

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

**CALIFORNIA CODE OF REGULATIONS
TITLE 3. FOOD AND AGRICULTURE
DIVISION 4. PLANT INDUSTRY
CHAPTER 2. FIELD CROPS
SUBCHAPTER 2. COMMERCIAL FEED
(Notice published October 6, 2021)**

NOTICE OF A 15-DAY COMMENT PERIOD

NOTICE IS HEREBY GIVEN that pursuant to the requirements of Government Code Subsection 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Food and Agriculture (Department), is providing notice of changes made to the action described in the Informative Digest published in the California Regulatory Notice Register on June 25, 2021 [Notice File No. Z2021-0615-07, Register 2021, No. 26-Z] relating to proposed incentives for the diversion of human food by-products to commercial livestock feed.

The Department is proposing to modify the originally proposed text for Sections 2675, 2750, 2751, 2802, and 2804 of Title 3, Division 4, Chapter 2, Subchapter 2, Articles 1, 11, and 14 of the CCR. Only those portions of the originally proposed text that are indicated by a double underline or ~~double strikethrough~~ have been modified. The remainder of the text remains the same as the originally proposed text.

The 45-day public comment period for the originally proposed text for this proposal began June 25, 2021 and ended on August 9, 2021. The Department is now publishing a notice of a 15-day comment period on the modified proposed text. The purpose is to allow interested persons time to review the modifications to the proposed text and submit written comments. The 15-day public comment period begins **October 6, 2021 and ends on October 21, 2021**.

Please note: Any written comments are to be restricted to the recent modifications as indicated in double underline or ~~double strikethrough~~ within the enclosed language. The Department is not required to respond to comments received in response to this notice on other aspects of the proposed regulation.

AUTHORITY AND REFERENCE

The Department is proposing to adopt changes to 3 CCR, Division 4, Chapter 2, Subchapter 2 pursuant to the authority vested by Sections 407 and 14902 of the Food and Agricultural Code (FAC) to adopt, implement, and enforce these regulations. The proposed regulations will implement, interpret, or make specific FAC Sections 14925, 14991, 14992, 15011, 15042, 15051, 15053, 15061, and 15062.

SECTIONS AFFECTED

California Code of Regulations (CCR) Title 3, Division 4, Chapter 2, Subchapter 2, Articles 1, 11, and 14, Sections 2675, 2750, 2751, 2802, and 2804.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments regarding the newly proposed changes to the Department by mail or email. The written comment period will close on **October 21, 2021**. The Department will only consider comments received by that date.

Submit comments to:

Erika Lewis, Research Data Specialist I
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
1220 N Street
Sacramento, CA 95814
Email: feed_lvstk@cdfa.ca.gov

All written comments received by **October 21, 2021** which pertain to the newly indicated changes will be reviewed and responded to by the Department in the Final Statement of Reasons as part of the compilation of the rulemaking file. Please limit your comments to the newly proposed modifications to the text.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of materials regarding this proposal can be accessed through the Department's website: <https://www.cdfa.ca.gov/is/Regulations.html>.

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

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

MODIFIED REGULATION TEXT

Original proposed text to be adopted is displayed in underline type.
Original proposed text to be deleted is displayed in ~~striketrough~~ type.
Modified proposed text to be adopted is displayed in double underline.
Modified proposed text to be deleted is displayed in ~~double striketrough~~ type.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

§2675. Definitions.

...

(j) "By-product" means a product produced in addition to the principal product, may be produced during processing, rejected as inferior during the process of grading or separating, or is produced via an industrial or biological process.

(k) "Manufacturing/processing" means making animal food from one or more ingredients, or synthesizing, preparing, treating, modifying, or manipulating animal food, including food crops or ingredients. Examples of manufacturing/processing activities include: Baking, boiling, bottling, canning, cooking, cooling, cutting, distilling, drying/dehydrating raw agricultural commodities to create a distinct commodity (such as drying/dehydrating grapes to produce raisins), evaporating, eviscerating, extracting juice, extruding, formulating, freezing, grinding, homogenizing, irradiating, labeling, milling, mixing, packaging (including modified atmosphere packaging), pasteurizing, peeling, pelleting, rendering, treating to manipulate ripening, trimming, washing, or waxing. For farms and farm mixed-type facilities, manufacturing/processing does not include activities that are part of harvesting, packing, or holding.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14925, 14991, 14992(e), 15011 and 15042, Food and Agricultural Code and Code of Federal Regulations Title 21, Part 507.3.

§2675.1. General Provisions.

(a) All by-products used in commercial feed must adhere to the following:

(1) Must not bear or contain any substance which may render it injurious to health.

(2) Must be held under conditions that will protect against contamination, including the following:

(A) Containers and equipment used to convey or hold by-products before distribution must be designed, constructed of appropriate material, cleaned as necessary, and maintained to protect against the contamination of by-products;

(B) By-products held for distribution must be held in a way to protect against contamination from sources such as trash; and

(C) During holding, by-products must be accurately identified.

