090 (2009); *see also* Jack L. Goldsmith & Alan O. Sykes, *The Internet and the Dormant Commerce Clause*, 110 *Yale L.J.* 785, 806 (2001) (suggesting that the Court’s “overbroad extraterritoriality dicta” can be ignored). The extraterritoriality test cannot strictly bar laws that have extraterritorial effect, scholars argue, because “[i]n practice, states exert regulatory control over each other all the time.” Gillian E. Metzger, *Congress, Article IV, and Interstate Relations*, 120 *Harv. L. Rev.* 1468, 1521 (2007) (noting, for example, “Delaware’s corporate law, which has de facto nationwide application”).

And indeed, the Supreme Court has given force to these scholarly observations, as it has indicated that the extraterritoriality principle in *Baldwin*, *Brown-Forman*, and *Healy* should be interpreted narrowly as applying only to state laws that are “price control or price affirmation statutes,” *Pharm. Rsch. & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 669 (2003). We have adopted this interpretation and held that the extraterritoriality principle is “not applicable to a statute that does not dictate the price of a product and does not tie the price of its in-state products to out-of-state prices.” *Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris (Eleveurs)*, 729 F.3d 937, 951 (9th Cir. 2013) (cleaned up). The Tenth Circuit has followed suit. *See Energy & Env’t Legal Inst. v. Epel*, 793 F.3d 1169, 1172 (10th Cir. 2015) (Gorsuch, J.) (holding that the “three essential characteristics”

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that mark *Baldwin*, *Brown-Forman*, and *Healy* are that the state law at issue (1) was a price-control statute, (2) linked prices paid in-state with those paid out-of-state, or (3) discriminated against interstate commerce).

Under this narrow interpretation, *Baldwin*, *Brown-Forman*, and *Healy* do not support the Council's arguments. It is undisputed that Proposition 12 is neither a price-control nor price-affirmation statute, as it neither dictates the price of pork products nor ties the price of pork products sold in California to out-of-state prices. *See Eleveurs*, 729 F.3d at 951. And the Council has not claimed that Proposition 12 discriminates against interstate commerce.

2

The Council nevertheless asks us to hold that Proposition 12's extraterritorial impact violates the underlying principles of the dormant Commerce Clause in light of the unique nature of the pork industry. According to the allegations of the complaint, the pork industry is highly interconnected. A single hog is butchered into many different cuts which would normally be sold throughout the country. In order to ensure they are not barred from selling their pork products into California, all the producers and the end-of-chain supplier will require assurances that the cuts and pork products come from hogs confined in a manner compliant with Proposition 12. This means that all pork suppliers will either produce hogs in compliance with California specifications or incur the additional cost of segregating their products. As a practical matter, given the interconnected nature of the nationwide pork industry, all or most hog farmers will be forced to comply with California requirements. The cost of compliance with Proposition 12's requirements is high, and

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would mostly fall on non-California transactions, because 87% of the pork produced in the country is consumed outside California. Therefore, the complaint alleges, Proposition 12 violates the dormant Commerce Clause given its substantial extraterritorial impact as a practical matter.

The Council’s theory is not barred by *Walsh*’s characterization of the *Baldwin* line of cases as being limited to price-control and price-affirmation statutes. We have recognized that the Supreme Court has not expressly narrowed the extraterritoriality principle to only price-control and price-affirmation cases, and we have recognized a “broad[er] understanding of the extraterritoriality principle” may apply outside this context, *Ward v. United Airlines, Inc.*, 986 F.3d 1234, 1240–41 (9th Cir. 2021). But even though the Council’s complaint plausibly alleges that Proposition 12 has an indirect “practical effect” on how pork is produced and sold outside California, we have rejected the argument that such upstream effects violate the dormant Commerce Clause.

Under our precedent, state laws that regulate only conduct in the state, including the sale of products in the state, do not have impermissible extraterritorial effects. *See Rosenblatt v. City of Santa Monica*, 940 F.3d 439, 445 (9th Cir. 2019). A state law may require out-of-state producers to meet burdensome requirements in order to sell their products in the state without violating the dormant Commerce Clause. *See Rocky Mountain Farmers Union v. Corey (Rocky II)*, 913 F.3d 940, 952 (9th Cir. 2019); *Eleveurs*, 729 F.3d at 942. Even if a state’s requirements have significant upstream effects outside of the state, and even if the burden of the law falls primarily on citizens of other states, the requirements do not impose *impermissible* extraterritorial effects. *See Eleveurs*, 729 F.3d at 942, 948–53. A state law is not

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impermissibly extraterritorial unless it directly regulates conduct that is wholly out of state. *Rosenblatt*, 940 F.3d at 442, 445 (holding that a city ordinance restricting vacation rentals in a California city did not violate the dormant Commerce Clause even though 95% of vacation rentals in the city involved an out-of-state party, because the ordinance penalized only conduct within the city).

The Council’s allegations regarding the upstream effects of Proposition 12 are most closely analogous to those we rejected in *Eleveurs*. 729 F.3d at 942. In *Eleveurs*, plaintiffs argued that a law banning the sale in California of certain duck products made by force feeding the duck violated the extraterritoriality principle because it controlled commerce outside of California. According to the plaintiffs, the law targeted out-of-state entities and compelled out-of-state farmers to comply with California’s standards. *Id.* at 949. We held that the plaintiff’s argument failed because the state law applied to “both California entities and out-of-state entities,” and the law merely precluded “a more profitable method of operation—force feeding birds for the purpose of enlarging its liver—rather than affecting the interstate flow of goods.” *Id.*

The requirements under Proposition 12 likewise apply to both California entities and out-of-state entities, and merely impose a higher cost on production, rather than affect interstate commerce. Therefore, even though Proposition 12 has some upstream effects, California is “free to regulate commerce and contracts within [its] boundaries with the goal of influencing the out-of-state choices of market participants.” *Rocky Mountain Farmers Union v. Corey* (*Rocky I*), 730 F.3d 1070, 1103 (9th Cir. 2013); *see also Eleveurs*, 729 F.3d at 948–49 (“A statute is not invalid merely

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because it affects in some way the flow of commerce between the States.” (cleaned up)).

For the same reason, California’s promulgation of regulations to implement Proposition 12, which, as a practical matter, may result in the imposition of complex compliance requirements on out-of-state farmers, does not have an impermissible extraterritorial effect. Proposition 12 required the California Department of Food and Agriculture (CDFA) to publish implementing regulations. Cal. Prop. 12 § 6 (2018); Cal. Health & Safety Code § 25993(a). Under the proposed regulations,² an out-of-state producer must hold a valid California certification in order to sell its products in California. CDFA, Proposed Regulations at 30 (May 28, 2021) (proposing to adopt California Code of Regulations Title 3, § 1322.1(b)). And to obtain the certification, a producer must “allow access by the certifying agent, and/or authorized representatives of the Department, to . . . houses where covered animals and covered animal products may be kept” *Id.* at 40 (proposing to adopt § 1326.1(c)). Once certified, pork-producing operations must also comply with the recordkeeping requirements. *Id.* at 40–41 (proposing to adopt § 1326.2).

² The complaint alleges that Proposition 12 charges California agencies with promulgating regulations to implement the proposition. After oral argument was held in this appeal, CDFA published proposed regulations implementing Proposition 12. The proposed regulations are located at http://www.cdfa.ca.gov/ahfss/pdfs/regulations/AnimalConfinementText1stNotice_05252021.pdf. *See also* 22-Z Cal. Regulatory Notice Reg. 594 (May 28, 2021).

Although the CDFA has published the proposed regulations, it has not yet promulgated a final version.

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Even assuming these proposed regulations become effective, “[a]ppropriate certificates may be exacted” from out-of-state producers for in-state health and safety purposes without violating the dormant Commerce Clause. *Baldwin*, 294 U.S. at 524. Indeed, in *Rocky I*, we held that a California law did not impermissibly regulate extraterritorial conduct even though it required out-of-state fuel distributors “to seek regulatory approval in California before undertaking a transaction also in California” and imposed reporting requirements on out-of-state producers. 730 F.3d at 1104. Therefore, the proposed regulations’ requirement that out-of-state producers seek a California certification in order to access the California market is not an impermissible extraterritorial effect.

3

The Council relies on a handful of cases in which we determined that a state law had an impermissibly extraterritorial effect because it directly regulated transactions conducted entirely out of state. In *Daniels Sharpsmart, Inc. v. Smith*, we struck down a California law requiring a company that sent medical waste out of state for disposal to use only a medical waste facility that met California requirements. 889 F.3d 608, 612–13, 615–16 (9th Cir. 2018). The transaction at issue in that case (the purchase of medical waste disposal services from out-of-state treatment facilities in Kentucky and Indiana) occurred wholly outside California. *Id.*; see also *Sam Francis Found. v. Christies, Inc.*, 784 F.3d 1320, 1323 (9th Cir. 2015) (en banc) (striking down a law that required California residents to pay five percent of their sales price in out-of-state art sale transactions to the artists). And in *National Collegiate Athletic Ass’n v. Miller*, we held that a statute had extraterritorial effect because it was

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“directed at interstate commerce and only interstate commerce,” given that “it regulates only interstate organizations, *i.e.*, national collegiate athletic associations which have member institutions in 40 or more states.” 10 F.3d 633, 638 (9th Cir. 1993); *see also Legato Vapors, LLC v. Cook*, 847 F.3d 825, 833 (7th Cir. 2017) (invalidating a state law which “govern[ed] the services and commercial relationships between out-of-state manufacturers and their employees and contractors”). Citing *Daniels Sharpsmart* and *Miller*, the Council argues that Proposition 12 necessarily controls transactions conducted among out-of-state pork producers, processors, distributors and sellers of pork products, because it compels them to ensure that pork products that may eventually be sold in California are traceable to hogs that have been confined in a manner that meets California requirements.

The Council’s reliance on the *Daniel Sharpsmart* line of cases is misplaced, because Proposition 12 does not regulate transactions conducted wholly outside of California. Rather, Proposition 12 directly regulates only the in-state sales of “products that are brought into or are otherwise within the borders of [California].” *Daniels Sharpsmart*, 889 F.3d at 615. Nor does Proposition 12 directly regulate interstate commerce; rather, by its terms, it is aimed at the in-state sales of pork, regardless whether it is produced by in-state or out-of-state farmers. We have not extended the *Daniel Sharpsmart* line of cases to a situation where the state law had an upstream effect only as a practical matter on out-of-state transactions. As explained above, we have rejected similar arguments relying on this theory. *See Eleveurs*, 729 F.3d at 942; *see also Epel*, 793 F.3d at 1174 (holding that the Supreme Court has rejected the “grand[] proposition” that the *Baldwin* line of cases “require [courts] to declare

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automatically unconstitutional any state regulation with the practical effect of controlling conduct beyond the boundaries of the State” (cleaned up)).

4

Finally, the Council argues that Proposition 12 violates the dormant Commerce Clause because it poses a risk of inconsistent regulations that undermines a “compelling need for national uniformity in regulation.” *See Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 299 n.12 (1997). While *Wayfair* did not overrule this principle (so it may be deemed a “variation” of the two primary principles of the dormant Commerce Clause), *see* 138 S. Ct. at 2090–91, we have held that only “state regulation of activities that are inherently national or require a uniform system of regulation” violates the dormant Commerce Clause, *Rosenblatt*, 940 F.3d at 452 (quoting *Chinatown Neighborhood Ass’n v. Harris*, 794 F.3d 1136, 1146 (9th Cir. 2015)); *see also Ward*, 986 F.3d at 1242 (holding that to prevail on the contention that it will inevitably be subjected to a patchwork of inconsistent regulations, a party must show that the challenged state law “regulates in an area that requires national uniformity”). Absent such a need for uniform national regulation, a state regulation does not violate the dormant Commerce Clause even where there is a threat of conflicting regulations. *See Chinatown*, 794 F.3d at 1146–47. The “small number” of cases dealing with “activities that are inherently national or require a uniform system of regulation” generally concern taxation or interstate transportation. *See Rosenblatt*, 940 F.3d at 452 (quoting *Chinatown*, 794 F.3d at 1146). Unless the state law at issue interferes with a system of national concern, it does not violate the dormant Commerce Clause. Thus in *Eleveurs*, we held that “Plaintiffs have not demonstrated that

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a nationally uniform foie gras production method is required to produce foie gras.” 729 F.3d at 950. Likewise, neither optometrists nor gas producers demonstrated a need for national uniformity in their economic activities. *See Nat’l Ass’n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1148 (9th Cir. 2012); *Rocky I*, 730 F.3d at 1104–05.

The complaint here fails to make a plausible allegation that the pork production industry is of such national concern that it is analogous to taxation or interstate travel, where uniform rules are crucial. *See Gen. Motors Corp.*, 519 U.S. at 298 n.12. Although the complaint plausibly alleges that Proposition 12 will have an impact on a national industry, we have already held that such impacts do not render the state law impermissibly extraterritorial. Accordingly, the complaint fails to state a claim on this basis.³

B

We now turn to the Council’s second argument that Proposition 12 imposes a burden on interstate commerce which is “clearly excessive in relation to the putative local

³ In any event, the Council has not shown that a threat of “*conflicting, legitimate legislation[s]*” by other jurisdictions is “both actual and imminent.” *Rocky I*, 730 F.3d at 1104–05 (emphasis added) (quoting *S.D. Myers v. City of San Francisco*, 253 F.3d 461, 469–70 (9th Cir. 2001)). According to an amicus brief, “Massachusetts, Maine, Michigan, and Rhode Island have enacted animal-confinement laws similar” or “nearly identical” to California’s current confinement rules. The Council points to Ohio’s regulations, *see* Ohio Admin. Code 901:12-8-02(G)(4), (5), but while they differ in approach from Proposition 12, compliance with both sets of regulations is possible. In short, while it is plausible that other states will implement laws regulating pork meat production, the referenced laws demonstrate that the Council has not stated a plausible claim that the various regulations will be conflicting.

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benefits” and thus violates the dormant Commerce Clause. *Pike*, 397 U.S. at 142. The Supreme Court has not provided a clear methodology for comparing in-state benefits and out-of-state burdens, but at the motion to dismiss stage a complaint must, at a minimum, “plausibly allege the ordinance places a ‘significant’ burden on interstate commerce.” *Rosenblatt*, 940 F.3d at 452.

