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

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.

4) Adopt Article 3 and sections 1322 through 1322.12 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) "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.

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

(c) "Certified operation" means as defined in section 1326 (e), Article 5, of this Chapter.

(d) "Certifying agent" means as defined in section 1326 (f), Article 5, 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 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 exclusively for purposes of transshipment or export for human consumption outside of the state.

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(2) Any sale 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 issued by the Food Safety Inspection Service of the United States Department of Agriculture.

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

(f) "Consumer" means any person who purchases whole uncooked pork meat, as defined in Section 25991, subdivision (u) of the Health and Safety Code and this Article, for the sole purpose of his or her 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 (RTE) pork 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 pork meat.

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

(i) "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.

(j) "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 (IMPS): Fresh Pork Series 400 (November 2014 Edition)* and the *2014 Uniform Retail Meat Identity Standards (URMIS)* developed by the Industry-Wide Cooperative Meat Identification Standards Committee, but shall exclude any ground or otherwise comminuted meat products.

(k) "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.

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

(1) A consumer.

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(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 handler.

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

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

(m) "Enforcement officer" for purposes of this Article means any of the following:

(1) Persons employed by and under the supervision and control of the Department of Food and Agriculture.

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

(n) "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 Chapter 1, Title 21, of the Code of Federal Regulations.

(o) "Food facility" for purposes of this Article means a facility as defined in section 113789 of the Health and Safety Code.

(p) "Food processing facility" for purposes of this Article means a facility as defined in section 109947 of the Health and Safety Code.

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

(r) "Pork handler" means a person engaged in the business of commercial sales 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.

(s) "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 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 official establishment

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number issued by the Food Safety Inspection Service of the United States Department of Agriculture.

(t) "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.

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

(v) "Retailer" means any person or facility that conducts commercial sales of whole uncooked pork meat to a consumer.

(w) "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 Chapter 1, Title 21, of the Code of Federal Regulations.

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

(y) "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: Section 25991, Health and Safety Code.

Section 1322.1. Breeding Pig Confinement.

(a) No pork producer or pork handler 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

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the immediate offspring of a breeding pig, that was confined in an enclosure that fails to comply with all of the following standards:

(1) The enclosure shall not prevent a breeding pig from lying down, standing up, fully extending its limbs, or turning around freely.

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

(3) The amount of usable floor space required by subsection (a)(2) 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.

(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 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: Section 25991, Health and Safety Code.

Section 1322.2. Registration.

(a) Any person engaged in business in this state as a pork handler, or any out-of-state pork handler 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 subdivision (a) of this section shall submit an application for registration on a form provided by the Department.

(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 handler 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.

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(f) Any change in ownership, change of business name, or change in business location must be reported to the Department within 30 business days of such change on a form provided by the Department.

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

(h) Every registration 12 months from the date of issue but shall remain in force for 30 days following the date of expiration as may be necessary for the renewal of such registration by the Department.

(i) A registration may be renewed each successive year by the Department in response to an application for renewal by a pork handler 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 handler 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 subsection (j) of this section, a registration may be granted prior to January 1, 2023 to a pork handler that self-certifies on a form provided by the Department that the pork handler 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 a facility at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601, et seq.).

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

Section 1322.3. Inspection and Audit of Registered Facilities.

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

(b) Every pork handler 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

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unimpeded 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: Section 25991, Health and Safety Code.

Section 1322.4. Shipping Document Requirements.

(a) Shipping Documents: Commencing January 1, 2022, all 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+ Compliant”. The statement shall be clearly legible and plainly printed or stamped.

(b) For shipments of whole pork meat that was not produced in compliance with section 25991 of the Health and Safety Code or 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 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”.

(c) No person shall label, identify, mark, advertise, or otherwise represent, pigs or pork meat for commercial sale in California using the statements in subdivision (a) of this section, or as meeting the requirements of Proposition 12 (2018) 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: Section 25991, Health and Safety Code.

Section 1322.5. Handler Recordkeeping.

(a) A pork handler, as a condition of registration pursuant to section 1322.2, 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, subsection (a), of this Article and the applicable recordkeeping requirements described in section 1326.2 of this Chapter.