(3) Shipping containers and bulk vehicles used to distribute by-products must be examined prior to use to protect against the contamination of commercial feed from the container or vehicle when the facility is responsible for transporting the by-products itself or arranges with a third party to transport the by-products.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14925, 14991, 14992, 15011 and 15042, Food and Agricultural Code.

...

ARTICLE 11. INSPECTION TAX AND PLANT LICENSES

§2750. Tax Payment.

(a) ~~Each person holding a commercial feed licensee whose name appears on a commercial feed label shall pay the inspection tonnage tax as required in section 15062 of the Food and Agricultural Code.~~

(b) Reports of taxable sales shall be made quarterly to the director not later than one calendar month after March 31, June 30, September 30, and December 31 on a form furnished by the director. Quarterly reports and payments become delinquent on May 1, August 1, November 1, and February 1, for the respective preceding quarter.

~~(c) Sales of commercial feed amounting to a tonnage tax of zero dollars (0) or up to five hundred dollars (\$500) may be submitted as an estimate for the entire year on the first quarter tonnage tax payment. A fourth quarter report shall be required if there are any adjustments for the calendar year's tonnage tax payment.~~

(~~dc~~) A completed tax report must be filed for each quarter whether or not taxable sales have been made in that period, ~~except as provided in Section 2750(c).~~

(~~ed~~) Each licensee shall keep accurate records of sales of commercial feed which shall be available for examination by the director and shall include the date of sale, to whom sold, the name and net weight of the product sold. The records shall be maintained to support the reports for the previous three (3) years.

(e) Human food by-products as defined under Section 2804 that are diverted to animal feed without further ~~processing or manufacturing~~ manufacturing/processing beyond what is stated in the ingredient definition are subject to reduced inspection tonnage tax set by the Secretary. Firms shall be exempt from paying inspection tonnage tax on the first one thousand (1,000) tons of human food by-products diverted to animal feed during the license period as defined in Section 15054 of the Food and Agricultural Code.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 15061 and 15062, Food and Agricultural Code.

§2751. Licensing.

(a) Exemptions from license requirements provided in Section 15051 of the Food and Agricultural Code shall apply only to retail stores selling bagged or packaged commercial feed labeled by a licensed feed manufacturer.

(b) Beginning July 1, 2015, the annual commercial feed license fee shall be five hundred dollars (\$500.00) for each location.

(c) The annual commercial feed license fee for firms solely engaged in the diversion of human food by-products as defined under Section 2804 without further ~~processing or manufacturing~~ manufacturing/processing beyond what is stated in the ingredient definition shall be one hundred dollars (\$100.00) for each location.

(d) The commercial feed license fee is non-refundable and shall not be reduced to cover a fraction of a year.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 15051 and 15053, Food and Agricultural Code.

...

ARTICLE 14. DEFINITIONS AND STANDARDS

...

§ 2789. Milk Products.

...

(m) Condensed Whey-Product is the product obtained by partially removing water from whey from which a portion of the lactose, protein and/or minerals have been removed. The minimum percent solids, crude protein and lactose and the maximum percent of ash shall be guaranteed on the label. It may also be labeled “condensed reduced minerals whey” or “condensed reduced lactose whey”, if appropriate.

...

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14992 and 15011, Food and Agricultural Code.

...

§ 2802. Miscellaneous Products.

...

~~(v) Dehydrated Garbage is artificially dried, undecomposed animal and vegetable table waste, from which crockery, glass, metal, string and similar materials have been removed, processed at a temperature sufficient to destroy pathogenic organisms. If part of the grease and fat is removed, it shall be designated as “Degreased Dehydrated Garbage.”~~

~~(w-y)~~ Cereal Food Fines consists of particles of breakfast cereals obtained as a by-product of their processing.

~~(x-w)~~ Dried Bakery Product is a mixture of bread, cookies, cake, crackers, flours, and doughs which has been mechanically separated from non-edible materials, artificially dried and ground. If the product contains more than 3.5 percent sodium, the maximum percentage of sodium shall be a part of the name; i.e., Dried Bakery Product with ___ percent sodium.

~~(y-x)~~ Buckwheat Hulls is the outer covering of the buckwheat obtained in the milling of buckwheat flour.

~~(z-y)~~ Guar Meal is whole guar beans after removal of most of the endosperm. If the product is heat treated, it may be designated as “heat treated” or “toasted.”

~~(aa-z)~~ Synthetic Fatty Alcohol is a blend of long chain linear and branched alcohols with carbon numbers ranging from C 20 through C 32 and of hydrocarbons ranging from C 24 through C 40. The product is an off white (straw) color, soft solid, with a melting point

of approximately 115 [FNo] F. The product shall contain not less than 95.0 percent long chain alcohols. It shall be labeled to show the minimum percent long chain alcohols, and maximum percent moisture, insoluble and unsaponifiable matter. The statement "For use in ruminant feeds only, not to exceed 5.0 percent of the ration," shall appear on the label. When used in blended fat or other fat products, the percent shall be stated.