We have held that a statute imposes such a significant burden only in rare cases. “[M]ost statutes that impose a substantial burden on interstate commerce do so because they are discriminatory.” *Eleveurs*, 729 F.3d at 952. As indicated above, the Council does not allege that Proposition 12 has a discriminatory effect. “[L]ess typically, statutes impose significant burdens on interstate commerce as a consequence of inconsistent regulation of activities that are inherently national or require a uniform system of regulation.” *Id.* (cleaned up). As we have explained, the complaint here does not plausibly allege that Proposition 12 falls into the narrow class of state laws that meets this requirement.

For dormant Commerce Clause purposes, laws that increase compliance costs, without more, do not constitute a significant burden on interstate commerce. “The mere fact that a firm engaged in interstate commerce will face increased costs as a result of complying with state regulations does not, on its own, suffice to establish a substantial burden on interstate commerce.” *Ward*, 986 F.3d at 1241–42. Nor does a non-discriminatory regulation that “precludes a preferred, more profitable method of operating in a retail market” place a significant burden on interstate commerce. *Nat’l Ass’n of Optometrists*, 682 F.3d at 1154–55. Finally, even a state law that imposes heavy burdens on some out-of-state sellers does not place an impermissible burden on interstate commerce.

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In *Exxon Corp. v. Governor of Maryland*, the Supreme Court held that even where the burdens imposed by a Maryland law would cause some refiners to stop selling in Maryland, and would deprive consumers of some special services, the law did not impermissibly burden interstate commerce. 437 U.S. 117, 127 (1978). While some refiners “may choose to withdraw entirely from the Maryland market,” it was reasonable to assume that they would “be promptly replaced by other interstate refiners.” *Id.* “[I]nterstate commerce is not subjected to an impermissible burden simply because an otherwise valid regulation causes some business to shift from one interstate supplier to another.” *Id.*; see also *Rosenblatt*, 940 F.3d at 453 (holding that a city ordinance did not violate the dormant Commerce Clause merely because it shifted tourism dollars from vacation rentals to hotels).

In this case, the crux of the allegations supporting the Council’s substantial burden claim is that the cost of compliance with Proposition 12 makes pork production more expensive nationwide. The complaint alleges that, to comply with Proposition 12’s requirements, “producers will have to expend millions in upfront capital costs and adopt a more labor-intensive method of production.” The cost of compliance would result in a 9.2 percent increase in production cost, which would be passed on to consumers, and producers that do not comply with Proposition 12 would lose business with packers that are supplying the California market.

Taking the plausible allegations in the complaint as true and making all reasonable inferences in the Council’s favor, we conclude that these alleged cost increases to market participants and customers do not qualify as a substantial burden to interstate commerce for purposes of the dormant

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Commerce Clause. “[A] loss to [some specific market participants] does not, without more, suggest that the [state] statute impedes substantially the free flow of commerce from state to state.” *Burlington N. R.R. Co. v. Dep’t of Pub. Serv. Regul.*, 763 F.2d 1106, 1114 (9th Cir. 1985) (cleaned up). Even if producers will need to adopt a more costly method of production to comply with Proposition 12, such increased costs do not constitute a substantial burden on interstate commerce. *Eleveurs*, 729 F.3d at 952. Nor do higher costs to consumers qualify as a substantial burden on interstate commerce. See *Nat’l Ass’n of Optometrists*, 682 F.3d at 1152. “[I]f the statute caused the loss [to some sellers] and therefore caused harm to the consuming public, such a result would be related to the wisdom of the statute, not to a burden on interstate commerce.” *Id.* (citing *Exxon*, 437 U.S. at 127–28)).

Accordingly, the district court did not err in holding that, as a matter of law, the Council failed to state a claim that Proposition 12 imposes a substantial burden on interstate commerce. Because the complaint failed to make a plausible allegation to that effect, the district court was correct in concluding that it “need not determine whether the benefits of the challenged law are illusory.” See *Rosenblatt*, 940 F.3d at 452.

III

While the dormant Commerce Clause is not yet a dead letter, it is moving in that direction. Indeed, some justices have criticized dormant Commerce Clause jurisprudence as being “unmoored from any constitutional text” and resulting in “policy-laden judgments that [courts] are ill equipped and arguably unauthorized to make,” *Camps*

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Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564, 610, 618 (1997) (Thomas, J., dissenting). Under our precedent, unless a state law facially discriminates against out-of-state activities, directly regulates transactions that are conducted entirely out of state, substantially impedes the flow of interstate commerce, or interferes with a national regime, a plaintiff's complaint is unlikely to survive a motion to dismiss. Even though the Council has plausibly alleged that Proposition 12 will have dramatic upstream effects and require pervasive changes to the pork production industry nationwide, it has not stated a violation of the dormant Commerce Clause under our existing precedent.

AFFIRMED.

DEPARTMENT OF FOOD AND AGRICULTURE
ANIMAL HEALTH AND FOOD SAFETY SERVICES
PROPOSED REGULATIONS
ANIMAL CONFINEMENT

The Department of Food and Agriculture, Animal Health and Food Safety Services Division, proposes to adopt Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, as specified below.

1) Adopt Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Chapter 10. Animal Confinement.

2) Adopt Article 1 and sections 1320 through 1320.10 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Article 1. Egg-laying Hens.

Section 1320. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to include the plural and vice versa, as the case may demand:

(a) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code.).

(b) "Audit trail" means records that are in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling, packaging, distribution, and sale of shell eggs or liquid eggs that were derived from an egg-laying hen confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Article, and from egg producers that hold a valid certification as a certified operation issued pursuant to Article 5 of this Chapter.

(c) "Certified operation" means as defined in section 1326(e) of this Chapter.

(d) "Certifying agent" means as defined in section 1326(f) of this Chapter.

(e) "Commercial sale" for purposes of section 25991(o) of the Health and Safety Code and this Article means to sell, offer for sale, expose for sale, possess for sale, exchange, barter, trade, transfer possession, or otherwise distribute in California commerce including, but not limited to, transactions by a retailer with a consumer and electronic transactions made using the internet. It shall not include any of the following transactions or transfers of possession:

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(1) Shell eggs or liquid eggs produced outside of the state that enter and exit California, without additional processing or repackaging, exclusively for purposes of transshipment or export for human consumption outside of the state;

(2) Any sale of shell eggs or liquid eggs undertaken on the premises of an official plant at which mandatory inspection is provided under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an Egg Products establishment number (prefix "G") granted by the Food Safety Inspection Service of the United States Department of Agriculture;
or

(3) Donations to religious, charitable, scientific, educational, or other nonprofit organizations that have a tax exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.).

(4) The exception to definition of commercial sale applies only to a specific transaction listed above, not to the covered product itself, and therefore does not apply to all subsequent sales of shell eggs or liquid eggs.

(f) "Consumer" means any person who purchases shell eggs or liquid eggs, as defined in sections 25991(l) and (p) of the Health and Safety Code and this Article, for the sole purpose of their own family use or consumption, or that purchases or consumes shell eggs or liquid eggs at a restaurant, food facility, or other similar business that serves cooked eggs to customers or patrons.

(g) "Container" means any box, case, basket, tote, can, carton, sack, pouch, bag, package, wrapper, receptacle, or any other device which is used to facilitate the handling, distribution, transportation, or commercial sale of shell eggs or liquid eggs.

(h) "Cottage food operation" means an establishment as defined in section 113758 of the Health and Safety Code.

(i) "Department" means the California Department of Food and Agriculture.

(j) "Document of title" means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the shell eggs or liquid eggs it covers. Examples of such document include bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of shell eggs or liquid eggs.

(k) "Egg distributor" means a person or facility engaged in the business of commercial sales or distribution of shell eggs or liquid eggs (as an egg producer or otherwise) to an end-user in California. This definition shall not apply to a person or facility that only receives shell eggs or liquid eggs as an end-user.

(l) “Egg-laying hen” means any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production pursuant to section 25991(g) of the Health and Safety Code. For purposes of this subsection and this Article, a hen kept for egg production means a sexually mature female confined for the purpose of laying eggs which are intended for use as human food as shell eggs or liquid eggs.

(m) “Egg producer” means a person engaged in the business of producing eggs from domesticated chickens, turkeys, ducks, geese, or guineafowl. This definition shall not apply to an official plant inspected under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an establishment number (prefix “G”) granted by the Food Safety Inspection Service of the United States Department of Agriculture.

(n) “Enclosure” means a structure used to confine a covered animal or animals. For purposes of this subsection and this Article, a structure means any cage, crate, pen, or other construction used to confine an egg-laying hen.

(o) “End-user” means any of the following:

(1) A consumer;

(2) A retailer that is not an egg producer and only conducts commercial sales directly to a consumer, without any further distribution, of shell eggs or liquid eggs that were purchased or received from an egg distributor;

(3) A food processing facility or cottage food operation that receives shell eggs or liquid eggs solely for use as an ingredient to manufacture a combination food product that does not meet the definition of a shell egg or liquid egg as defined in this Article; or

(4) A restaurant, food facility, or other similar business that only cooks and serves shell eggs or liquid eggs to customers, patrons, or guests for purposes of consumption.

(p) “Enforcement officer” means any of the following:

(1) Persons employed by and under the supervision and control of the Department; or

(2) Persons employed by and under the supervision and control of the Department of Public Health.

(q) “Flavoring” for purposes of section 25991(l) of the Health and Safety Code and this Article means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, but includes milk and butter, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and Part 184 of Title 21 of the Code of Federal Regulations.

(r) “Food facility” means a facility as defined in section 113789 of the Health and Safety Code.

(s) "Food processing facility" means a facility as defined in section 109947 of the Health and Safety Code.

(t) "In its shell form" for purposes of section 25991(p) of the Health and Safety Code and this Article means an egg as developed, proportioned and shaped in the shell by an egg-laying hen, whether it is in the shell, raw, pasteurized in the shell, treated in the shell, hardboiled, or otherwise cooked in whole form, peeled, co-packaged with other foods, or subsequently sold sliced, chopped or otherwise cut.

(u) "Liquid eggs" means the product defined in section 25991(l) of the Health and Safety Code, whether it is raw or pasteurized, co-packaged with other foods, or sold frozen, dried, freeze-dried, or as a cooked patty, puck, or other cooked form, and shall include all of the following:

(1) Liquid eggs as described by section 160.115 of Title 21 of the Code of Federal Regulations;

(2) Dried eggs as described by section 160.105 of Title 21 of the Code of Federal Regulations;

(3) Frozen eggs as described by section 160.110 of Title 21 of the Code of Federal Regulations;

(4) Egg whites as described by section 160.140 of Title 21 of the Code of Federal Regulations;

(5) Dried egg whites as described by section 160.145 of Title 21 of the Code of Federal Regulations;

(6) Frozen egg whites as described by section 160.150 of Title 21 of the Code of Federal Regulations;

(7) Egg yolks as described by section 160.180 of Title 21 of the Code of Federal Regulations;

(8) Dried egg yolks as described by section 160.185 of Title 21 of the Code of Federal Regulations;

(9) Frozen egg yolks as described by section 160.190 of Title 21 of the Code of Federal Regulations;

(10) Any mixture, irrespective of proportions, of two or more of the products specified in this subsection;

(11) Any product, or mixture of products, specified in this subsection to which has been added no more than sugar, salt, water, seasoning, coloring, flavoring, preservatives, stabilizers, or other similar food additives; and

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(12) Any product represented to the customer as, or bearing the statement of identity of, liquid eggs, or any of the products specified in this subsection on the product label according to section 101.3 of Title 21 of the Code of Federal Regulations.

(v) "Pasteurized" means a pasteurization process applied to eggs in the shell or liquid eggs by any method approved by the United States Food and Drug Administration, United States Department of Food and Agriculture, the Department of Public Health, or the Department.

(w) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(x) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(y) "Retailer" means a facility location that conducts commercial sales of shell eggs or liquid eggs to a consumer.

(z) "Seasoning" for purposes of section 25991(l) of the Health and Safety Code and this Article is synonymous with the term "spice" and means any aromatic vegetable substance in the whole, broken, diced, or ground form, whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include onions, garlic, peppers, and the spices listed in section 182.10, and Part 184 of Title 21 of the Code of Federal Regulations.

(aa) "Shell egg" means a whole egg of an egg-laying hen in its shell form, intended for use as human food pursuant to section 25991(p) of the Health and Safety Code.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, 109947, 113758, and 113789, Health and Safety Code; Title 21, Part 101, section 101.3, Part 160, sections 160.105, 160.110, 160.115, 160.145, 160.150, 160.180, 160.185, and 160.190, Part 172, sections 172.510 and 172.515(b), Part 182, sections 182.10, 182.20, 182.40, 182.50, and Part 184, Code of Federal Regulations; Egg Products Inspection Act, 21 U.S.C. section 1031 et seq.; and Internal Revenue Code, 26 U.S.C. section 501(c)(3).

Section 1320.1. Egg-laying Hen Confinement.

(a) No egg producer or egg distributor shall knowingly sell or contract to sell within the state a shell egg or liquid egg for human consumption if it is the product of an egg-laying hen that was confined in an enclosure that fails to comply with all of the following standards:

(1) Prior to January 1, 2022, an enclosure shall provide a minimum of 144 square inches of usable floorspace per hen;

(2) Commencing January 1, 2022, an enclosure shall be a cage-free housing system that complies with all of the following:

(A) The enclosure shall be an indoor or outdoor controlled environment within which hens are free to roam unrestricted;

(B) The enclosure shall provide enrichments that allow hens to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas;

(C) Employees can provide care while standing within the egg-laying hens' usable floorspace;

(D) And the enclosure shall provide the minimum amount of usable floorspace per hen required by the 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-laying flocks as follows:

(i) Multitiered aviaries in which hens have access to multiple elevated platforms shall provide a minimum of one (1) square foot of usable floorspace per hen;

(ii) Partially slatted systems in which hens have access to elevated flat platforms shall provide a minimum of one (1) square foot of usable floorspace per hen;

(iii) Single-level all-litter floor systems bedded with litter in which hens have limited or no access to elevated flat platforms shall provide a minimum of one and one-half (1.5) square feet of usable floorspace per hen; and

(iv) Any other cage-free housing system not described in this section shall provide a minimum of one (1) square foot of usable floorspace per hen in systems that provide hens with access to vertical space and shall provide a minimum of one and one-half (1.5) square feet of usable floorspace per hen in systems that do not provide hens access to vertical space.

(3) For purposes of this section "usable floorspace" means the total square footage of floorspace provided to each egg-laying hen, as calculated by dividing the total square footage of floorspace provided to egg-laying hens in an individual enclosure by the number of egg-laying hens in that individual enclosure. Usable floorspace shall include both ground-space and elevated level flat platforms upon which hens can roost but shall not include perches or ramps; and

(4) Exceptions as specified in section 25992 of the Health and Safety Code and Article 4 of this Chapter apply to the requirements of this section.

