

## TITLE 3. FOOD AND AGRICULTURE

### PROPOSED REGULATIONS – ANIMAL CONFINEMENT

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person beginning **May 28, 2021 and ending on July 12, 2021**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

**Authority and Reference:** Pursuant to the authority vested by section 25993 of the Health and Safety Code (HSC), the Department is proposing to implement, interpret, or make specific the requirements relating to the confinement of egg-laying hens, veal calves, and breeding pigs, and/or selling specified whole veal meat, whole pork meat, shell eggs, and liquid eggs in California in accordance with sections 25990, 25991, 25992, 25993.1, and 25994 of the HSC, as described in the Informative Digest.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

In 2018, California voters passed Proposition 12, Farm Animal Confinement Initiative, self-titled as the Prevention of Cruelty to Farm Animals Act, and as defined in the proposed regulatory text, the Farm Animal Cruelty statute (Act), which amended the requirements of HSC sections 25990 through 25993 and added section 25993.1; section 25994 remained unchanged. The purpose of the Act is to prevent animal cruelty by phasing out certain methods of farm animal confinement for covered animals raised in the State and the products harvested from those animals, or immediate offspring of those animals in the case of breeding pigs, if sold within the State for human consumption. The Act mandates farm animal confinement standards and compliance timeframes, establishes definitions affecting the production and sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State, and directs the Department and the Department of Public Health (DPH) to jointly promulgate regulations to implement the provisions of the HSC relating to the confinement of specified farm animals and the sale of specified products derived from them.

In this rulemaking, the Department proposes to adopt new Chapter 10 (commencing with section 1320) of Division 2 of Title 3 of the California Code of Regulations (CCR) to implement, interpret, and make specific the laws established by the Act. Specifically, this proposal would

establish a program of registration, certification, conveyance inspection, and labeling and marking requirements for the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State which is necessary to fully effectuate the intent of the Act.

Existing law, section 25990(a) of the HSC specifies that a farm owner or operator within the State of California shall not knowingly cause any covered animal to be confined in a cruel manner.

Existing law, section 25990(b) of the HSC specifies that a business owner or operator shall not knowingly engage in the sale within the State of any of the following: (1) Whole veal meat that the business owner or operator knows or should know is the meat of a covered animal who was confined in a cruel manner; (2) Whole pork meat that the business owner or operator knows or should know is the meat of a covered animal who was confined in a cruel manner, or is the meat of immediate offspring of a covered animal who was confined in a cruel manner; (3) Shell eggs that the business owner or operator knows or should know is the product of a covered animal who was confined in a cruel manner; (4) Liquid eggs that the business owner or operator knows or should know are the product of a covered animal who was confined in a cruel manner.

Existing law, section 25991(a) of the HSC defines “breeding pig” as meaning any female pig of the porcine species kept for the purpose of commercial breeding who is six (6) months or older or pregnant.

Existing law, section 25991(b) of the HSC defines a “business owner or operator” to mean any person who owns or controls the operations of a business.

Existing law, section 25991(c) of the HSC defines a “cage-free housing system” for egg-laying hens including types of qualifying platforms and flooring systems and describes different acceptable hen housing systems that must include the minimum requirements for enrichments such as scratch areas, perches, nest boxes, and dust bathing areas as well as the ability of an employee to fully stand and provide care while working in the hens’ usable floorspace.

Existing law, section 25991(d) of the HSC defines a “calf raised for veal” to mean any calf of the bovine species kept for the purpose of producing the food product described as veal.

Existing law, section 25991(e) of the HSC defines acts that mean an animal was “confined in a cruel manner” including, but not limited to, confining a calf raised for veal with less than 43 square feet of usable floorspace per calf after December 31, 2019; confining a breeding pig with less than 24 square feet of usable floorspace per pig after December 31, 2021; confining an egg-laying hen with less than 144 square inches of usable floorspace per hen after December 31, 2019; and confining an egg-laying hen with less than the 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: Guidelines for Cage-Free Housing or in an enclosure other than a cage-free system after December 31, 2021.

Existing law, section 25991(f) of the HSC defines a “covered animal” as meaning any calf raised for veal, breeding pig, or egg-laying hen who is kept on a farm.

Existing law, section 25991(g) of the HSC defines an “egg-laying hen” as meaning any female domesticated chicken, turkey, duck, goose, or guineafowl kept for the purpose of egg production.

Existing law, section 25991(h) of the HSC defines “enclosure” as meaning a structure used to confine a covered animal or animals.

Existing law, section 25991(i) of the HSC defines “farm” as meaning the land, building, support facilities, and other equipment that are wholly or partially used for the commercial production of animals or animal products used for food or fiber; and does not include live animal markets, establishments at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), or official plants at which mandatory inspection is maintained under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.).

Existing law, section 25991(j) of the HSC defines “farm owner or operator” as meaning any person who owns or controls the operations of a farm.

Existing law, section 25991(k) of the HSC defines “fully extending the animal’s limbs” as meaning fully extending all limbs without touching the side of an enclosure, or another animal.