(aa) Salvage Pet Food is a product resulting from pet food manufacturing. This product may consist of, but is not limited to, start-up and over-run product, unfinished pet food, pet food fines and other product not suitable for packaging for retail sale. If it contains, or may contain, any material identified by Code of Federal Regulations Title 21, Part 589.2000, April 1, 2021, as prohibited from use in the feed of ruminant animals, or if it is no longer accompanied by a detailed label listing all of the ingredients in the salvage pet food, the label must contain the precautionary statement "Do not feed to cattle or other ruminants." It shall be free of foreign materials harmful to animals, suitable for the purpose for which it is being marketed, and properly labeled for its intended use.

(ab) Distressed Pet Food is a product resulting from pet food distribution, but which is no longer available for retail sale. This product may be pet food in, but not limited to, dented cans, torn bags, product past its sell-by date, or returned product that is suitable for use in feed. It may consist of a single formula, still in the original packaging, or a variety of formulas commingled into one bulk container and containing none of the original packaging or labeling. If it contains, or may contain, any material identified by Code of Federal Regulations Title 21, Part 589.2000, April 1, 2021, as prohibited from use in the feed of ruminant animals, or if it is no longer accompanied by a detailed label listing all of the ingredients in the distressed product, the label must contain the precautionary statement "Do not feed to cattle or other ruminants." It shall be free of foreign materials harmful to animals, suitable for the purpose for which it is being marketed, and properly labeled for its intended use.

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14992 and 15011, Food and Agricultural Code.

...

§ 2804. Human Food By-Products.

(a) Wet Food Processing Waste is composed of any and all animal and vegetable products from basic food processing. This may include manufacturing or processing waste, cannery residue, production over-run, and otherwise unsaleable material and is 70% moisture or higher. The guaranteed analysis shall include the maximum moisture. If part of the grease and fat is removed, it must be designated as "Degreased." If wet food processing waste is comprised of a single ingredient the label shall additionally specify what the product is, e.g. Wet Food Processing Waste - Potato Peels. Use of this ingredient, from mammalian origins, is restricted to non-ruminant feeds unless

specifically exempted by Code of Federal Regulations Title 21, Part 589.2000, April 1, 2021. Feeds containing prohibited material must bear the following label statement: “Do not feed to cattle or other ruminants.”

(b) Restaurant Food Waste is composed of food waste collected from restaurants, cafeterias, and other institutes of food preparation. Processing and/or handling must remove any and all undesirable constituents including crockery, glass, metal, string, and similar materials. The guaranteed analysis shall include maximum moisture, unless the product is dried by artificial means to less than 12% moisture and designated as “Dehydrated Restaurant Food Waste.” If part of the grease and fat is removed it must be designated as “Degreased.” Use of this ingredient, from mammalian origins, is restricted to non-ruminant feeds unless specifically exempted by Code of Federal Regulations Title 21, Part 589.2000, April 1, 2021. Feeds containing prohibited material must bear the following label statement: “Do not feed to cattle or other ruminants.”

(c) Recovered Retail Food is composed of human food products safe and suitable for livestock feed that are collected from retail food establishments, domestic holding facilities, and domestic packing facilities. Permitted recovered retail foods are products from overstocks, lacking consumer acceptance, or beyond their sell-by date that include items such as bruised, cut, or overly ripe produce (fruit and vegetables), bakery goods, eggs, and dairy products. It shall be safe and appropriately labeled for its intended use and shall be free of material harmful to animals. Materials excluded from this definition include pet foods and products containing beef, lamb, pork, poultry, fish, or shellfish. It must not contain packaging materials (e.g., plastics, glass, metal, string, Styrofoam, cardboard, and similar materials), flowers, potted plants, or potting soil. The recovered foods shall be collected and intermixed in secure holding containers to exclude unauthorized addition of trash, materials harmful to animals, or infestation and adulteration by pests. Egg and dairy products (and other products ordinarily held at refrigerator temperatures) must be kept in cold storage until the scheduled pick-up. To minimize spoilage, the recovered retail food shall be collected at least weekly, or more frequently if necessary. The establishment should have a sanitation plan in place, and the containers shall be cleaned and sanitized as necessary. The product must be handled to preserve its safety and nutritional value.

(d) Cull Fruit or Vegetables means material rejected as inferior during the process of grading or separating. This includes any fruits or vegetables that are left in the field after harvest. The label for these products shall include the word “cull,” the name of the product, and a statement to the effect of “not for human consumption” or “for livestock feed only.”

(e) Wet Apple Pomace as defined under Section 2775(c).

(f) Wet Beet Pulp as defined under Section 2777(b).

(g) Brewers Wet Grains as defined under Section 2778(b).

(h) Condensed Whey-Product as defined under Section 2789(m).

(i) Whey as defined under Section 2789(p).

(j) Condensed Whey Permeate as defined under Section 2789(w).

(k) Condensed Delactosed Whey Permeate as defined under Section 2789(x).

(l) Dairy Food By-Products as defined under Section 2789(z).

(m) Wet Citrus Pulp as defined under Section 2802(g).

(n) Cereal Food Fines as defined under Section 2802(v).

(o) Dried Bakery Product as defined under Section 2802(w).

Note: Authority cited: Sections 407 and 14902, Food and Agricultural Code. Reference: Sections 14992 and 15011, Food and Agricultural Code.