(b) Commencing January 1, 2023, any person engaged in business in this state as an egg producer, or any out-of-state egg producer that is keeping, maintaining, confining and housing an egg-laying hen for the purposes of egg production for human food as shell eggs or

liquid eggs in California, shall hold a valid certification issued pursuant to Article 5 of this Chapter as a certified operation.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1320.2. Egg Distributor Registration.

(a) Any person engaged in business in this state as an egg distributor, or any out-of-state egg distributor conducting commercial sales of shell eggs or liquid eggs into California for purposes of human food use in the state, shall register with the Department pursuant to this Article.

(b) Any person required to register pursuant to this section shall submit an application for registration provided by the Department including the following information:

(1) Business name, physical address of distribution operation, mailing address, phone number, email address, website address, federal tax identification number, and name, phone number and email of person authorized to act on the applicant's behalf.

(2) Description of the type(s) of shell eggs and liquid eggs distributed in the State.

(c) The registration shall not be transferable to any person and shall be applicable only to the location for which originally issued.

(d) A registration is required for each facility location from which shell eggs or liquid eggs are sold, distributed, or otherwise supplied to the location of an end-user.

(e) An egg distributor shall not engage in the commercial sale of shell eggs or liquid eggs within, or into, California unless such person has obtained and holds a valid registration from the Department pursuant to this section for each facility location.

(f) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the registered distributor must be reported to the Department within 30 business days of such change.

(g) All information set forth on applications for registrations and renewals for registrations, including but not limited to any documentation of certification required by (i) of this section, shall be truthful and not misleading.

(h) Every registration expires 12 months from the date of issue.

(i) A registration may be renewed each 12-month period by the Department in response to an application for renewal by an egg distributor if the business of the facility applying for renewal was conducted in accordance with the requirements of this Article and sections 25990

and 25991 of the Health and Safety Code during the preceding 12 months for which the renewal is requested.

(j) An application to the Department by an egg distributor for initial registration, or for purposes of renewal, shall be accompanied by documentation of valid certification pursuant to Article 5 of this Chapter for each location where registration is being sought. A registration shall not be issued for any facility location for which a valid certification required by this section has not been submitted to the Department.

(k) Notwithstanding the requirements of (j) of this section, a registration may be granted prior to January 1, 2023 to an egg distributor that submits a self-certification to the Department that the egg distributor complies with all applicable requirements of sections 1320.4 and 1320.5 of this Article, and distributes shell eggs or liquid eggs within or into California only from egg producers that comply with section 1320.1 of this Article.

(l) This section shall not apply to a facility that is an official plant inspected under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and granted an establishment number with prefix of "G" by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Egg Products Inspection Act, 21 U.S.C. section 1031 et seq.

*cited in Nat'l Egg Producers Council v. Ross
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Section 1320.3. Inspection and Audit of Registered Egg Distributor Facilities.

(a) Every person required to be registered pursuant to section 1320.2 of this Article shall comply with this section.

(b) Every egg distributor by submitting an application for registration of a facility agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access to the premises and business records of the facility for purposes of inspection and audit as described in Article 5 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1320.4. Shell Egg and Liquid Egg Shipping Document and Labeling Requirements.

(a) Shipping Documents.

(1) Prior to January 1, 2022, all documents of title, shipping invoices, bills of lading, and shipping manifests for all shipments of shell eggs and liquid eggs entering the state or

transported within the state for commercial sale in California shall include the statement “California 144 Compliant” and may be abbreviated to read “CA 144”. The statement “CA SEFS Compliant” may be used as an alternative statement prior to January 1, 2022, provided the shell eggs are produced in compliance with section 1350 of Title 3 of the California Code of Regulations and are certified under the Department’s Egg Safety and Quality Management Program. The statement shall be legible and plainly printed or stamped.

(2) Commencing January 1, 2022, all documents of title, shipping invoices, bills of lading, and shipping manifests for all shipments of shell eggs and liquid eggs entering the state or transported within the state for commercial sale in California shall include the statement “CA Cage Free” or “Cage Free CA”.

(3) For shipments of shell eggs or liquid eggs that were not produced in compliance with section 25991 of the Health and Safety Code and this Article, and enter California exclusively for purposes of transshipment or export for human consumption outside of the state and are not destined for commercial sale in California, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation and storage within the state, be marked with the statement “Not for California Consumption” or “Not for California Sale”.

(4) For shipments of shell eggs or liquid eggs not produced in compliance with section 25991 of the Health and Safety Code and this Article that originate from an official plant, whether located inside or outside of the state, holding an establishment number with prefix “G” granted by the Food Safety Inspection Service of United States Department of Agriculture under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and being transported to another official plant in California holding an establishment number with prefix “G” granted by the Food Safety Inspection Service of United States Department of Agriculture under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.), solely for purposes of using the shell eggs or liquid eggs for making food products not covered by the Act or this Article, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation within the state, be clearly marked with the statement “Only for use at” immediately followed by the complete establishment number, including the prefix “G”, granted by the Food Safety Inspection Service of the United States Department of Agriculture for the specific facility where the shipment is destined for delivery.

(b) Containers. Commencing July 1, 2022, the principal display panel for each container of all shell eggs for commercial sale, or destined for commercial sale, in California shall contain the statement “CA Cage Free” or “Cage Free CA”. The statement shall be clearly legible,

without obscuring designs, vignettes or crowding, and be plainly printed, stamped or marked in letters not less than ¼ inch in height.

(c) No person shall label, identify, mark, advertise, or otherwise represent, shell eggs or liquid eggs for purposes of commercial sale in California using the statements in (a) and (b) of this section, or as meeting the requirements of the Act or otherwise meeting California cage size or enclosure space requirements for egg-laying hens, unless the shell eggs or liquid eggs were produced in compliance with section 25991 of the Health and Safety Code and this Article.

(d) Commencing January 1, 2022, no person shall label, identify, mark, advertise, or otherwise represent shell eggs or liquid eggs for purposes of commercial sale in the state using the term "cage free" or other similar descriptive term unless the shell eggs or liquid eggs were produced in compliance with section 1320.1 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Egg Products Inspection Act, 21 U.S.C. section 1031 et seq.

Section 1320.5. Egg Distributor Recordkeeping.

(a) An egg distributor, as a condition of registration pursuant to section 1320.2 of this Article, shall maintain records that comply with all the requirements of this section.

(b) Records shall be sufficient for purposes of an audit trail as defined in section 1320(b) of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

(c) Records shall document in a traceable manner that shell eggs and liquid eggs being distributed for commercial sale into or within California originate from egg producers that are in compliance with all requirements of section 1320.1 of this Article.

(d) Records shall document the address of the location where the distributor, as the buyer, takes physical possession of shell eggs and liquid eggs for each sales transaction.

(e) Records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or certifying agent as required by section 1320.3 of this Article.

(f) This section shall not apply to an official plant at which mandatory inspection is provided under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an Egg Products establishment number (prefix "G") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Egg Products Inspection Act, 21 U.S.C. section 1031 et seq.

Section 1320.6. Inspection of Conveyances.

(a) Every egg distributor by submitting an application for registration agrees as a condition of registration to provide the Department or other enforcement officer, and/or a certifying agent, access to inspect in California any vehicle or other conveyance under the registrant's operation or control that is transporting shell eggs or liquid eggs into or within the state.

(b) Every person shall stop at the request of an enforcement officer at any California Border Protection Station for purposes of inspection of cargo and any accompanying shipping documents, manifests, and bills of lading, any vehicle or other conveyance transporting into or within the state shell eggs or liquid eggs.

(c) The Department, or other enforcement officer in California, may deny entry to or order diversion from the state any vehicle or other conveyance transporting shell eggs or liquid eggs for commercial sale that was produced, packaged, identified, or shipped in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, including but not limited to labeling and marking requirements specified in section 1320.4 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1320.7. Tagging and Seizure of Shell Eggs or Liquid Eggs.

(a) The Department or other enforcement officer may affix a warning tag or notice to shipping documents, manifests, containers, sub-containers, lots, or loads of shell eggs or liquid eggs which have been produced, packaged, stored, labeled, marked, identified, transported, delivered, or sold in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, and may give notice of such violation to the egg producer, egg distributor, owner, or other person in possession of the shell eggs or liquid eggs.

(b) No person shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department or other enforcement officer.

(c) An enforcement officer may seize and hold any containers, sub-containers, lots, or loads of shell eggs or liquid eggs in California which they have reasonable suspicion to believe

is in violation of the provisions of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. If the Department or other enforcement officer seizes any container, sub-container, lot, or load of shell eggs or liquid eggs, a hold notice shall be issued to the person that has control of the shell eggs or liquid eggs, and a tag or notice may be affixed to the container, sub-container, lot, or load which states it is so held.

(d) Any shell eggs or liquid eggs for which a hold notice is issued shall be held by the person having control of the shell eggs or liquid eggs and shall not be disturbed, moved, diverted, or offered for sale except under the specific directions of the Department or other enforcement officer.

(e) A person may request an informal hearing to contest tagging, hold notice, or seizure of shell eggs or liquid eggs pursuant to section 1327.1 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1320.8. Written Certification.

(a) For purposes of section 25993.1 of the Health and Safety Code, any written certification from a supplier to a buyer engaged in commercial sales of shell eggs or liquid eggs that were not derived from an egg-laying hen confined in a cruel manner shall be based upon an audit trail as defined in section 1320.6 of this Article, and shall be traceable to egg producers compliant with all requirements of section 1320.1 of this Article.

(b) A retailer or food processing facility that is an end-user and takes possession, whether by use of a common carrier, private carrier, or other means of conveyance, of shell eggs or liquid eggs at, or directly from, an official plant at which mandatory inspection is provided under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an Egg Products establishment number (prefix "G") granted by the Food Safety Inspection Service of the United States Department of Agriculture, shall:

(1) Maintain records documenting written certifications that meet the requirements of this section for shell eggs or liquid eggs received during the preceding 12-month period.

(2) Maintain records documenting the address of the location where the retailer or food processing facility, as the buyer, takes physical possession of shell eggs and liquid eggs for each sales transaction.

(3) Make the records required by this section available on-site for inspection by the Department and other state or local health agencies upon request. Electronic records are considered on-site if they are accessible from an on-site location.

(c) Subsection (b) of this section shall not apply to a shell egg or liquid egg end-user that is an official plant at which mandatory inspection is provided under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.) and that holds an Egg Products establishment number (prefix "G") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Egg Products Inspection Act, 21 U.S.C. section 1031 et seq.

Section 1320.9. Denial, Suspension, or Revocation of Egg Distributor Registration.

(a) The Department may deny, suspend, or revoke a registration issued pursuant to this Article for any of the following:

(1) Violations that resulted, or reasonably could have resulted, in the commercial sale of shell eggs or liquid eggs from egg-laying hens that were not confined in compliance with this Article;

(2) Repetitive failure to comply with the requirements of this Article and/or statutes pertaining to shell eggs, liquid eggs or egg-laying hens in sections 25990-25992 of the Health and Safety Code;

(3) Refusal to grant access to, or interference with, inspections or audits as described in sections 1320.3 or 1320.6 of this Article;

(4) Misrepresenting shell eggs or liquid eggs as being produced in compliance with this Article; or

(5) Providing false information on an application for registration.

(b) A person may appeal the Department's decision to refuse to issue, or to deny, suspend, or revoke a registration certificate by requesting a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The Department's decision to deny, suspend, or revoke a registration shall remain in effect pending the outcome of an appeal process.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1320.10. Registration with the California Department of Public Health.

(a) Notwithstanding section 1320.2 of this Article, any person operating a food processing establishment in California shall also register with the California Department of

Public Health pursuant to section 110460 of the Health and Safety Code. The registration requirement applies to all forms of processed eggs.

(b) Evidence of this registration shall be provided to the Department or its designee upon request.

Note: Authority cited: Sections 25993 and 110065, Health and Safety Code. Reference: Sections 25990, 25991, 109875, 109935, 110045, and 110460, Health and Safety Code.

3) Adopt Article 2 and sections 1321 through 1321.10 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Article 2. Veal Calves.

Section 1321. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code.).

(b) "Audit trail" means records that are in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling, packaging, distribution, and sale of whole veal meat that was derived from a veal calf confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Article, and from veal producers that hold a valid certification as a certified operation issued pursuant to Article 5 of this Chapter.

(c) "Certified operation" means as defined in section 1326(e) of this Chapter.

(d) "Certifying agent" means as defined in section 1326(f) of this Chapter.

(e) "Commercial sale" for purposes of section 25991(o) of the Health and Safety Code and this Article means to sell, offer for sale, expose for sale, possess for sale, exchange, barter, trade, transfer profession, or otherwise distribute in California commerce including, but not limited to, transactions by a retailer with a consumer and electronic transactions made using the internet. It shall not include any of the following transactions or transfers of possession:

(1) Whole veal meat produced outside of the state that enters and exits California without additional processing or repackaging exclusively for purposes of transshipment or export for human consumption outside of the state;

(2) Any sale of whole veal meat undertaken on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture; or

(3) Donations to religious, charitable, scientific, educational, or other nonprofit organizations that have a tax exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.).

(4) The exception to definition of commercial sale applies only to a specific transaction listed above, not to the covered product itself, and therefore does not apply to all subsequent sales of whole veal meat.

(f) "Consumer" means any person who purchases whole uncooked veal meat, as defined in section 25991(v) of the Health and Safety Code and this Article, for the sole purpose of their own family use or consumption, or that purchases or consumes cooked veal meat at a restaurant, food facility, or other business that serves cooked or ready-to-eat veal meat to customers or patrons.

(g) "Container" means any box, case, basket, tote, can, carton, sack, pouch, bag, package, wrapper, receptacle, or any other device which is used to facilitate the handling, distribution, transportation, or commercial sale of whole veal meat.

(h) "Cottage food operation" means an establishment as defined in section 113758 of the Health and Safety Code.

(i) "Curing agents" for purposes of section 25991(v) of the Health and Safety Code and this Article means any substance listed and described in section 424.21(c) of Title 9 of the Code of Federal Regulations.

(j) "Cut" for purposes of section 25991(v) of the Health and Safety Code and this Article means any uncooked primal, wholesale, sub-primal or retail cut including, but not limited to, those identified and described in the United States Department of Agriculture's Institutional Meat Purchase Specifications: Fresh Veal Series 300 (November 2014 Edition) and the 2014 Uniform Retail Meat Identity Standards developed by the Industry-Wide Cooperative Meat Identification Standards Committee, but shall exclude any ground or otherwise comminuted meat products.