Existing law, section 25991(l) of the HSC defines “liquid eggs” as meaning eggs of an egg-laying hen broken from the shells, intended for human food, with the yolks and whites in their natural proportions, or with the yolks and whites separated, mixed, or mixed and strained. Liquid eggs do not include combination food products, including pancake mixes, cake mixes, cookies, pizzas, cookie dough, ice cream, or similar processed or prepared food products, that are comprised of more than liquid eggs, sugar, salt, water, seasoning, coloring, flavoring, preservatives, stabilizers, and similar food additives.

Existing law, section 25991(m) of the HSC defines a “person” as meaning any individual, firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate.

Existing law, section 25991(n) of the HSC defines “pork meat” as meaning meat, as defined in 3 CCR 900 as of August 2017, of a pig of the porcine species, intended for use as human food.

Existing law, section 25991(o) of the HSC defines “sale” as meaning a commercial sale by a business that sells any item covered by this chapter, but does not include any sale undertaken at an establishment at which mandatory inspection is provided under the Federal Meat Inspection Act (21 U.S.C. Sec. 601 et seq.), or any sale undertaken at an official plant at which mandatory inspection is maintained under the federal Egg Products Inspection Act (21 U.S.C. Sec. 1031 et seq.). For purposes of this section, a sale shall be deemed to occur at the location where the buyer takes physical possession of an item covered by HSC section 25990.

Existing law, section 25991(p) of the HSC defines “shell egg” as meaning a whole egg of an egg-laying hen in its shell form, intended for use as human food.

Existing law, section 25991(q) of the HSC defines “turning around freely” as meaning turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure or another animal.

Existing law, section 25991(r) of the HSC defines “uncooked” as meaning requiring cooking prior to human consumption.

Existing law, section 25991(s) of the HSC defines “usable floorspace” as meaning the total square footage of floorspace provided to each covered animal, as calculated by dividing the total square footage of floorspace provided to the animals in an enclosure by the number of animals in that enclosure. In the case of egg-laying hens, usable floorspace shall include both ground space and elevated level flat platforms upon which hens can roost but shall not include perches or ramps.

Existing law, section 25991(t) of the HSC defines “veal meat” as meaning meat, as defined in 3 CCR 900 as of August 2017, of a calf raised for veal intended for use as human food.

Existing law, section 25991(u) of the HSC defines “whole pork meat” as meaning 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.

Existing law, section 25991(v) of the HSC defines “whole veal meat” as meaning 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.

Existing law, section 25992 of the HSC specifies the exceptions to the provisions of Chapter 13.8 of Division 20 of the HSC, including during medical research; during examination, testing, individual treatment, or operation for veterinary purposes; during transportation; during rodeo exhibitions, state or county fair exhibitions, 4-H programs, and similar exhibitions; during slaughter; for a breeding pig during the five (5) day period prior to her farrowing date and while she is nursing piglets; and during temporary periods of no more than six (6) hours in a 24-hour period and no more than 24 hours total in any 30-day period.

Existing law, section 25993(a) of the HSC specifies that the Department and DPH shall jointly promulgate rules and regulations for the implementation of these provisions by September 1, 2019.

Existing law, sections 25993(b) and (c) specify that a violation of any of the provisions of Chapter 13.8 of Division 20 of the HSC is a misdemeanor and punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a period not to exceed 180 days or by both, and that provisions of the chapter supersede any conflicting regulations, including those in Chapter 6 (commencing with section 40601) of Subdivision 6 of Division 2 of Title 22 of the CCR.

Existing law, section 25993.1 of the HSC specifies that it shall be a defense to any action to enforce section 25990(b) that a business owner or operator relied in good faith upon a written certification by a supplier that the whole veal meat, whole pork meat, shell eggs, or liquid eggs at issue was not derived from a covered animal confined in a cruel manner, or from the immediate offspring of a breeding pig who was confined in a cruel manner.

Existing law, section 25994 of the HSC specifies that the provisions of the chapter are in addition to, and not in lieu of, any other laws protecting animal welfare, including the California Penal Code, and shall not be construed to limit any state law or regulations protecting the welfare of animals, nor prevent a local governing body from adopting and enforcing its own animal welfare laws and regulations.

Existing regulations in 3 CCR section 1350 (Shell Egg Food Safety) specify the minimum cage size requirements for egg producers and egg handlers, as defined by Food and Agricultural Code (FAC) section 27510, for marketing unpasteurized shell eggs in California. The Egg Safety and Quality Management (ESQM) program ensures eggs have been properly handled, labeled, transported, and refrigerated by inspecting eggs at production, packing, distribution, and retail facilities; and are wholesome and safe to eat. However, ESQM program regulations do not exist to implement the scope of animal confinement provisions mandated by the Act for egg-laying hens. The intent of the ESQM program's section 1350 regulations is to prevent the occurrence of *Salmonella enterica* serotype Enteritidis (SE) contamination of shell eggs at production and to prevent SE contaminated shell eggs from being marketed to California consumers.

Regulations do not exist for the confinement of veal calves and breeding pigs, or the covered products of whole veal meat and whole pork meat as mandated by the Act.