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(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 be maintained for two 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.

(e) This section shall not apply to a facility at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601, et seq.).

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

Section 1322.6. Inspection of Conveyances.

(a) Every pork handler 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 any enforcement officer at any California inspection station operated pursuant to sections 5341-5351 of the Food and Agricultural Code 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.

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

Section 1322.7 Tagging and Seizure.

(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

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provisions of this Article, and may give notice of such violation to the pork producer, pork handler, 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 he or she has reasonable cause 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.

Note: Authority cited: Section 25993, Health and Safety Code. Reference: Section 25991, 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 that whole pork meat 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, subsection (a), 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, a plant at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), shall:

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

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

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

Section 1322.9. Denial, Suspension or Revocation of 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, 25991, 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.

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

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

(b) A party may appeal the Department's decision to refuse to issue, or to deny, suspend or revoke a registration certificate by requesting an informal hearing pursuant to section 1322.10 of this Article.

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

Section 1322.10. Informal Hearing Procedures.

(a) A respondent, or his or her duly authorized representative, may contest a notice of adverse determination from the Department under this Article by requesting an informal hearing as outlined in this section.

(b) Informal hearing requests shall be submitted by written correspondence to the California Department of Food and Agriculture, Legal Office of Hearings and Appeals, 1220 "N" Street, Suite 315, Sacramento, California 95814 within 30 days from the date of receipt of the Department's notice of adverse determination.

(c) Any request for an informal hearing shall include a copy of the notice of adverse determination and may state the grounds for the appeal.

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(d) Any objection to the Department's selection of the informal hearing procedure shall be made in writing to the Legal Office of Hearings and Appeals and shall be resolved by the Hearing Officer prior to the hearing pursuant to Government Code section 11445.30.

(e) Failure to submit a timely request for a hearing constitutes a waiver of the respondent's right to contest the notice of an adverse determination. Untimely requests for a hearing shall be denied by the Department absent good cause.

(f) The Department shall schedule an informal hearing within 30 days from the receipt of the request from the respondent.

(g) At least 10 business days prior to the informal hearing, the Department shall provide a notice of the informal hearing to the respondent containing all of the following information:

(1) Date, location, and time of the informal hearing;

(2) Departmental contact information including applicable telephone and facsimile numbers; and

(3) Subject matter of the adverse determination.

(h) The notice of an informal hearing shall be sent to the address of the person charged as provided by any application, registration, or certification on record with the Department or as provided by a driver's license record obtained from the Department of Motor Vehicles.

(i) A notice that is sent pursuant to subsection (h) shall be considered effective even if delivery is refused or if the notice is not accepted at that address.

(j) Any documents to be considered by the Hearing Officer shall be received by the Legal Office of Hearings and Appeals at least three business days prior to the scheduled informal hearing. Any documents not timely submitted may be considered at the discretion of the Hearing Officer.

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

(l) 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.

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

(n) 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.

(o) The decision of the Hearing Officer shall be in writing, issued within 30 days after the conclusion of the hearing, and shall be effective immediately upon issuance.

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

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

Note: Authority cited: Section 25993, Health and Safety Code, and section 11400.20, Government Code. Reference: Article 10 (commencing with section 11445.10), Chapter 4.5, Part 1, Division 3, Title 2, Government Code.

Section 1322.11. Informal Hearings Involving the Seizure or Holding of Whole Pork Meat.

(a) A respondent may request an informal hearing to contest a notice of adverse determination that seizes or places a hold on whole pork meat pursuant to section 1322.7 of this Article.

(b) The request for an informal hearing shall be submitted to the Department by electronic mail, facsimile, or by telephone within three 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 business days after the Department receives the request for an informal hearing.

(e) Informal hearings conducted under this section shall be held in accordance with subsections (k) through (q) of section 1322.10.

Note: Authority cited: Section 25993 of the Health and Safety Code and Section 11400.20, Government Code. Reference: Article 10 (commencing with section 11445.10), Chapter 4.5, Part 1, Division 3, Title 2, Government Code.

Section 1322.12. Registration with the California Department of Public Health.

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

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

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

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