(k) "Department" means the California Department of Food and Agriculture.

(l) "Document of title" means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the whole veal meat it covers. Examples of

such document include bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of whole veal meat.

(m) "Enclosure" means a structure used to confine a covered animal or animals. For purposes of this subsection and this Article, a structure means any cage, crate, pen, or other construction used to confine a calf.

(n) "End-user" means any of the following:

(1) A consumer;

(2) A retailer that is not a veal producer and only conducts commercial sales directly to a consumer, without any further distribution, of whole veal meat that was purchased or received from a veal distributor;

(3) A food processing facility or cottage food operation that receives whole veal meat solely for use as an ingredient to manufacture a combination food product that does not meet the definition of whole veal meat as defined in this Article; or

(4) A restaurant, food facility or other business that only cooks and serves veal meat, and/or serves only ready-to-eat veal meat, to customers, patrons, or guests for purposes of consumption.

(o) "Enforcement officer" means any of the following:

(1) Persons employed by and under the supervision and control of the Department; or

(2) Persons employed by and under the supervision and control of the Department of Public Health.

(p) "Flavoring" for purposes of section 25991(v) of the Health and Safety Code and this Article means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and Part 184 of Title 21 of the Code of Federal Regulations.

(q) "Food facility" means a facility as defined in section 113789 of the Health and Safety Code.

(r) "Food processing facility" means a facility as defined in section 109947 of the Health and Safety Code.

(s) "Kept for the purpose of producing" for purposes of section 25991(d) of the Health and Safety Code and this Article means keeping a calf of the bovine species that is, or is intended to be, slaughtered at more than 21 days of age or more than 150 pounds in liveweight for the production of food described, advertised, represented, identified, or labeled as veal.

(t) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(u) "Ready-to-eat (RTE)" means in a form that is edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, gastronomic, or culinary purposes. RTE product is not required to bear a safe-handling instruction (as required for non-RTE products by sections 317.2(l) and 381.125(b)) of Title 9 of the Code of Federal Regulations) or other labeling that directs that the product must be cooked or otherwise treated for safety and can include frozen meat products.

(v) "Requiring cooking" for the purposes of section 25991(r) of the Health and Safety Code and this Article means not ready-to-eat in the condition sold, offered for sale, or otherwise distributed.

(w) "Retailer" means a facility location that conducts commercial sales of whole veal meat to a consumer.

(x) "Seasoning" for purposes of section 25991(v) of the Health and Safety Code and this Article is synonymous with the term "spice" and means any aromatic vegetable substance in the whole, broken, or ground form, whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include onions, garlic, peppers, and the spices listed in section 182.10 and Part 184 of Title 21 of the Code of Federal Regulations.

(y) "Uncooked" means requiring cooking prior to human consumption.

(z) "Veal distributor" means a person or facility engaged in the business of commercial sales or distribution of whole veal meat (as a veal producer or otherwise) to an end-user in California. This definition shall not apply to a person or facility that only receives whole veal meat as an end-user.

(aa) "Veal producer" means a person engaged in the business of keeping, confining, and/or housing a calf of the bovine species, to be slaughtered at more than 21 days of age or more than 150 pounds, for the purpose of producing the human food product described, advertised, represented, identified, or labeled as veal. This definition shall not apply to the following:

(1) A person housing calves exclusively for purposes of standard dairy herd management practices at, or for, a dairy farm holding a valid market milk permit or manufacturing milk permit pursuant to section 33222 of the Food and Agricultural Code or a valid permit issued by the government milk regulatory authority where the dairy farm is located if not in California; or

(2) An establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

(bb) "Whole veal meat" means, pursuant to section 25991(v) of the Health and Safety Code, any uncooked cut of veal, including chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin, or cutlet, that is comprised entirely of veal meat, except for seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives. Whole veal meat does not include combination food products, including soups, sandwiches, pizzas, hotdogs, or similar processed or prepared food products, that are comprised of more than veal meat, seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, 109947, 113758, and 113789, Health and Safety Code; Title 9, Part 317, section 317.2(l), Part 381, section 381.125(b), and Part 424, section 424.21(c), Title 21, Part 172, sections 172.510 and 172.515(b), Part 182, sections 182.10, 182.20, 182.40, 182.50, and Part 184, Code of Federal Regulations; Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.; and Internal Revenue Code, 26 U.S.C. section 501(c)(3).

Section 1321.1. Veal Calf Confinement.

(a) No veal producer or veal distributor shall knowingly sell or contract to sell within the state whole veal meat for human consumption if it is the product of a calf that was confined in an enclosure that fails to comply with the following standard:

(1) An enclosure shall provide a minimum of 43 square feet of usable floorspace per calf.

(2) The amount of usable floorspace required by (a)(1) of this section shall be calculated by dividing the total square footage of floorspace provided to calves in an enclosure by the number of calves in the enclosure. For purposes of this section, floorspace shall also include ground-space for enclosures that are outdoor pens or pastures accessible at all times by all calves in the enclosure; and

(3) Exceptions as specified in section 25992 of the Health and Safety Code and Article 4 of this Chapter apply to the requirements of this section.

(b) Commencing January 1, 2023, any person engaged in business in this state as a veal producer, or any out-of-state veal producer that is keeping, maintaining, confining, and/or housing calves for the purposes of producing whole veal meat for human food use in California, shall hold a valid certification issued pursuant to Article 5 of this Chapter as a certified operation.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991 and 25992, Health and Safety Code.

Section 1321.2. Veal Distributor Registration.

(a) Any person engaged in business in this state as a veal distributor, or any out-of-state veal distributor selling whole veal meat into California for purposes of human food use in the state, shall register with the Department pursuant to this Article.

(b) Any person required to register pursuant to (a) of this section shall submit an application for registration provided by the Department including the following information: Business name, physical address of distribution operation, mailing address, phone number, email address, website address, federal tax identification number, and name, phone number and email of person authorized to act on the applicant's behalf.

(c) The registration shall not be transferable to any person and shall be applicable only to the location for which originally issued.

(d) A registration is required for each facility location from which whole veal meat is sold, distributed, or otherwise supplied to the location of an end user.

(e) A veal distributor shall not engage in the commercial sale of whole veal meat within, or into, California unless such person has obtained and holds a valid registration from the Department pursuant to this section for each facility location.

(f) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the registered distributor must be reported to the Department within 30 business days of such change.

(g) All information set forth on applications for registrations and renewals for registrations, including but not limited to any documentation of certification required by (j) of this section, shall be truthful and not misleading.

(h) Every registration expires 12 months from the date of issue.

(i) A registration may be renewed each 12-month period by the Department in response to an application for renewal by a veal distributor if the business of the facility applying for renewal was conducted in accordance with the requirements of this Article and sections 25990 and 25991 of the Health and Safety Code during the preceding 12 months for which the renewal is requested.

(j) An application to the Department by a veal distributor for initial registration, or for purposes of renewal, shall be accompanied by documentation of valid certification pursuant to

Article 5 of this Chapter for each location where registration is being sought. A registration shall not be issued for any facility location for which the valid certification required by this section has not been submitted to the Department.

(k) Notwithstanding the requirements of (j) of this section, a registration may be granted prior to January 1, 2023 to a veal distributor that submits a self-certification to the Department that the veal distributor complies with all applicable requirements of sections 1321.4 and 1321.5 of this Article, and distributes whole veal meat within or into California only from veal producers that comply with section 1321.1 of this Article.

(l) This section shall not apply to an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Federal Meat Inspection Act (21 U.S.C. section 601 et seq.).

Section 1321.3. Inspection and Audit of Registered Veal Distributor Facilities.

(a) Every person required to be registered pursuant to section 1321.2 of this Article shall comply with this section.

(b) Every veal distributor by submitting an application for registration of a facility agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access to the premises and business records of the facility for purposes of inspection and audit as described in Article 5 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1321.4. Whole Veal Meat Shipping Document Requirements.

(a) Shipping Documents.

(1) All documents of title, shipping invoices, bills of lading, and shipping manifests for all shipments of whole veal meat entering the state or transported within the state for commercial sale in California shall include the statement "California 43+ Compliant" and may be abbreviated to read "CA 43+". The statement shall be clearly legible and plainly printed or stamped;

(2) For shipments of whole veal meat that were not produced in compliance with section 25991 of the Health and Safety Code and this Article, and enter California exclusively for

purposes of transshipment or export for human consumption outside of the state and are not destined for commercial sale in California, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation and storage within the state, be marked with the statement "Not for California Consumption" or "Not for California Sale"; and

(3) For shipments of whole veal meat not produced in compliance with section 25991 of the Health and Safety Code and this Article that originate from a facility, whether located inside or outside of the state, holding an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and being transported to another facility in California holding an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), solely for purposes of using the whole veal meat for making food products not covered by the Act or this Article, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation within the state, be clearly marked with the statement "Only for use at" immediately followed by the complete establishment number, including the prefix "M", granted by the Food Safety Inspection Service of the United States Department of Agriculture for the specific facility where the shipments are destined for delivery.

(b) No person shall label, identify, mark, advertise, or otherwise represent, calves or veal meat for commercial sale in California using the statements in (a) of this section, or as meeting the requirements of the Act or otherwise meeting California enclosure space requirements, unless they were produced in compliance with section 25991 of the Health and Safety Code and this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.

Section 1321.5. Veal Distributor Recordkeeping.

(a) A veal distributor, as a condition of registration pursuant to section 1321.2 of this Article, shall maintain records that comply with all the requirements of this section.

(b) Records shall be sufficient for purposes of an audit trail as defined in section 1321(b) of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

(c) Records shall document in a traceable manner that whole veal meat being sold into or within California originates from veal producers that are certified operations pursuant to Article 5 of this Chapter.

(d) Records shall document the address of the location where the distributor, as the buyer, takes physical possession of whole veal meat for each sales transaction.

(e) Records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or a certifying agent as required by section 1321.3 of this Article.

(f) This section shall not apply to an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and granted an establishment number (prefix "M") by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.

Section 1321.6. Inspection of Conveyances.

(a) Every veal distributor by submitting an application for registration agrees as a condition of registration to provide the Department or other enforcement officer, and/or a certifying agent, access to inspect in California any vehicle or other conveyance under the registrant's operation or control that is transporting whole veal meat into or within the state.

(b) Every person shall stop at the request of an enforcement officer at any California Border Protection Station for purposes of inspection of cargo and any accompanying shipping documents, manifests, and bills of lading, any vehicle or other conveyance transporting into or within the state whole veal meat.

(c) The Department, or other enforcement officer in California, may deny entry to or order diversion from the state any vehicle or other conveyance transporting whole veal meat intended for commercial sale that was produced, packaged, identified, or shipped in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, including but not limited to shipping document requirements specified in section 1321.4 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1321.7. Tagging and Seizure of Whole Veal Meat.

(a) The Department or other enforcement officer may affix a warning tag or notice to shipping documents, manifests, containers, sub-containers, lots, or loads of whole veal meat which have been produced, packaged, stored, labeled, marked, identified, transported, delivered, or sold in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, and may give notice of such violation to the veal producer, veal distributor, owner, or other person in possession of the veal meat.

(b) No person shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department or other enforcement officer.

(c) An enforcement officer may seize and hold any containers, sub-containers, lots, or loads of whole veal meat in California which they have reasonable suspicion to believe is in violation of the provisions of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. If the Department or other enforcement officer seizes any container, sub-container, lot, or load of veal meat, a hold notice shall be issued to the person that has control of the veal meat, and a tag or notice may be affixed to the container, sub-container, lot, or load which states it is so held.

(d) Any whole veal meat for which a hold notice is issued shall be held by the person having control of the whole veal meat and shall not be disturbed, moved, diverted, or offered for sale except under the specific directions of the Department or other enforcement officer.

(e) A person may request an informal hearing to contest tagging, hold notice, or seizure of whole veal meat pursuant to section 1327.1 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1321.8. Written Certification.

(a) For purposes of section 25993.1 of the Health and Safety Code, any written certification from a supplier to a buyer engaged in commercial sales of whole veal meat that was not derived from a calf confined in a cruel manner shall be based upon an audit trail as defined in section 1321(b) of this Article, and shall be traceable to veal producers compliant with all requirements of section 1321.1 of this Article.

(b) A retailer or food processing facility that is an end-user and takes possession, whether by use of a common carrier, private carrier, or other means of conveyance, of whole veal meat at, or directly from, an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) granted an establishment number

(prefix "M") by the Food Safety Inspection Service of the United States Department of Agriculture, shall:

(1) Maintain records documenting written certifications that meet the requirements of this section for whole veal meat received during the preceding 12-month period.

(2) Maintain records documenting the address of the location where the retailer or food processing facility, as the buyer, takes physical possession of whole veal meat for each sales transaction.

(3) Make the records required by this section available on-site for inspection by the Department and other state or local health agencies upon request. Electronic records are considered on-site if they are accessible from an on-site location.

(c) Subsection (b) of this section shall not apply to a whole veal meat end-user that is an establishment inspected under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and granted an establishment number (prefix "M") by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.

Section 1321.9. Denial, Suspension, or Revocation of Veal Distributor Registration.

(a) The Department may deny, suspend, or revoke a registration issued pursuant to this Article for any of the following:

(1) Violations that resulted, or reasonably could have resulted, in the commercial sale of whole veal meat from a calf that was not confined in compliance with this Article;

(2) Repetitive failure to comply with the requirements of this Article and/or statutes pertaining to whole veal meat or a calf raised for veal in sections 25990-25992 of the Health and Safety Code;

(3) Refusal to grant access for, or interference with, inspections or audits described in sections 1321.3 or 1321.6 of this Article;

(4) Misrepresenting whole veal meat as being produced in compliance with this Article;

or

(5) Providing false information on an application for registration.

(b) A person may appeal the Department's decision to refuse to issue, or to deny, suspend, or revoke a registration certificate by requesting a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The Department's decision to deny, suspend, or revoke a registration shall remain in effect pending the outcome of an appeals process.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1321.10. Registration with the California Department of Public Health.

(a) Notwithstanding section 1321.2 of this Article, any person operating a food processing establishment in California shall also register with the California Department of Public Health pursuant to section 110460 of the Health and Safety Code. The registration requirement applies to all forms of processed veal.

(b) Evidence of this registration shall be provided to the Department or its designee upon request.

Note: Authority cited: Sections 25993 and 110065, Health and Safety Code. Reference: Sections 25990, 25991, 109875, 109935, 110045, and 110460, Health and Safety Code.

4) Adopt Article 3 and sections 1322 through 1322.10 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Article 3. Breeding Pigs.