Therefore, the Department is proposing to adopt new Chapter 10 (commencing with section 1320), of Division 2, of Title 3 of the CCR to specify the requirements for persons housing egg-laying hens, veal calves, and breeding pigs, and/or selling specified whole veal meat, whole pork meat, shell eggs, and liquid eggs in the State in accordance with sections 25990, 25991, and 25993 of the HSC.

Anticipated Benefits of the Proposal: This proposal would establish a regulatory framework for purposes of implementation of the provisions of the Act as mandated by section 25993 of the HSC. Effective implementation of the provisions specified in HSC sections 25990 through 25994 by adopting these regulations would benefit the objectives of the citizens of California that voted to approve the Proposition 12 initiative and the standards for animal confinement and prohibition of animal cruelty that it described. Egg, pork, and veal producers and distributors would benefit from this proposal because the Department is establishing compliance requirements for producing and selling covered products in the State in accordance with current law as specified in HSC sections 25990 through 25994 to ensure the orderly sale of covered products from covered animals not confined in a cruel manner regardless of their state or country of origin within California. This proposal does not directly impact human health and welfare of California residents, worker safety, or the State's environment, however the Department can infer that benefits accrue to Californians knowing that breeding pigs, veal calves, and egg-laying hens are raised with a minimum space requirement, which may be more space than covered animals previously were allotted. There are no quantitative studies that document or measure the effect of confinement covered animals according the standards outlined in the Act for people in California. The proposed regulations are necessary to implement animal confinement requirements and sale of the covered products pursuant to HSC sections 25990, 25991 and 25993.

Comparable Federal Regulations/Mandated by Federal Law or Regulations: This proposal is not mandated by federal law or regulations and does not duplicate or conflict with any federal regulations because there are no federal regulations governing farm animal confinement requirements if the products from specified animals are marketed to California consumers.

Consistency and Compatibility with Existing State Regulations: The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with existing State regulations. The intent is to conform the Department's regulations relating to marketing shell eggs, liquid eggs, whole veal meat, and whole pork meat in California to HSC sections 25990 and 25991. Existing regulations in 3 CCR section 1350 (Shell Egg Food Safety) specify the minimum cage size requirements for egg producers and egg handlers, as defined as defined by FAC section 27510, for marketing unpasteurized shell eggs in California. The Egg Safety and Quality Management (ESQM) program ensures shell eggs have been properly handled, labeled, transported, and refrigerated by inspecting eggs at production, packing, distribution, and retail facilities; and are wholesome and safe to eat. The intent of the ESQM program's section 1350 regulations is based on food safety to prevent the occurrence of Salmonella enterica serotype Enteritidis (SE) contamination of shell eggs at production and to prevent SE contaminated shell eggs from being marketed to California consumers. Regulations do not exist for the confinement of veal calves and breeding pigs, or the covered products of whole veal meat and whole pork meat as mandated by the Act.

Forms Incorporated by Reference: None.

Technical, Theoretical, and Empirical Study, Report, or Similar Documents (Materials Relied Upon):

- California Proposition 12, Farm Animal Confinement Initiative (2018)
- United Egg Producers, Animal Husbandry Guidelines for U.S. Egg-Laying Flocks, Guidelines for Cage-Free Housing, 2017 Edition
- Federal Meat Inspection Act (21 U.S.C. 601 et seq.)
- Egg Products Inspection Act (21 U.S.C. 1031 et seq.)
- Title 3, California Code of Regulations section 900
- Title 3, California Code of Regulations section 1350
- Food and Agricultural Code section 27510
- CDFA Workshop to Discuss CA Proposition 12: Farm Animal Confinement Initiative (2018), February 22, 2019, Sacramento, CA
- Sumner, D.A., Goldstein, R., Hart, J.D., Lee, H., Matthews, W.A., & Medellin-Asuara, J. (2020). *Standardized regulatory impact assessment of proposed regulations to implement proposition 12*. University of California, Davis, UC Agricultural Issues, and California Department of Food and Agriculture
- California Department of Public Health, Memo dated November 13, 2020
- CDFA State Organic Program (FAC sections 46000-46029 and 3 CCR sections 1391-1391.7)
- USDA National Organic Program (7 CFR Part 205)
- Internal Revenue Code (26 U.S.C. 501(c)(3))
- Health and Safety Code section 113758
- USDA, Food Safety Inspection Service, Meat, Poultry and Egg Product Inspection Directory, Legend for Establishment Numbers
- Title 21, Code of Federal Regulations, Part 172 sections 172.510 and 172.515(b); Part 182 sections 182.10, 182.20, 182.40, and 182.50; and Part 184
- Health and Safety Code section 113789
- Health and Safety Code section 109947
- Title 21, Code of Federal Regulations, Part 160
- Title 21, Code of Federal Regulations, Part 101 section 101.3
- Title 21, United States Code, Part 343 section 403; Title 9, Code of Federal Regulations section 590.5; Health and Safety Code section 109992; and Food and Agricultural Code section 27519.6
- Health and Safety Code section 110460
- Title 9, Code of Federal Regulations, Part 424 section 424.21(c)
- USDA, Institutional Meat Purchase Specifications: Fresh Veal Series 300 (November 2014)
- 2014 Uniform Retail Meat Identity Standards
- Title 9, Code of Federal Regulations Part 317 section 317.2(1) and Part 381 section 381.125(b)
- USDA, Institutional Meat Purchase Specifications: Fresh Pork Series 400 (November 2014)
- Title 21, Code of Federal Regulations, Part 530 section 530.3(i)
- Title 3, Code of Federal Regulations, Part 2 section 2.31
- Economic and Fiscal Impact Statement, STD 399 with Attachment

## **LOCAL MANDATE**

There will be no local mandate.