Section 1322. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code.).

(b) "Audit trail" means records that are in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling, packaging, distribution, and sale of whole pork meat that was derived from a breeding pig confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Article, and from pork producers that hold a valid certification as a certified operation issued pursuant to Article 5 of this Chapter.

*cited in Nat'l Pork Producers Council v. Ross
No. 20-55631 archived on July 22, 2021*

(c) "Breeding pig" means, pursuant to section 25991(a) of the Health and Safety Code, any female pig of the porcine species kept for the purpose of commercial breeding who is six (6) months of age or older, or pregnant.

(d) "Certified operation" means as defined in section 1326(e) of this Chapter.

(e) "Certifying agent" means as defined in section 1326(f) of this Chapter.

(f) "Commercial sale" for purposes of section 25991(o) of the Health and Safety Code and this Article means to sell, offer for sale, expose for sale, possess for sale, exchange, barter, trade, transfer possession, or otherwise distribute in California commerce including, but not limited to, transactions by a retailer with a consumer and electronic transactions made using the internet. It shall not include any of the following transactions or transfers of possession:

(1) Whole pork meat produced outside of the state that enters and exits California, without additional processing or repackaging, exclusively for purposes of transshipment or export for human consumption outside of the state;

(2) Any sale of whole pork meat undertaken on the premises of an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an official establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture; or

(3) Donations to religious, charitable, scientific, educational, or other nonprofit organizations that have a tax exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.).

(4) The exception to definition of commercial sale applies only to a specific transaction listed above, not to the covered product itself, and therefore does not apply to all subsequent sales of whole pork meat.

(g) "Consumer" means any person who purchases whole uncooked pork meat, as defined in section 25991(u) of the Health and Safety Code and this Article, for the sole purpose of their own family use or consumption, or that purchases or consumes cooked pork meat at a restaurant, food facility, or other business that serves cooked or ready-to-eat pork meat to customers or patrons.

(h) "Container" means any box, case, basket, tote, can, carton, sack, pouch, bag, package, wrapper, receptacle, or any other device which is used to facilitate the handling, distribution, transportation, or commercial sale of whole pork meat.

(i) "Cottage food operation" means an establishment as defined in section 113758 of the Health and Safety Code.

(j) "Curing agents" for purposes of section 25991(u) of the Health and Safety Code and this Article means any substance listed and described in section 424.21(c) of Title 9 of the Code of Federal Regulations.

(k) "Cut" for purposes of section 25991(u) of the Health and Safety Code and this Article means any uncooked primal, wholesale, sub-primal or retail cut including, but not limited to, those identified and described in the United States Department of Agriculture's Institutional Meat Purchase Specifications: Fresh Pork Series 400 (November 2014 Edition) and the 2014 Uniform Retail Meat Identity Standards developed by the Industry-Wide Cooperative Meat Identification Standards Committee, but shall exclude any ground or otherwise comminuted meat products.

(l) "Department" means the California Department of Food and Agriculture.

(m) "Document of title" means a document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the whole pork meat it covers. Examples of such document include bill of lading, dock warrant, dock receipt, warehouse receipt, or an order for the delivery of whole pork meat.

(n) "Enclosure" means a structure used to confine a covered animal or animals. For purposes of this subsection and this Article, a structure means any cage, crate, pen, or other construction used to confine a breeding pig.

(o) "End-user" means any of the following:

(1) A consumer;

(2) A retailer that is not a pork producer and only conducts commercial sales directly to a consumer, without any further distribution, of whole pork meat that was purchased or received from a pork distributor;

(3) A food processing facility or cottage food operation that receives whole pork meat solely for use as an ingredient to manufacture a combination food product that does not meet the definition of whole pork meat as defined in this Article; or

(4) A restaurant, food facility or other business that only cooks and serves pork meat, and/or serves only ready-to-eat pork meat, to customers, patrons or guests for purposes of consumption.

(p) "Enforcement officer" means any of the following:

(1) Persons employed by and under the supervision and control of the Department; or

(2) Persons employed by and under the supervision and control of the Department of Public Health.

(g) "Flavoring" for purposes of section 25991(u) of the Health and Safety Code and this Article means any substance, whether artificial or natural, the function of which is to impart flavor rather than nutrition, and includes the substances listed and described in sections 172.510, 172.515(b), 182.10, 182.20, 182.40, and 182.50, and part 184 of Title 21 of the Code of Federal Regulations.

(r) "Food facility" means a facility as defined in section 113789 of the Health and Safety Code.

(s) "Food processing facility" means a facility as defined in section 109947 of the Health and Safety Code.

(t) "Person" means any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

(u) "Pork distributor" means a person or facility engaged in the business of commercial sales or distribution of whole pork meat (as a pork producer or otherwise) to an end-user in California. This definition shall not apply to a person or facility that only receives whole pork meat as an end-user.

(v) "Pork producer" means a person engaged in the business of keeping, maintaining, confining and/or housing a female pig of the porcine species that is six (6) months of age or older, or is pregnant, for the purpose of commercial breeding to produce pork meat for human food. This definition shall not apply to an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture.

(w) "Ready-to-eat (RTE)" means in a form that is edible without additional preparation to achieve food safety and may receive additional preparation for palatability or aesthetic, gastronomic, or culinary purposes. RTE product is not required to bear a safe-handling instruction (as required for non-RTE products by sections 317.2(l) and 381.125(b)) of Title 9 of the Code of Federal Regulations) or other labeling that directs that the product must be cooked or otherwise treated for safety and can include frozen meat products.

(x) "Requiring cooking" for the purposes of section 25991(r) of the Health and Safety Code and this Article means not ready-to-eat in the condition sold, offered for sale or otherwise distributed.

(y) "Retailer" means a facility location that conducts commercial sales of whole pork meat to a consumer.

(z) "Seasoning" for purposes of section 25991(u) of the Health and Safety Code and this Article is synonymous with the term "spice" and means any aromatic vegetable substance in the whole, broken, or ground form, whose primary function in food is seasoning rather than nutritional and from which no portion of any volatile oil or other flavoring principle has been removed. Spices include onions, garlic, peppers, and the spices listed in section 182.10, and Part 184 of Title 21 of the Code of Federal Regulations.

(aa) "Uncooked" means requiring cooking prior to human consumption.

(bb) "Whole pork meat" means, pursuant to section 25991(u) of the Health and Safety Code, any uncooked cut of pork, including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin, or cutlet, that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives. Whole pork meat does not include combination food products, including soups, sandwiches, pizzas, hotdogs, or similar processed or prepared food products, that are comprised of more than pork meat, seasoning, curing agents, coloring, flavoring, preservatives, and similar meat additives.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, 109947, 113758, and 113789, Health and Safety Code, Title 9, Part 317, section 317.2(l), Part 381, section 381.125(b), and Part 424, section 424.21(c), Title 21, Part 172, sections 172.510 and 172.515(b), Part 182, sections 182.10, 182.20, 182.40, 182.50; and Part 184, Code of Federal Regulations; Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.; and Internal Revenue Code, 26 U.S.C. section 501(c)(3).

Section 1322.1. Breeding Pig Confinement.

(a) No pork producer or pork distributor shall knowingly sell or contract to sell whole pork meat for human consumption in the state if it is the product of a breeding pig, or the product of the immediate offspring of a breeding pig, that was confined in an enclosure that fails to comply with the following standard:

(1) Commencing January 1, 2022, an enclosure shall provide a minimum of 24 square feet of usable floorspace per breeding pig.

(2) The amount of usable floorspace required by (a)(1) of this section shall be calculated by dividing the total square footage of floorspace provided to breeding pigs in an enclosure by the number of breeding pigs in the enclosure. For purposes of this section, floorspace shall also include ground-space for enclosures that are outdoor pens or pastures accessible at all times by all pigs in the enclosure.

(3) Exceptions specified in section 25992 of the Health and Safety Code and Article 4 of this Chapter apply to the requirements of this section.

(b) Commencing January 1, 2023, any person engaged in business in this state as a pork producer, or any out-of-state pork producer that is keeping, maintaining, confining, and/or housing a breeding pig for purposes of producing whole pork meat, from the breeding pig or its immediate offspring, for human food use in California, shall hold a valid certification issued pursuant to Article 5 of this Chapter as a certified operation.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1322.2. Pork Distributor Registration.

(a) Any person engaged in business in this state as a pork distributor, or any out-of-state pork distributor selling whole pork meat into California for purposes of human food use in the state, shall register with the Department pursuant to this Article.

(b) Any person required to register pursuant to (a) of this section shall submit an application for registration provided by the Department including the following information: Business name, physical address of distribution operation, mailing address, phone number, email address, website address, federal tax identification number, and name, phone number and email of person authorized to act on the applicant's behalf.

(c) The registration shall not be transferable to any person and shall be applicable only to the location for which originally issued.

(d) A registration is required for each facility location from which whole pork meat is sold, distributed, or otherwise supplied to the location of an end-user.

(e) A pork distributor shall not engage in the commercial sale of whole pork meat within, or into, California unless such person has obtained and holds a valid registration from the Department pursuant to this section for each facility location.

(f) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the registered distributor must be reported to the Department within 30 business days of such change.

(g) All information set forth on applications for registrations and renewals for registrations, including but not limited to any documentation of certification required by (i) of this section, shall be truthful and not misleading.

(h) Every registration expires 12 months from the date of issue.

(i) A registration may be renewed each 12-month period by the Department in response to an application for renewal by a pork distributor if the business of the facility applying for renewal was conducted in accordance with the requirements of this Article and sections 25990 and 25991 of the Health and Safety Code during the preceding 12 months for which the renewal is requested.

(j) An application to the Department by a pork distributor for initial registration, or for purposes of renewal, shall be accompanied by documentation of valid certification pursuant to Article 5 of this Chapter for each location where registration is being sought. A registration shall not be issued for any facility location for which the valid certification required by this section has not been submitted to the Department.

(k) Notwithstanding the requirements of (j) of this section, a registration may be granted prior to January 1, 2023 to a pork distributor that submits a self-certification to the Department that the pork distributor complies with all applicable requirements of sections 1322.4 and 1322.5 of this Article, and distributes whole pork meat within or into California only from pork producers that comply with section 1322.1 of this Article.

(l) This section shall not apply to an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and that holds an establishment number (prefix "M") granted by the Food Safety Inspection Service of the United States Department of Agriculture with prefix of "M".

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Federal Meat Inspection Act (21 U.S.C. section 601 et seq.).

Section 1322.3. Inspection and Audit of Registered Pork Distributor Facilities.

(a) Every person required to be registered pursuant to section 1322.2 of this Article shall comply with this section.

(b) Every pork distributor by submitting an application for registration of a facility agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access to the premises and business records of the facility for purposes of inspection and audit as described in Article 5 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1322.4. Whole Pork Meat Shipping Document Requirements.

(a) Shipping Documents.

(1) Commencing January 1, 2022, all documents of title, shipping invoices, bills of lading, and shipping manifests for all shipments of whole pork meat entering the state or transported within the state for commercial sale in California shall include the statement "California 24+ Compliant" and may be abbreviated to read "CA 24+". The statement shall be clearly legible and plainly printed or stamped;

(2) For shipments of whole pork meat that was not produced in compliance with section 25991 of the Health and Safety Code and this Article, and enter California exclusively for purposes of transshipment or export for human consumption outside of the state and are not destined for commercial sale in California, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation and storage within the state, be marked with the statement "Not for California Consumption" or "Not for California Sale";

(3) For shipments of whole pork meat not produced in compliance with section 25991 of the Health and Safety Code and this Article that originate from a facility, whether located inside or outside of the state, holding an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and being transported to another facility in California holding an establishment number with prefix "M" granted by the Food Safety Inspection Service of the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), solely for purposes of using the whole pork meat for making food products not covered by the Act or this Article, all documents of title, shipping invoices, bills of lading, and shipping manifests shall, upon entrance into the state and during transportation within the state, be clearly marked with the statement "Only for use at" immediately followed by the complete establishment number, including the prefix "M", granted by the Food Safety Inspection Service of the United States Department of Agriculture for the specific facility where the shipment is destined for delivery.

(b) No person shall label, identify, mark, advertise, or otherwise represent, pigs or pork meat for commercial sale in California using the statements in (a) of this section, or as meeting the requirements of the Act or otherwise meeting California enclosure space requirements, unless they were produced in compliance with section 25991 of the Health and Safety Code and this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.

Section 1322.5. Pork Distributor Recordkeeping.

(a) A pork distributor, as a condition of registration pursuant to section 1322.2 of this Article, shall maintain records that comply with all the requirements of this section.

(b) Records shall be sufficient for purposes of an audit trail as defined in section 1322(b) of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

(c) Records shall document in a traceable manner that whole pork meat being distributed for commercial sale into or within California originates from pork producers that are in compliance with all requirements of section 1322.1 of this Article.

(d) Records shall document the address of the location where the distributor, as the buyer, takes physical possession of whole pork meat for each sales transaction.

(e) Records shall be maintained for two (2) years from the date of creation and be made accessible for inspection and audit by the Department and/or a certifying agent as required by section 1322.3 of this Article.

(f) This section shall not apply to an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and granted an establishment number (prefix "M") by the Food Safety Inspection Service of the United States Department of Agriculture with prefix of "M".

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code and Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.

Section 1322.6. Inspection of Conveyances.

(a) Every pork distributor by submitting an application for registration agrees as a condition of registration to provide the Department or other enforcement officer, and/or a certifying agent, access to inspect in California any vehicle or other conveyance under the registrant's operation or control that is transporting whole pork meat into or within the state.

(b) Every person shall stop at the request of an enforcement officer at any California Border Protection Station for purposes of inspection of cargo and any accompanying shipping documents, manifests, and bills of lading, any vehicle or other conveyance transporting into or within the state whole pork meat.

(c) The Department, or other enforcement officer in California, may deny entry to or order diversion from the state any vehicle or other conveyance transporting whole pork meat intended for commercial sale that was produced, packaged, identified, or shipped in violation of

the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, including but not limited to shipping document requirements specified in section 1322.4 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1322.7. Tagging and Seizure of Whole Pork Meat.

(a) The Department or other enforcement officer may affix a warning tag or notice to shipping documents, manifests, containers, sub-containers, lots, or loads of pork meat which have been produced, packaged, stored, labeled, marked, identified, transported, delivered, or sold in violation of the requirements of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article, and may give notice of such violation to the pork producer, pork distributor, owner, or other person in possession of the pork meat.

(b) No person shall remove a warning tag or notice from the place it is affixed except upon written permission or specific direction of the Department or other enforcement officer.

(c) An enforcement officer may seize and hold any containers, sub-containers, lots or loads of pork meat in California which they have reasonable suspicion to believe is in violation of the provisions of sections 25990-25992 of the Health and Safety Code, or the provisions of this Article. If the Department or other enforcement officer seizes any container, sub-container, lot, or load of pork meat, a hold notice shall be issued to the person that has control of the pork meat, and a tag or notice may be affixed to the container, sub-container, lot, or load which states it is so held.

(d) Any whole pork meat for which a hold notice is issued shall be held by the person having control of the whole pork meat and shall not be disturbed, moved, diverted, or offered for sale except under the specific directions of the Department or other enforcement officer.

(e) A person may request an informal hearing to contest tagging, hold notice, or seizure of whole pork meat pursuant to section 1327.1 of this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1322.8. Written Certification.

(a) For purposes of section 25993.1 of the Health and Safety Code, any written certification from a supplier to a buyer engaged in commercial sales of whole pork meat that was not derived from a breeding pig, or offspring of a breeding pig, confined in a cruel manner

shall be based upon an audit trail as defined in section 1322(b), of this Article, and shall be traceable to pork producers compliant with all requirements of section 1322.1 of this Article.

(b) A retailer or food processing facility that is an end-user and takes possession, whether by use of a common carrier, private carrier or other means of conveyance, of whole pork meat at, or directly from, an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) granted an establishment number (prefix "M") by the Food Safety Inspection Service of the United States Department of Agriculture with a prefix of "M", shall:

(1) Maintain records documenting written certifications that meet the requirements of this section for whole pork meat received during the preceding 12-month period.

(2) Maintain records documenting the address of the location where the retailer or food processor, as the buyer, takes physical possession of whole pork meat for each sales transaction.

(3) Make the records required by this subsection available on-site for inspection by the Department and other state or local health agencies upon request. Electronic records are considered on-site if they are accessible from an on-site location.

(c) Subsection (b) of this section shall not apply to a whole pork meat end-user that is an official establishment inspected under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.) and granted an establishment number (prefix "M") by the Food Safety Inspection Service of the United States Department of Agriculture.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25900 and 25991, Health and Safety Code and Federal Meat Inspection Act, 21 U.S.C. section 601 et seq.

Section 1322.9. Denial, Suspension, or Revocation of Pork Distributor Registration.

(a) The Department may deny, suspend, or revoke a registration issued pursuant to this Article for any of the following:

(1) Violations that resulted, or reasonably could have resulted, in the commercial sale of whole pork meat from breeding pigs, or offspring of breeding pigs, that was not confined in compliance with this Article;

(2) Repetitive failure to comply with the requirements of this Article and/or statutes pertaining to whole pork meat or breeding pigs in sections 25990-25992 of the Health and Safety Code;

(3) Refusal to grant access for, or interference with, inspections or audits described in sections 1322.3 or 1322.6 of this Article;

(4) Misrepresenting whole pork meat as being produced in compliance with this Article;

or

(5) Providing false information on an application for registration.

(b) A person may appeal the Department's decision to refuse to issue, or to deny, suspend, or revoke a registration certificate by requesting a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The Department's decision to deny, suspend, or revoke a registration shall remain in effect pending the outcome of an appeals process.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1322.10. Registration with the California Department of Public Health.

(a) Notwithstanding section 1322.2 of this Article, any person operating a food processing establishment in California shall also register with the California Department of Public Health pursuant to section 110460 of the Health and Safety Code. The registration requirement applies to all forms of processed pork.

(b) Evidence of this registration shall be provided to the Department or its designee upon request.

Note: Authority cited Sections 25993 and 110065, Health and Safety Code. Reference: Sections 25990, 25991, 109875, 109935, 110045, and 110460, Health and Safety Code.

5) Adopt Article 4 and section 1324 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Article 4. Exceptions.

Section 1324. Definitions.

(a) "Individual treatment" for purposes of section 25992 of the Health and Safety Code, and this Chapter, means any protocol, practice, procedure, or application of care concerned with the diagnosis, treatment, mitigation, or prevention of animal disease, injury or harm that is administered by, or conducted under the order or recommendation of, a licensed veterinarian as part of a veterinarian-client-patient relationship as defined in section 530.3(i) of Title 21 of the Code of Federal Regulations.

(b) "Medical research" for purposes of section 25992 of the Health and Safety Code, and this Chapter, means any basic and applied research that relates or contributes to the scientific

understanding, promotion, or protection of human or animal health, fitness, function, performance, welfare or care, and that is conducted under the review of an Institutional Animal Care and Use Committee operating in accordance with section 2.31 of Title 9 of the Code of Federal Regulations.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code and Title 9, Part 2, section 2.31 and Title 21, Part 530, section 530.3(i), Code of Federal Regulations.

6) Adopt Article 5 and sections 1326 through 1326.22 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Article 5. Certification and Accredited Certifiers.

Section 1326. Definitions.

Unless the context otherwise requires, the following definitions apply to this Article and words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand:

(a) "Accreditation or accredit" means a determination made by the Department that authorizes a private entity to conduct certification activities as a certifying agent under this Chapter.

(b) "Act" means the Farm Animal Cruelty statute, as amended (Chapter 13.8 (commencing with section 25990) of Division 20 of the Health and Safety Code.).

(c) "Area of operation" means the types of covered animal production or distribution operations, including veal calves and whole veal meat, breeding pigs and whole pork meat, egg-laying hens and shell eggs or liquid eggs, or any combination thereof that a certifying agent may be accredited to certify under this Chapter.

(d) "Certification or certify" means a determination made by a certifying agent that a production or distribution operation is in compliance with the Act and this Chapter, which is documented by a certificate of California farm animal confinement compliance.

(e) "Certified operation" means a production or distribution operation, or portion of such operation, that is certified by a certifying agent as utilizing a system of animal confinement or distribution as described by the Act and this Chapter.

(f) "Certifying agent" means any private entity accredited by the Department as a third-party certifying agent for the purpose of certifying a production or distribution operation as a

certified operation, the Department, or any government entity that the Department recognizes as providing functionally equivalent certification services to the requirements of this Chapter.

(g) "Certifying agent's operation" means all sites, facilities, personnel, and records used by an accredited private certifying agent to conduct certification activities under the regulations in this Chapter.

(h) "Covered animal" means any calf raised for veal, breeding pig, or egg-laying hen who is kept on a farm pursuant to sections 25991(f) and (i) of the Health and Safety Code for purposes of producing covered products.

(i) "Covered product" means all of the following:

(1) Shell eggs as defined in section 25991(p) of the Health and Safety Code and section 1320(aa), of this Chapter; or

(2) Liquid eggs as defined in section 25991(l) of the Health and Safety Code and, section 1320(u) of this Chapter; or

(3) Whole veal meat as defined in section 25991(v) of the Health and Safety Code and section 1321(bb) of this Chapter; or

(4) Whole pork meat as defined in section 25991(u) of the Health and Safety Code and section 1322(bb) of this Chapter.

(j) "Department" means the California Department of Food and Agriculture.

(k) "Distributor" means an egg distributor as defined in section 1320(k), a veal distributor as defined in section 1321(z), and a pork distributor as defined in section 1322(u), of this Chapter.

(l) "Distributor operation" means any operation or portion of an operation that conducts activities as a distributor.

(m) "Employee" means any person providing paid or volunteer services for a certifying agent.

(n) "Governmental entity" means any local, state, or federal domestic government, tribal government, or foreign governmental subdivision providing certification services.

(o) "Immediate family" means the spouse, minor children, or blood relatives who reside in the immediate household of a certifying agent or in the immediate household of employee, inspector, contractor, or other personnel of the certifying agent. For the purpose of this Chapter, the interest of a spouse, minor child, or blood relative who is a resident of the immediate household of a certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent shall be considered to be an interest of the certifying agent or an employee, inspector, contractor, or other personnel of the certifying agent.

(p) "Inspection" means the act of examining and evaluating the production or distribution operation of an applicant for certification or a certified operation to determine compliance with the Act and this Chapter.

(q) "Inspector" means any person retained or used by a certifying agent to conduct inspections of certification applicants or certified production or distribution operations, or an authorized representative of the Department.

(r) "Label" means a display of written, printed, or graphic material on the immediate container of a covered product or any such material affixed to any covered product or affixed to a bulk container containing a covered product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(s) "Labeling" means all written, printed, or graphic material accompanying a covered product at any time or written, printed, or graphic material about the covered product displayed at retail stores about the product.

(t) "Person" means any individual, firm, partnership, joint venture, association, limited liability corporation, corporation, estate, trust, receiver, or syndicate.

(u) "Private entity" means any domestic or foreign non-governmental for-profit, or not-for-profit organization providing certification services.

(v) "Producer" means an egg producer as defined in section 1320(m), a veal producer as defined in section 1320(aaa), and a pork producer as defined in section 1322(v).

(w) "Records" means any information in written, visual, or electronic form that documents the activities undertaken by a producer, distributor, or certifying agent to comply with the Act and this Chapter.

(x) "Responsibly connected" means any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant, or a recipient of certification or accreditation.

(y) "Split operation" means an operation that produces or distributes covered animals and/or covered products from operations, or portions of an operation, that are both in conformance and out-of-conformance with the confinement standards of the Act and this Chapter.

(z) "State" means any of the several States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.1. General Requirements for Certification.

A person seeking to receive or maintain certification under this Chapter must:

(a) Comply with the Act and applicable regulations of this Chapter;

(b) Allow on-site inspections by the certifying agent, and/or authorized representatives of the Department, with access to the production and/or distribution operation, and offices as provided for in sections 1326.2 and 1326.5 of this Article;

(c) If a producer, allow access by the certifying agent, and/or authorized representatives of the Department, to pastures, fields, structures, and houses where covered animals and covered animal products may be kept, produced, processed, handled, stored or transported, including the inspection of all enclosures for covered animals;

(d) If a distributor, allow access by the certifying agent, and/or authorized representatives of the Department, to examine all covered products that are sold or intended, held, segregated, stored, packaged, labeled, or represented for sale or distribution;

(e) Allow access by the certifying agent, and/or authorized representatives of the Department, to containers, labels, labeling, invoices, documents of title, and bills of lading used in the handling, storage, packaging, sale, transportation, or distribution of covered products;

(f) Allow access by the certifying agent and/or authorized representatives of the Department, during normal business hours for review and copying of records required by section 1326.2 of this Article; and

(g) Immediately notify the certifying agent concerning any change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.2. Recordkeeping by Certified Operations.

(a) In order to receive and maintain certification, a certified operation must maintain records concerning the production and distribution of covered animals and/or covered products.

(b) Such records must:

(1) Be maintained by a producer in sufficient detail to document that covered animals were confined in compliance with sections 25991 and 25992 of the Health and Safety Code and the requirements of this Chapter;

(2) Be maintained by a distributor in sufficient detail to document the identification, source, supplier, transfer of ownership, transportation, storage, segregation, handling,

packaging, distribution, and sale of covered products that were derived from animals confined in compliance with sections 25991 and 25992 of the Health and Safety Code and this Chapter;

(3) Be maintained for not less than two (2) years beyond their creation;

(4) Include records of all covered animal and/or covered product transactions for the preceding two-year period. The records must indicate the date, quantity, identity of the buyer and seller, and the address where physical possession of covered product took place for each transaction;

(5) Include documentation and records for the preceding two-year period pertaining to the production, processing, handling, packaging, storage, transportation, or sale of covered animals or covered products sold, intended for sale in California or identified or represented as compliant with the confinement requirements of the Act and this Chapter;

(6) Include documentation of the size of the certified operation, the quantity of covered animals and/or covered products produced or processed from each facility or farm unit in the certified operation, the number of covered animal enclosures for each facility or farm unit, the size of each enclosure, the number of covered animals housed in each enclosure, and the dates of stocking, harvest and production;

(7) If the facility is a split operation, include documentation sufficient to demonstrate the identification, segregation, distribution, and handling of covered animals and/or covered products to prevent commingling with any animals or products that do not comply with requirements of the Act, and

(8) Include documentation of registration issued by the Department pursuant to sections 1320.2, 1321.2, and 1322.2 of this Chapter, as applicable to the certified operation.

(c) The inspection and audit of any records and documents required by this section, may be conducted by the Department, or other certifying agent, by on-site inspection at the certified operation location, or by utilizing email, phone, teleconference, or any combination thereof, at the discretion of the certifying agent or the Department.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990, 25991, and 25992, Health and Safety Code.

Section 1326.3. Application for Certification.

(a) A person seeking certification of a production or distribution operation by a certifying agent under this Article must submit an application for certification that includes all the following information:

(1) The name of the person completing the application; the applicant's business name, physical address, mailing address, and telephone number; and, when the applicant is a corporation, the name, address, email, and telephone number of the person authorized to act on the applicant's behalf;

(2) The name(s) of any certifying agent(s) to which application has previously been made; the year(s) of application; the outcome of the application(s) submission, including, when available, a copy of any notification of noncompliance, denial or revocation of certification issued to the applicant for certification; and a description of the actions taken by the applicant to correct the noncompliance noted in the notification of noncompliance, including evidence of such correction;

(3) A description of the type and quantity of covered animals and/or covered products to be produced and/or distributed at the facility for which certification is being requested;

(4) A description of the covered animal confinement system to be used at the facility, including but not limited to the number of enclosures, size of enclosures and maximum number of covered animals to be housed in each, and additional information as deemed necessary by the certifying agent to determine compliance with the Act and this Chapter;

(5) A description of the management practices, physical barriers, and standard operating procedures established to prevent commingling of covered animals or covered products if the facility is a split operation; and

(b) If the certifying agent is a government entity other than the Department, it may use its own authorized procedures for application for certification in lieu of this section's requirements.
Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.4. Review of Application for Certification.

(a) Upon acceptance of an application for certification, a certifying agent must:

(1) Review the application to ensure completeness pursuant to section 1326.3 of this Article;

(2) Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of the Act and this Chapter;

(3) Verify that an applicant who previously applied to another certifying agent and received a notification of noncompliance, denial or revocation of certification, pursuant to section 1326.7 of this Article, has submitted documentation to support the correction of any issues of

noncompliance identified in the notification of noncompliance or denial of certification, as required in section 1326.7(e) of this Article; and

(4) Schedule an on-site inspection, pursuant to section 1326.5 of this Article, of the production or distribution operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the production or distribution operation may be in compliance with the applicable requirements of the Act and this Chapter.

(b) A certifying agent shall:

(1) Review the application materials received and communicate its findings to the applicant; and

(2) Provide the applicant with a copy of the on-site inspection report, as approved by the certifying agent, for any on-site inspection performed.