## **COST OR SAVINGS TO STATE AGENCIES (FISCAL IMPACTS)**

The Act mandates farm animal confinement standards and compliance timeframes, establishes definitions affecting the production and sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State, and directs the Department and the DPH to jointly promulgate regulations to implement the provisions of the HSC relating to the confinement of specified farm animals and the sale of specified products derived from them. Details of the estimated fiscal impacts discussed below can be found in the Department's Standardized Regulatory Impact Assessment (SRIA) and appendix.

*Department.* The total annual agency budget for Fiscal Year (2020-21) equals approximately \$3.53 million. The Department estimates the total annual fiscal costs for Fiscal Years (2021-22) and (2022-23) to each equal approximately \$4.94 million.

Pursuant to the Act, the Department's proposed regulations describe a program to implement prohibitions on the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat derived from cruelly confined animals so Californians can have confidence that the products they purchase come only from sources that meet specified animal housing standards, as described. Specifically, this proposal would establish a program of registration, certification, conveyance inspection, and labeling and marking requirements for the sale of shell eggs, liquid eggs, whole veal meat, and whole pork meat in the State which is necessary to fully effectuate the intent of the Act.

*Schools.* Schools in California serve free or reduced-price meals to needy children with funding from the State Meal Program that includes state and federal dollars. In the 2018-2019 school year a total of 288 million breakfasts and 536 million lunches were provided to school children. Eggs and pork are components in these meals and the costs of these covered products will increase after January 1, 2022 when the full standards go into effect. In total, it is expected State costs for school meals to increase by \$1.84 million in the first full school year after egg-laying hen and breeding pig confinement standards move to cage-free and twenty-four square feet, respectively.

*Colleges and universities.* The economic impact on the operating costs of California state colleges and universities is accounted for in meal plan fees to participating students living on campus. The costs to the State of California from the increase in meal plan fees is the State expenditure to fund meal plans for students on state-subsidized scholarships which include coverage of room and board fees. The State costs for student meal plan subsidy is \$1.32 million for the first full academic year after January 1, 2022 when animal confinement minimum standards go into full effect due to an increase in food costs.

State prisons. California’s state prison population is projected to remain at about 117 thousand people for the next several years when animal confinement minimum standards go into full effect after January 1, 2022. (California Department of Corrections and Rehabilitation 2020). An increase in the price of shell eggs, liquid eggs, and whole pork meat would increase the total costs of meals for the state prisons by about \$4.68 million per year.

**COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GOVERNMENT CODE SECTIONS 17500 THROUGH 17630**

Cost to local governments will not be reimbursed by the State.

**OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED ON LOCAL AGENCIES**

The Department’s regulations do not require additional expenditures by local governments; however, local agencies may incur costs. Fiscal impact on local governments will begin when the second deadline of animal confinement minimum standards go into effect January 1, 2022 for whole pork meat, shell eggs, and liquid eggs due to the increase in the cost of these foods sold in California. Whole veal meat is not included in this impact to local agencies because it is not purchased by the impacted local governments. This cost to local governments will not be reimbursed by the State.

County jails. California county jail population totaled around 73,000 inmates in 2018 and 2019. (California Board of State and Community Corrections August 25, 2020 report). Beginning in 2022, an annual total cost for county jails of about \$2.92 million due to increase in costs of shell egg, liquid egg, and whole pork meat due to full implementation of animal confinement standards as outlined in statutes.

**COST OR SAVINGS IN FEDERAL FUNDING TO STATE**

None.

**DETERMINATION OF ANTICIPATED BUSINESS IMPACT**

The Department has made an initial determination that this regulatory proposal will impact egg, veal, and pork producers; food processing facilities (referred to as “food manufacturing” in SRIA); distribution; food retailers (supermarkets/grocery/convenience stores); and restaurants (and drinking establishments) that purchase or sell shell eggs, liquid eggs, whole veal meat, or whole pork meat in California, as specified. Details of the estimated business impacts as discussed below can be found in the Department’s SRIA and appendix.

Businesses (and individuals) affected by this proposal:

California egg producers:	approximately 6,546 farms
California veal producers:	approximately 0 farms
California pork producers:	approximately 1,236 farms

California restaurant/drinking establishments: approximately 76,200  
California supermarkets/grocery/convenience stores: approximately 20,000  
California food processing facilities: approximately 450  
Total number of businesses affected: approximately 104,432

Compete with businesses in other states. In-state farms will find it more costly to compete with farms outside of the State when selling shell eggs, liquid eggs, whole veal meat, and whole pork meat to an out-of-state buyer compared to farms located in states that do not have the same animal confinement standards as described in the Act. Food processing facilities based in the State will have to use more expensive ingredients, shell eggs, liquid eggs, whole veal meat, and whole pork meat, that are compliant with the Act compared to food processing facilities located outside the State.

Creation/elimination of existing businesses/expansion of businesses: The proposed regulations will impact whole veal meat, whole pork meat, shell eggs, and liquid eggs produced and marketed in California. The current businesses from farm to end-user will be affected. Some farms may choose to exit during implementation rather than make the necessary adjustments, others may find the implementation of the regulations attractive for entry into the market. Private third-party certifying businesses providing certification services to farms and “handlers” according to the NOP standards within the State will be able to expand services to additional farms and distributors for compliance with the Act and this proposal. This flux is expected to be small relative to the numbers already in the production, distribution, processing, and retailing businesses. It is expected entries and exits in the range of less than 100 businesses.

Creation/elimination of jobs: Impacts on jobs in California is minimal compared to the impact on consumer expenditures for the covered food items. Overall, there is a projected a loss of 31 jobs statewide in the calendar year 2022, when final deadlines for the Act go into effect, and then a loss of 332 jobs in 2023, after adjustments for the a reduction in cage-free shell egg production are fully incorporated. A large portion of the jobs effect from the proposed regulations are in California’s shell egg production and associated industries due to requirement to a cage-free production system.

Anticipated compliance requirements as a result of this proposal: Producers and distributors who sell their shell eggs, liquid eggs, whole pork meat, and whole veal meat in California would need to comply with the certification, registration, and labeling requirements as proposed. Private third-party certifiers would need to be accredited by the Department to certify operations in as compliance with the Act and these regulations.

*Certification.* The proposed regulations require producers and distributors to be certified as compliant with the Act. This may be done by a private third-party that is accredited by the Department, a government entity outside of the State, or directly by the Department. Certification compliance consists of credible regulatory documentation (audit trail) of a production or distribution operation’s good standing with certification requirements in these regulations and conformance with the specific minimum confinement standards in accordance with HSC section 25991.

*Registration.* The proposed regulations require annual distributor registration application and renewal used by the Department to identify and ensure compliance of businesses selling shell eggs, liquid eggs, whole pork meat, and whole veal meat within or into California.

*Labeling.* The proposed regulations require product container labeling for shell egg cartons, which is already a requirement under the Department's ESQM program (3 CCR section 1354), although this proposal would require some modifications to the existing required labeling on printed cartons. Consumer facing packaging labeling of other products such as liquid eggs, whole pork meat, and whole veal meat is not a requirement of the proposed regulations, however, could be implemented voluntarily by associated industries. Required labeling of shipping manifests and bills of lading is proposed for all covered product sales transactions within or into the State, however these types of documents are easily generated and modified.

Paperwork/Reporting: There are new paperwork and reporting requirements under this proposal. The requirements include annual distributor registration application and renewal forms, certifying agent accreditation application and renewal (every five years) forms that may be retained and otherwise required by statute or regulation, and submitted to the Department as part of routine business transactions in order for the sale of covered products in California. Accredited third-party certifying agents are also required to submit an annual report to the Department of the operations that have been granted, renewed, or denied certification. Each producer and distributor operation must be certified as compliant to raise covered animals producing covered products sold in California, and/or businesses selling covered products within and into the State. This certification requires necessary records to be maintained for review or audit by a certifying agent or the Department, as specified.

Recordkeeping: There are new recordkeeping requirements under this proposal that may impact egg, pork, and veal distributors and producers. The proposed regulations require that records must be sufficient for an audit trail and documented in a traceable manner that covered product originated from certified compliant operations with the Act and these regulations. For example, records of their business operations, such as, production and shipment records, invoices, receipts, and related paperwork. The records are not required to be sent to the Department, however certified producers and certified distributors must keep the records on-site or available electronically for two years. Accredited third-party certifiers are to submit annual reports to the Department as a part of their recordkeeping requirements as specified in this proposal. The Department conducts routine and risk-based audits and inspections of farms, distributors, end-users, and certifying agents to ensure compliance with statutes and regulations.

Benefits to human health, worker safety, or the State's environment. This proposal does not directly impact human health and welfare of California residents, worker safety, or the State's environment, however the Department can infer that benefits accrue to Californians knowing that breeding pigs, veal calves, and egg-laying hens are raised with a minimum space

requirement, which may be more space than covered animals previously were allotted. This proposal is needed to implement the Proposition 12 initiative which was passed by California voters in 2018. A benefit is for proper and orderly implementation of a law directly decided by voters for them to purchase with confidence covered products from covered animals not raised in a cruel manner. There are no quantitative studies that document or measure the effect of purchasing shell eggs, liquid eggs, whole veal meat, and whole pork meat from farms animals not confined in a cruel manner for people in California.