(c) The applicant may withdraw its application at any time. An applicant that voluntarily withdrew its application prior to the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdrew its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

(d) If the certifying agent is a government entity other than the Department, it may use its own authorized procedures for application review in lieu of this section's requirements as long as such review includes an on-site verification of an applicant's compliance with the Act and applicable provisions of this Chapter by a process equivalent to that described in section 1326.5 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.5. On-site Inspections.

(a) On-site inspections.

(1) In order to grant certification, a certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or distributes covered animals or covered products that is included in an operation for which certification is requested. An on-site inspection must be conducted at least once every 12 months thereafter for each certified operation that produces or distributes covered animals or covered products for the purpose of determining whether to approve the request for certification or whether certification of the operation should continue.

(2) The Department may require that additional inspections be performed by an accredited certifying agent or the Department for the purpose of determining compliance with

the Act and this Chapter. Additional inspections may be announced or unannounced as required by the Department.

(b) Scheduling.

(1) The initial on-site inspection must be conducted within 3 months following a determination that the applicant appears to comply or may be able to comply with the requirements of the Act and this Chapter.

(2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when facilities and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of the Act and this Chapter can be observed, except that this requirement does not apply to unannounced on-site inspections.

(c) Verification of information. The on-site inspection of an operation must verify:

(1) The operation's compliance or capability to comply with the Act and this Chapter; and
(2) That the information provided in accordance with sections 1326.3 and 1326.8 of this Article accurately reflects the practices used or to be used by the applicant for certification or by the certified operation.

(d) Exit interview. The inspector must conduct an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector must also address the need for any additional information as well as any issues of concern.

(e) A copy of the on-site inspection report shall be sent to the inspected operation by the certifying agent.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.6. Granting Certification.

(a) After completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the confinement or distribution system and all procedures and activities of the applicant's operation are in compliance with the Act and this Chapter, the agent shall grant certification.

(b) When a certifying agent issues a certificate of compliance it shall specify all the following:

(1) Name and address of the certified operation;

(2) Effective date of certification;

(3) Date of most recent on-site inspection;

(4) Categories of operation, including whether the operation is a producer, distributor or both, a split operation, and the species of covered animals and/or types of covered products produced or distributed by the certified operation; and

(5) Name, address, and telephone number of the certifying agent.

(c) Notwithstanding (a) of this section, the Department will accept certifications granted by another government entity using procedures established under the authority of that government entity, provided such certification is based on on-site verification of a certified operation's compliance with the Act and applicable provisions of this Chapter by a process equivalent to that described in section 1326.5 of this Article, and that the certificate specifies at a minimum the information described in paragraph (b) of this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.7. Denial of Certification.

(a) When the certifying agent, based on a review of the information specified in sections 1326.2, 1326.3, 1326.4 or 1326.5 of this Article, determines that an applicant for certification is not in compliance with the Act and this Chapter, the certifying agent shall provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. The notification of noncompliance shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Upon receipt of such notification of noncompliance, the applicant may:

(1) Correct noncompliances and submit a description of the corrective actions taken with supporting documentation to the certifying agent;

(2) Correct noncompliances and submit a new application to another certifying agent:

Provided, that the applicant must include a complete application, the notification of noncompliance received from the first certifying agent, and a description of the corrective actions taken with supporting documentation; or

(3) Submit written information to the issuing certifying agent to rebut the noncompliance described in the notification of noncompliance.

(c) After issuance of a notification of noncompliance, the certifying agent must:

(1) Evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal and conduct an on-site inspection if necessary;

(2) When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, issue the applicant an approval of certification pursuant to section 1326.6 of this Article; or

(3) When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification, issue the applicant a written notice of denial of certification;

(d) A certifying agent must issue a written notice of denial of certification to an applicant who fails to respond to the notification of noncompliance.

(e) A notice of denial of certification must state the reason(s) for denial and the applicant's right to:

(1) Reapply for certification pursuant to sections 1326.3 and 1326.8 of this Article;

(2) Request mediation pursuant to section 1327.2 of this Chapter; or

(3) File an appeal for a formal hearing on the denial of certification pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) An applicant for certification who has received a written notification of noncompliance or a written notice of denial of certification may apply for certification again at any time with any certifying agent, in accordance with sections 1326.3 and 1326.8 of this Article. When such applicant submits a new application to a certifying agent other than the agent who issued the notification of noncompliance or notice of denial of certification, the applicant for certification must include a copy of the notification of noncompliance or notice of denial of certification and a description of the actions taken, with supporting documentation, to correct the noncompliances noted in the notification of noncompliance.

(g) A certifying agent who receives a new application for certification, which includes a notification of noncompliance, a notice of denial or revocation of certification, must treat the application as a new application and begin a new application process pursuant to sections 1326.3 and 1326.4 of this Article.

(h) Notwithstanding (a) of this section, if a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements

pursuant to this Article, the certifying agent may deny certification pursuant to (e) of this section without first issuing a notification of noncompliance.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.8. Continuation of Certification.

(a) To continue certification, a certified operation must annually submit the following renewal information, as applicable, to the certifying agent:

(1) A summary statement, supported by documentation, detailing any deviations from, or changes to, information submitted on the previous year's application, including but not limited to any additions to or deletions from the information required pursuant to section 1326.3 of this Article;

(2) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and

(3) Other information as deemed necessary by the certifying agent to determine compliance with the Act and this Chapter.

(b) Following the receipt of the information specified in subsection (a) of this section, the certifying agent shall arrange and conduct an on-site inspection of the certified operation pursuant to section 1326.5 of this Article to determine compliance with the Act and this Chapter.

(c) If the certifying agent determines, based on the on-site inspection and a review of the information specified in (a) of this section, that a certified operation is not complying with the requirements of the Act and this Chapter, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with section 1326.20 of this Article.

(d) If the certifying agent determines, based on the on-site inspection and a review of the information specified in subsection (a) of this section, that the certified operation is complying with the Act and this Chapter, the certifying agent shall issue an updated certificate of compliance pursuant to section 1326.6(b) of this Article.

(e) Any change in ownership, change of business name, or change in business location, closure of business, or change of name, address, phone number or email of person authorized to act on behalf of the certified operation must be reported to the certifying agent within 30 days of such change.

(f) If the certifying agent is a government entity other than the Department, it may use its own authorized procedures for continuation of certification in lieu of this section's requirements as long as such renewal process includes an on-site verification of the certified operation's

compliance with the Act and applicable provisions of this Chapter by a process equivalent to that described in section 1326.5.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.9. Areas and Duration of Accreditation as a Certifying Agent.

(a) The Department may accredit a qualified domestic or foreign applicant to certify a domestic or foreign production or distribution operation as a certified operation.

(b) Accreditation shall be for a period of five (5) years from the date of approval of accreditation pursuant to section 1326.14 of this Article.

(c) In lieu of accreditation under (a) of this section, the Department will accept a foreign certifying agent's accreditation to certify production or distribution operations if the Department determines, upon the request of a foreign government, that the standards under which the foreign government authority accredited the foreign certifying agent are functionally equivalent to the requirements of this Chapter.

(d) Notwithstanding any provision of this Chapter, the Department may, at its discretion, certify a production or distribution operation as a certified operation after determining an operation is in compliance with the provisions of the Act and this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.10. General Requirements for Accredited Certifying Agents.

(a) In order to receive and maintain accreditation, a private entity accredited as a certifying agent under this Chapter must:

(1) Have sufficient expertise in covered animal production and covered product distribution techniques to fully comply with and implement the terms and conditions of the certification program established under this Chapter;

(2) Carry out the provisions of the Act and this Chapter, including the provisions of certifying operations as described in sections 1326.3 through 1326.8 of this Article;

(3) Use a sufficient number of adequately trained personnel, including inspectors, and certification review personnel, to comply with and implement the certification program established under this Chapter;

(4) Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in covered animal production and covered product distribution to successfully perform the duties assigned;

(5) Provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and this Chapter;

(6) Maintain all records pursuant to section 1326.17(b) of this Article and make all such records available for inspection and copying during normal business hours by authorized representatives of the Department;

(7) Not disclose any information collected pursuant to this Article obtained while certifying producers or distributors for compliance with this Chapter to any third-party without approval by the Department. Any request to an accredited certifying agent for records or documents must be submitted to the Department for review and approval pursuant to the California Public Records Act (Government Code section 6250 et seq.);

(8) Prevent conflicts of interest by:

(A) Not certifying a production or distribution operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or distribution operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(B) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or distribution operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(C) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected.;

(9) Refrain from making false or misleading claims about its accreditation status, the accreditation program for certifying agents, or the nature or qualities of covered products; and

(10) Submit to the Department a copy of:

(A) Within 14 days of creation, any notice of proposed suspension or revocation and notification of suspension or revocation sent pursuant to section 1326.20 of this Article; and

(B) Annual report as described in section 1326.17(a) of this Article including the name, address, and telephone number of each operation granted initial certification pursuant to section 1326.6 of this Article or an updated certification pursuant to section 1326.8 of this Article, during the preceding year.

(b) A private entity accredited as a certifying agent must:

(1) Hold the Department harmless for any failure on the part of the certifying agent to carry out the provisions of the Act and this Chapter; and

(2) Transfer to the Department all records or copies of records concerning the person's certification activities related to this Article in the event that the certifying agent dissolves or loses its accreditation; provided, that, such transfer shall not apply to a merger, sale, or other transfer of ownership of a certifying agent.

(c) No certifying agent under this Article shall exclude from participation in or deny the benefits of certification to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

(d) A private entity seeking accreditation under this Article must sign and return a statement of agreement prepared by the Department which affirms that, if granted accreditation as a certifying agent under this Chapter, the applicant will carry out the provisions of the Act and this Chapter, including but not limited to all applicable requirements of this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.11. Applying for Accreditation as a Certifying Agent.

(a) A private entity seeking accreditation as a certifying agent under this section must submit an application for accreditation provided by the Department which contains the applicable information and documents set forth in sections 1326.12 and 1326.13 of this Article.

(b) Following the receipt of the information and documents, the Department will determine, pursuant to sections 1326.12 and 1326.13 of this Article, whether the applicant for accreditation should be accredited as a certifying agent.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.12. Applicant Information for Accreditation as a Certifying Agent.

A private entity seeking accreditation as a certifying agent must submit the following information:

(a) The business name, primary office location, mailing address, name of the person(s) responsible for the certifying agent's day-to-day operations, contact numbers (telephone,

facsimile, email and Internet address) of the applicant, and, the entity's federal taxpayer identification number;

(b) The name, office location, mailing address, and contact numbers (telephone, facsimile, email and Internet address) for each of its organizational units, such as Chapters or subsidiary offices, and the name of a contact person for each unit;

(c) Each area of operation (veal calves, breeding pigs, or egg-laying hens or distribution) for which accreditation is requested and the estimated number of each type of operation anticipated to be certified annually by the applicant along with a copy of the applicant's schedule of fees for all services to be provided under these regulations by the applicant;

(d) The type of entity the applicant is (e.g., for-profit business, not-for-profit membership association) and documentation showing the entity's status and organizational purpose, such as Articles of incorporation and by-laws or ownership or membership provisions, and its date of establishment; and

(e) A list of each State or foreign country in which the applicant has previously conducted certification services and a list of each State or foreign country in which the applicant intends to certify production or distribution operations pursuant to this Chapter.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.13. Evidence of Expertise and Ability.

A private entity seeking accreditation as a certifying agent must submit to the Department all of the following documents and information:

(a) Personnel.

(1) The name and position description of personnel in the certifier's operation performing inspections, members of any certification review and evaluation committees, and inspection contractors.

(2) A description of the qualifications, including experience, training, and education in auditing, inspection, covered animal production and/or covered product distribution, or other relevant areas of work for:

(A) Each inspector to be used by the applicant; and

(B) Each person to be designated by the applicant to review or evaluate applications for certification.

(3) A description of procedures, practices, and training to ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, auditing and

decision-making responsibilities have sufficient expertise to successfully perform the duties assigned and to comply with and implement the requirements of the Act and this Chapter.

(b) Administrative policies and procedures.

(1) A copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates;

(2) A copy of the procedures to be used for reviewing and investigating certified operations compliance with the Act and this Chapter and the reporting of violations of the Act and this Chapter to the Department; and

(3) A copy of the procedures to be used for complying with the recordkeeping requirements set forth in section 1326.10(a)(6) of this Article.

(c) Conflicts of interest. A copy of procedures to be implemented to prevent the occurrence of conflicts of interest, as described in section 1326.10(a)(8) of this Article.

(d) Other information. Any other information the applicant believes may assist in the Department's evaluation of the applicant's expertise and ability.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.14. Granting Accreditation.

(a) Accreditation will be granted when:

(1) The accreditation applicant has submitted the information required by sections 1326.12 and 1326.13 of this Article; and

(2) The Department determines that the applicant for accreditation meets the requirements for accreditation as stated in section 1326.10 of this Article, as determined by a review of the information submitted in accordance with sections 1326.12 and 1326.13 of this Article and, if necessary, a review of the information obtained from an on-site evaluation as provided for in section 1326.16 of this Article.

(b) On making a determination to approve an application for accreditation, the Department will notify the applicant of the granting of accreditation in writing, stating:

(1) The area(s) for which accreditation is given;

(2) The effective date of the accreditation; and

(3) The date of expiration of the accreditation.

(c) The accreditation of a certifying agent shall continue in effect until such time as the certifying agent fails to renew accreditation as provided in section 1326.17(c) of this Article, the

certifying agent voluntarily ceases its certification activities, or accreditation is suspended or revoked pursuant to section 1326.21 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.15. Denial of Accreditation.

(a) If the Department has reason to believe, based on a review of the information specified in sections 1326.12 and 1326.13 of this Article or after an on-site evaluation as specified in section 1326.16, that an applicant for accreditation is not able to comply or is not in compliance with the requirements of the Act and this Chapter, the Department shall provide a written notification of noncompliance to the applicant. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) When each noncompliance has been resolved, the Department will send the applicant a written notification of noncompliance resolution and proceed with further processing of the application.

(c) If an applicant fails to correct the noncompliances, fails to report the corrections by the date specified in the notification of noncompliance, fails to file a rebuttal of the notification of noncompliance by the date specified, or is unsuccessful in its rebuttal, the Department will provide the applicant with written notification of accreditation denial. An applicant who has received written notification of accreditation denial may apply for accreditation again at any time in accordance with sections 1326.12 and 1326.13 of this Article or appeal the denial of accreditation in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) If the certifying agent was accredited prior to an on-site evaluation and the on-site evaluation reveals issues of noncompliance, the Department will begin the noncompliance procedures for accredited certifying agents according to section 1326.21 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.16. On-site Evaluations.