The Department has made an initial determination that the proposed regulatory action will have significant, statewide adverse economic impact directly affecting California businesses including the ability of California businesses to compete with businesses in other states. The Department has considered proposed alternatives that would lessen any adverse economic impacts on business and invites you to submit proposals. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- Consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

## **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

The Department is aware of cost impacts that a representative private person or businesses would necessarily incur in reasonable compliance with the proposed action. This determination is based on the SRIA included in this filing. The impacts are as a result of the implementation of existing law, HSC sections 25990 and 25991.

Private persons: There are no initial costs for an individual and ongoing costs for an individual are estimated at \$50 per year for increase in food costs after January 1, 2022. California per individual annual covered egg consumption (including in processed products made in California) is a little over 20 dozen. Per dozen cost increase about \$2 per dozen, increasing ongoing costs to \$40 per individual and it is estimated that increase in whole pork meat and whole veal meat prices will increase food costs \$10 per individual giving a total of \$50 per year individual ongoing costs.

Businesses: Producers and distributors selling shell eggs, liquid eggs, whole pork meat, and whole veal meat would need to comply with the provisions for animal confinement or ensure covered product sold in the State originate from animals that comply with the provisions for animal confinement as specified in HSC section 25990 and 25991.

*Whole pork meat.* A typical breeding pig farm has about 1,000 breeding pigs and produces 20,000 hogs per year. Estimated initial cost for a typical breeding pig operation is \$66,000 per farm to convert barns and pens into housing compliant with minimum standards outlined in the Act. Estimated ongoing cost is greater than the initial cost of conversion at \$100,000

per year for a typical breeding pig farm due to smaller inventory of breeding pigs, lower piglet output per animal and increased breeding pig mortality.

*Shell eggs and liquid eggs.* A typical egg farm is one million egg-laying hens producing a total of 25 million dozen eggs per year. Estimated initial cost is \$68 million per typical egg farm to convert to cage-free requirements outlined in the Act. Estimated annual ongoing cost is \$6.8 million per typical egg farm.

*Whole veal meat.* There is no veal produced in California.

Paperwork/Reporting and Recordkeeping: The recordkeeping/reporting requirement for a typical California business is estimated at \$5,000/year and a conservative estimate of 7,900 businesses will need to comply with proposed recording requirements for a total of \$39.5 million/year. The possible 7,900 businesses include egg producers, pork producers, and distributors of covered egg, pork, and veal products. Each of these operations must be certified as compliant to raise covered animals in California and/or sell covered products in California. This certification requires necessary records to be maintained for review or audit by an accredited third-party certifier or the Department. This number of California businesses, 7,900, is potentially an overestimate based on the current number of commercial egg and pork producers in California being much smaller than the United States Department of Agriculture (USDA) 2017 Agricultural census reference of 6,500 covered farming operations in the State. The Act does not have a minimum herd or flock size requirement for compliance (ESQM program), or a minimum number of dollars sold to register (State Organic Program), so any farm raising egg-laying hens or breeding pigs will need to comply with recordkeeping requirements. In addition, California distributors are responsible for documenting traceability of selling shell eggs, liquid eggs, whole veal meat, and whole pork meat sourced from certified farms, which may originate at locations outside of the State or country.

## **HOUSING COSTS**

None.

## **SMALL BUSINESS IMPACT**

The Department's proposal may affect small California businesses, as defined in Government Code section 11342.610, such as small retail food establishments (supermarkets, grocery stores, convenience stores, restaurants, and other food retailers) that have veal on their menus due to the increase in veal wholesale prices, however, as a whole, costs are negligible because total sales change little. For small California pork and egg producers, they face initial and annual compliance costs that are less than a typical operation because they are likely to have space that is compliant or almost compliant. There are about 210 small pork farms selling more than 25 hogs annually and 823 small egg farms may need to make investments for animal confinement compliance in California. Estimated initial costs is \$5,000 and ongoing annual cost \$500 for small pork and egg producers.

## **BUSINESS REPORTING REQUIREMENT**

It is necessary for the health, safety, or welfare of the people of the State that the regulation apply to businesses. There are new paperwork and reporting requirements under this proposal. The requirements include annual distributor registration application and renewal forms, certifying agent accreditation application and renewal (every five years) forms that may be retained and otherwise required by statute or regulation, and submitted to the Department as part of routine business transactions in order for the sale of covered products in California. Accredited third-party certifying agents are also required to submit an annual report to the Department of the operations that have been granted, renewed, or denied certification.

## **RESULTS OF STANDARDIZED REGULATORY IMPACT ASSESSMENT**

The Department completed a SRIA, which is included in this filing. A summary of the results of the assessment is as follows:

*a. The creation or elimination of jobs within the State.*

Impacts on jobs in California is minimal compared to the impact on consumer expenditures for the covered food items. Overall, the Department projects a loss of 31 jobs statewide in the calendar year 2022, when final deadlines for the Act go into effect and proposed regulations are fully implemented, and then a loss of 332 jobs in 2023, after adjustments for the reduction in cage-free shell egg production are fully incorporated. A large portion of the jobs lost are in the shell egg production and associated industries because the mandates of the Act require these industries to move into a cage-free production system.

*b. The creation of new businesses or the elimination of existing businesses within the State.*

Creation and elimination of businesses is natural given any significant change to the business conditions. The regulations considered here will change the nature of veal, pork, and eggs produced and marketed in California. The current businesses from farm through end-user will be affected. Some farms may choose to exit during implementation rather than make adjustments others may find the implementation of the regulations attractive for entry. The Department expects this flux to be small relative to the numbers already in the production, distribution, and retailing businesses. The Department expects entries and exits in the range of less than 100 businesses.

California has a large shell egg industry. Egg producers in California face higher costs by \$72 million, and egg output will decline by 51 million dozen relative to the baseline in 2022. Shell egg farm revenue rises by \$7 million in 2022.

*c. The competitive advantages or disadvantages for businesses currently doing business within the State.*

The cage-free mandate for egg-laying hens and 24-square-foot mandate for breeding pigs (the portion of the proposed regulations that goes into effect starting January 1, 2022) may cause some egg and pork producers to exit because they find it uneconomical to adapt their facilities to comply with the new mandates required by the Act. The Department expects that some preexisting producers whose facilities already meet the Act's standards will enjoy corresponding competitive advantages. Preexisting cage-free egg producers, whose potential market grows when statutes take effect, will have an advantage over those who have not engaged in cage-free production in that they will not face costs of converting facilities. Similar competitive farm issues apply to breeding pig operations, but there are very few such businesses in California.

*d. The increase or decrease of investment in the State.*

As discussed in Section 6.2 and 6.3 of the SRIA, some new businesses and investment may enter the market as a result of the proposed regulations, the overall effect of the regulations (as summarized in Section 1.4, reported in Section 4, and detailed in Appendices 1–4 of the SRIA) is to decrease the total amount of shell eggs, liquid eggs, whole pork meat, and whole veal meat consumed in California. Although some one-time investments in construction, machinery, and labor will be made by businesses as they adapt their facilities, in the long run the Department expects that the regulations promulgated to implement the Act will decrease average annual investment in California egg and pork producers and distributors, relative to the Baseline. Although investment in other businesses in California may correspondingly decrease as investors move resources elsewhere, the Department expects the net effect to be a modest decrease in overall investment in the State.

California consumers will be affected by higher food prices and respond with lower quantity consumed. In the 2022 calendar year, when the Act's standards go into full effect, proposed regulations will increase consumer expenditures in California of \$1,195 million. The largest impacts are on consumers of shell eggs and whole pork meat due to increased cost of these covered products at wholesale and retail.

*e. The incentives for innovation in products, materials, or process.*

Farms may have some incentives to innovate in their business processes as they adapt their facilities to be compliant with the Act's confinement standards. However, businesses involved in the design and manufacturing of products and materials for adaptation, such as animal cages, are not typically located in California.

*f. The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the State's environment and quality of life, among any other benefits identified by the agency.*

The SRIA did not quantify any benefits directly impacting human health and welfare of California residents, worker safety, or the State's environment. Other economic studies have shown that some government regulations of meat and egg production and processing

increase consumer willingness to pay more in food markets. About 20% of California's shell egg consumption prior to 2022 already met California cage-free egg standards. This means cage-free shell egg consumers were already willing to pay more than twice as much, on average, for cage-free shell eggs than for conventional shell eggs. Other consumers who are not willing to pay double for cage-free eggs may be willing to pay a smaller increased amount for cage-free shell eggs. Both of these types of consumers would therefore receive some corresponding benefits (even if they are hard-to-quantify benefits such as moral satisfaction, peace of mind, social approval, etc.) from knowing all eggs raised and sold in California are cage-free after January 1, 2022. In addition, non-consumers of the covered products may benefit from assurance that shell eggs, liquid eggs, whole veal meat, and whole pork meat sold in California meet the specified housing standards even if they do not plan to consume these foods. The Department notes that a large majority of voters in 2018 approved, 63%, the Proposition 12 initiative to eliminate egg-laying hens, veal calves, and breeding pigs from being cruelly confined in the State or if products from those animals are sold in the State.

Animal confinement space allowances prescribed in the Act (cage-free for egg-laying hens, 43 square feet for veal calves and 24 square feet for breeding pigs) are not based in specific peer-reviewed published scientific literature or accepted as standards within the scientific community to reduce human food-borne illness, promote worker safety, the environment, or other human or safety concerns. Health and Safety Code confinement standards are described as a minimum standard for space allowance to prevent cruel confinement of covered animals and the law was not primarily written with the concern or benefit of human food-borne illness, worker safety, environment, etc. The standard of cage-free in HSC references the United Egg Producers 2017 guidelines and is the cage-free standard set by the egg industry to provide uniform guidance of cage-free egg operations. Minimum space requirements for veal calves and breeding pigs outlined in HSC are not drawn from specific industry standards or published scientific research prescribing 43 square feet for veal calves and 24 square feet for breeding pigs. The Department has no regulatory discretion over the Act's animal confinement mandates, so any such effects would stem not from the way regulations were written or implemented, but from the mandates directly imposed by the Act.