(a) In order to receive and maintain accreditation, an accredited certifying agent must allow on-site evaluations for the purpose of examining the certifying agent's operations and evaluating its compliance with the Act and this Chapter. On-site evaluations shall include a review of the certifying agent's certification procedures, facilities, administrative and management systems for production or distribution operations certified by the certifying agent. On-site evaluations shall be conducted by a representative(s) of the Department.

(b) An initial on-site evaluation of an accreditation applicant may, at the discretion of the Department, be conducted before or after issuance of the applicant's "notification of accreditation." An on-site evaluation shall be conducted after application for renewal of accreditation, but prior to the issuance of a notice of renewal of accreditation. One or more on-site evaluations will be conducted during the period of accreditation to determine whether an accredited certifying agent is complying with the requirements set forth in section 1326.10 of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.17. Annual Report, Recordkeeping, and Renewal of Accreditation.

(a) Annual report. An accredited certifying agent must submit annually to the Department, on or before January 30, the following reports:

(1) A complete and accurate update of information submitted pursuant to sections 1326.10(a)(10)(B), 1326.12 and 1326.13 of this Article;

(2) Information supporting any changes being requested in the areas of accreditation described in section 1326.9 of this Article; and

(3) A description of the measures implemented in the previous year and any measures to be implemented in the coming year to satisfy any terms and conditions determined by the Department to be necessary, as specified in the most recent on-site inspection report.

(b) Recordkeeping. Accredited private certifying agents must maintain records according to the following schedule:

(1) Records obtained from applicants for certification and certified operations must be maintained for not less than three (3) years beyond their receipt;

(2) Records created by the certifying agent regarding applicants for certification and certified operations must be maintained for not less than three (3) years beyond their creation;
and

(3) Records created or received by the certifying agent pursuant to the accreditation requirements of this Article, excluding any records covered by section 1326.17(b)(2) of this Article, must be maintained for not less than three (3) years beyond their creation or receipt.

(c) Renewal of accreditation.

(1) An accredited certifying agent's application for accreditation renewal must be received at least 6 months prior to the fifth anniversary of issuance of the notification of accreditation and each subsequent renewal of accreditation. Certifying agents with an expired accreditation shall not perform certification activities under the Act and this Chapter.

(2) Following receipt of the information submitted by the certifying agent in accordance with (a) of this section and the results of an on-site evaluation, the Department will determine whether the certifying agent remains in compliance with the Act and this Chapter and should have its accreditation renewed.

(d) Notice of renewal of accreditation. Upon a determination that the certifying agent is in compliance with the Act and this Chapter, the Department will issue a notice of renewal of accreditation according to 1326.14(b) of this Article.

(e) Notice of denial of renewal of accreditation. If the certifying agent is found not to be in compliance with the Act and this Chapter, and the accreditation has expired, the Department will issue a notice of denial of renewal and include reason(s) why renewal was denied and corrective actions to be taken by the certifying agent before applying again according to sections 1326.12 and 1326.13 of this Article. A notice of denial of renewal of accreditation can be appealed by requesting a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Noncompliance. Upon a determination that the certifying agent is not in compliance with the Act and this Chapter, and the accreditation has not expired, the Department will initiate proceedings to suspend or revoke the certifying agent's accreditation as described in section 1326.21 of this Article.

(g) Amending accreditation. Amendment to scope of an accreditation may be requested at any time. The application for amendment shall be provided by the Department and shall contain information applicable to the requested change in accreditation, and a complete and accurate update of the information submitted pursuant to sections 1326.12 and 1326.13 of this Article.

(h) Any change in ownership, change of business name, change in business location, closure of business, or change of name, address, phone number or email of person authorized

to act on behalf of the accredited certifier must be reported to the Department within 30 days of such change.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.18. General Compliance.

(a) As a condition of certification and accreditation as a private certifying agent, the Department may inspect and review certified production and distribution operations and accredited certifying agents that are private entities for compliance with the Act or this Chapter.

(b) The Department may initiate suspension or revocation proceedings against a certified operation as described in section 1326.20 of this Article:

(1) When the Department has determined a certified operation has violated or is not in compliance with the Act or this Chapter; or

(2) When a certifying agent fails to take appropriate action to enforce the Act or this Chapter.

(c) The Department may initiate suspension or revocation of a private certifying agent's accreditation, as described in section 1326.21 of this Article, if the certifying agent that is a private entity fails to meet, conduct, or maintain accreditation requirements pursuant to the Act or this Chapter.

(d) Each notification of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, and suspension or revocation issued pursuant to sections 1326.20, 1326.21, and 1327.2 and each response to such notification must be sent to the recipient's place of business via a delivery service which provides dated return receipts.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.19. Investigation of Certified Operations.

A certifying agent shall report to the Department complaints of noncompliance with the Act or this Chapter concerning production and distribution operations certified as compliant with the Act and this Chapter by the certifying agent. The Department may at its discretion investigate complaints of noncompliance with the Act and require additional inspections by a certifying agent.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.20. Noncompliance Procedure for Certified Operations.

(a) Notification. When an inspection, review, or investigation of a certified operation by a certifying agent reveals any noncompliance with the Act or regulations in this Chapter, a written notification of noncompliance shall be sent by the certifying agent to the certified operation.

Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

(b) Resolution. When a certified operation demonstrates that each noncompliance has been resolved within the prescribed time period, the certifying agent shall send the certified operation a written notification of noncompliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the certifying agent shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification. The notification of proposed suspension or revocation of certification shall state:

(1) The reasons for the proposed suspension or revocation;

(2) The proposed effective date of suspension or revocation;

(A) The maximum number of days from date of notification of proposed suspension or revocation and effective date of suspension or revocation is 30 calendar days;

(3) The impact of a suspension or revocation on future eligibility for certification including conditions for reinstatement; and

(4) The right to request mediation pursuant to section 1327.2 of this Chapter or to request a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The notice of proposed suspension or revocation shall remain in effect pending the outcome of an appeals process.

(d) Willful violations. Notwithstanding (a) of this section, if a certifying agent has evidence that a certified operation has willfully violated the Act or this Chapter, the certifying agent shall send the certified operation a notification of proposed suspension or revocation of

certification of the entire operation or a portion of the operation, as applicable to the noncompliance.

(e) Suspension or revocation.

(1) If the certified operation fails to correct the noncompliance according to the prescribed time period, to resolve the issue through rebuttal or mediation, or to file an appeal of the proposed suspension or revocation of certification before suspension or revocation goes into effect according to the notice of proposed suspension or revocation, the certifying agent shall send the certified operation a written notification of suspension or revocation.

(2) A certifying agent must not send a notification of suspension or revocation to a certified operation that has requested mediation pursuant to section 1327.2 of this Chapter or filed an appeal pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, while final resolution of either is pending.

(f) Eligibility.

(1) A certified operation whose certification has been suspended under section 1326.20 of this Article may at any time, unless otherwise stated in the notification of suspension, submit a request to the Department for reinstatement of its certification. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and this Chapter.

(2) A certified operation or a person responsibly connected with an operation whose certification has been revoked under section 1326.20 of this Article will be ineligible to receive certification for a period of two (2) years following the date of such revocation.

(3) A certified operation whose certification is suspended or revoked by a certifying agent has the right to appeal this decision pursuant to section 1327.2 of this Chapter or through a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The notice of suspension or revocation shall remain in effect pending the outcome of an appeals process.

(g) Notwithstanding (a) through (e) of this section, if the certifying agent is a government entity other than the Department, the noncompliance procedures for certified operations established under the authority of that government entity may be followed in lieu of sections 1326.20(a) through (e) of this Article.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.21. Noncompliance Procedure for Accredited Certifying Agents.

(a) Notification. When an inspection, review, or investigation of an accredited certifying agent by the Department reveals any noncompliance with the Act or this Chapter, a written notification of noncompliance shall be sent by the Department to the certifying agent. Such notification shall provide:

(1) A description of each noncompliance;

(2) The facts upon which the notification of noncompliance is based; and

(3) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible.

(b) Resolution. When the certifying agent demonstrates that each noncompliance has been resolved within the prescribed time period, the Department shall send the certifying agent a written notification of noncompliance resolution.

(c) Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the Department shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent. The notification of proposed suspension or revocation shall state whether the certifying agent's accreditation or specified areas of accreditation are to be suspended or revoked. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation may be combined in one notification. The notification of proposed suspension or revocation of accreditation shall state:

(1) The reasons for the proposed suspension or revocation;

(2) The proposed effective date of the suspension or revocation;

(A) The maximum number of days from date of notification of proposed suspension or revocation and effective date of suspension or revocation is 30 calendar days;

(3) The impact of a suspension or revocation on future eligibility for accreditation including conditions for reinstatement; and

(4) The right to file a formal hearing appeal pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The Department's notice of proposed suspension or revocation shall remain in effect pending the outcome of an appeals process.

(d) Willful violations. Notwithstanding paragraph (a) of this section, if the Department has reason to believe that a certifying agent has willfully violated the Act or this Chapter, the Department shall send a written notification of proposed suspension or revocation of accreditation to the certifying agent.

(e) Suspension or revocation. When the accredited certifying agent fails to correct the issues of noncompliance as described in the proposed suspension or revocation, or fails to file a formal hearing appeal of the proposed suspension or revocation of accreditation within the prescribed time, the Department shall send a written notice of suspension or revocation of accreditation to the certifying agent.

(f) Cessation of certification activities. A certifying agent whose accreditation is suspended or revoked must:

(1) Cease all certification activities under this Chapter in each area of accreditation and in each State for which its accreditation is suspended or revoked; and

(2) Transfer to the Department all records concerning its certification activities that were suspended or revoked.

(g) Eligibility.

(1) A certifying agent whose accreditation is suspended by the Department under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Department for reinstatement of its accreditation. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and this Chapter.

(2) A certifying agent whose accreditation is revoked by the Department shall be ineligible to be accredited as a certifying agent under the Act and this Chapter for a period of not less than 2 years following the date of such revocation.

(3) A certifying agent whose accreditation is suspended or revoked by the Department has the right to appeal this decision pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The Department's decision to suspend or revoke an accreditation shall remain in effect pending the outcome of an appeal process.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

Section 1326.22. Government Entity Providing Certification.

(a) A government entity acting as a certifying agent and performing certification of producer or distribution operations for compliance with the Act and this Chapter may:

(1) Register annually with the Department;

(2) Submit to the Department a copy of any notice of proposed suspension or revocation of certification and notification of suspension and revocation of certification sent pursuant to section 1326.20 of this Article; and

(3) Submit to the Department a list, on January 30 of each year, the name, address, and telephone number of each operation granted initial certification pursuant to section 1326.6 of this Article or an updated certification pursuant to section 1326.8 of this Article, during the preceding year.

(b) For issues of certifier noncompliance, the Department will use substantially equivalent procedures to section 1327.2 of this Chapter to resolve any noncompliance in a government entity's certification activities under this Chapter, and if the government entity fails to correct such noncompliance, to notify the government entity that the Department will no longer accept its certifications for compliance with the Act and this Chapter.

7) Adopt Article 6 and sections 1327.1 and 1327.2 of Chapter 10 of Division 2 of Title 3 of the California Code of Regulations, to read as follows:

Article 6. Informal Hearing and Mediation.

Section 1327.1. Seizure or Holding of Covered Product Informal Hearing Procedures.

(a) A respondent may request an informal hearing to contest a notice of adverse determination that seizes or places a hold on covered product pursuant to sections 1320.7, 1321.7, and 1322.7 of this Chapter.

(b) The request for an informal hearing shall be submitted to the Department by electronic mail, facsimile, or by telephone within three (3) business days from the date of receipt of the notice of adverse determination.

(c) The notice of adverse determination shall remain in effect pending the outcome of the informal hearing.

(d) Hearings conducted under this section shall be held within three (3) business days after the Department receives the request for an informal hearing.

(e) The informal hearing shall be presided over and conducted by a Hearing Officer designated by the Secretary.

(f) The standard of proof to be applied by the Hearing Officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.

(g) A teleconference line shall be made available at every hearing.

(h) Hearings shall be recorded by the Department. A transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request.

(i) The decision of the Hearing Officer shall be in writing, issued within three (3) business days after the conclusion of the hearing, and shall be effective immediately upon issuance.

(j) The decision shall be served on the respondent by U.S. Mail or, if available, by electronic mail.

(k) The respondent may appeal the Hearing Officer's decision and order by filing a petition for a writ of administrative mandamus in accordance with section 1094.5 of the Code of Civil Procedure.

Note: Authority cited: Section 25993, Health and Safety Code and section 11400.20, Government Code. Reference: Sections 11445.30, 11445.40, 11445.50, and 11445.60, Government Code and sections 25990, 25991, and 25992, Health and Safety Code.

Section 1327.2. Mediation.

(a) Mediation may be requested for any denial of certification under section 1326.7 or any proposed suspension or revocation or noticed suspension or revocation of certification under section 1326.20.

(b) Any request for mediation shall be requested in writing to the applicable certifying agent within 30 calendar days of the receiving a denial of certification, proposed suspension or revocation, or noticed suspension or revocation of certification.

(c) The certifying agent may accept or reject the request for mediation.

(1) If the certifying agent rejects the request for mediation, the certifying agent shall provide written notification to the applicant for certification or certified operation of the rejection. The written notification shall advise the applicant for certification or certified operation of the right to request an appeal, pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, within 30 days of the date of the written notification of rejection of the request for mediation.

(2) If the certifying agent accepts the request for mediation, certifying agent shall provide written notification to the applicant or certified operation of the acceptance.

(d) The mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation.

(e) The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent's decision pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and this Chapter.

(g) If the certifying agent is an out-of-state government entity, the mediation procedures established under the authority of that government entity may be followed in lieu of this section.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Sections 25990 and 25991, Health and Safety Code.

* * *

*cited in Nat'l Pork Producers Council v. Ross
No. 20-55631 archived on July 22, 2021*

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

(use "s/[typed name]" to sign electronically-filed documents)

COST TAXABLE	REQUESTED <i>(each column must be completed)</i>			
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Principal Brief(s) (<i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i>)	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>
Reply Brief / Cross-Appeal Reply Brief	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>
Supplemental Brief(s)	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee				\$ <input style="width: 50px; height: 20px;" type="text"/>
TOTAL:				\$ <input style="width: 50px; height: 20px;" type="text"/>

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:

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