## **SUMMARY OF DEPARTMENT OF FINANCE COMMENTS AND DEPARTMENT'S RESPONSE**

The Department of Finance (Finance) provided comments to the Department's SRIA. A summary of the five comment categories and the Department's responses are below. Reference citations noted in the below responses can be found in the Department's SRIA.

*Finance comment #1: The SRIA must estimate the costs to producers to comply with the new housing, certification, labeling, and reporting requirements and for individuals to maintain their consumption or to substitute. Furthermore, disparate impacts must be discussed. For instance, some small farmers might not be able to switch to cage-free eggs right away and might reduce or stop production altogether. Larger farms, who typically can adapt more quickly, will increase their market share to compensate for lower production from smaller farms.*

a. Cost to producers for certification, labeling, and reporting requirements

Certification costs. Proposed regulations require farms to be certified as compliant with the Act. This may be done by a private third-party that is accredited by the Department or directly by the Department. Producers would incur costs for certification services from accredited third-party certifiers by payment of fees charged by these private entities. For existing private businesses that conduct certification services similar to those proposed in these regulations (e.g., American Certified Humane, Certified Humane, Validus, Global Humane Animal Partnership, etc.), the fee structures are most commonly based on a sliding scale depending on the size of the production operation. Small producers may pay \$100-\$200 per year for certification while large producers may pay \$2,000-4,000 each year for certification (subsection b. below for more information on smaller- and larger-sized operations). If a production operation is already inspected by a third-party company for welfare standards who is accredited by the Department, then the producer may not have to incur additional costs for certification. For example, American Certified Humane, Certified Humane, and Global Animal Partnership all have standards that meet the minimum confinement requirements for egg-laying hens. Similar costs might be expected for producers receiving certification services directly from the Department, depending upon the extent of public funds available to support this activity.

Labeling costs. Product container labeling is only required for shell egg cartons under this proposal. Currently, all cartons of unpasteurized eggs still in the shell that are sold in California have required labeling of “CA SEFS COMPLIANT” as part of the Department’s Shell Egg Food Safety program. The addition of “CA CAGE FREE” labeling as part of the proposed regulations starting in July of 2022 is not expected to result in significant additional costs to shell egg producers that already must print cartons with California specific statements. Additionally, the use of “Cage Free” statements on cartons to identify this type of production system for consumers purchasing eggs is already common in the marketplace, and the proposed addition of “CA” to existing statements to designate conformance with the Act and this proposal’s specific standards is not expected to be a significant added cost.

Labeling of other covered products (e.g., liquid eggs, whole pork meat, and whole veal meat) on consumer facing packaging is not a requirement of the proposed regulations, but could be done voluntarily by the industry at the discretion of the producer, packer, or co-packer to communicate compliance with the Act and these regulations for marketing purposes.

Proper labeling of shipping manifests and bills of lading is required by the proposed regulations and again is estimated to be a nominal cost to the producer or distributor because these types of documents are already being generated and printed for covered products distributed and sold in California. For example, beginning in January of 2022 shipments of whole pork meat under this proposal will need to have “CA 24+” printed on the shipping documents and be available for review during the certification process, upon entry at a California Border Protection Station, or during an inspection or investigation.

Reporting costs. The additional cost of reporting requirements as outlined in the proposed regulations is estimated to be \$5,000 annually for a typical California business (producer, distributor or accredited third-party certifier). This record keeping cost will vary depending on the extent of time required to maintain documents required to demonstrate compliance and traceability with the Act and these regulations. Additionally, annual reporting to the Department is required of accredited third-party certifiers and annual renewal distributor registration under this proposal will contribute to overall recordkeeping costs for a typical California business.

b. Consideration of disparate impacts

California Veal Operations: small and large farm potential differential impacts. There is no data to indicate that there are veal producers in California. Therefore, there are no differential impacts across veal producers.

California Pork Operations: small and large farm potential differential impacts. According to the 2017 United States (US) Census of Agriculture, there were 1,389 swine farms that had a total of 96,456 hogs and pigs in California. The census data does not distinguish between breeding pig, weaned pig, finishing, or fully integrated operations. Of the total swine operations in California, 1,236 of the farms sold hogs and pigs at a total of 207,768 animals in 2017. Most of the farms that sold hogs and pigs (USDA reported term for number of head slaughtered), 1,009 farms, sold fewer than 25 hogs and pigs each annually. To qualify as a “farm” operation under the USDA definition, the business only needs to have products that might have sold for more than \$1,000 in a year. Of these 1,009 very small operations, a total of 5,950 animals were sold, giving an average of about 6 hogs and pigs from each farm. A breeding pig will produce about 25 piglets per year, therefore few of these small operations would have any breeding pigs that would be affected by the Act’s confinement square footage minimums. There were six farms in 2017 that sold more than 5,000 hogs and pigs each for a total of 161,409 animals, giving an average of about 26,900 hogs and pigs sold by each of these larger swine operations.

Of the six large farms that sold more than 5,000 pigs each, three were farrow-to-finish, meaning they housed breeding sows and would need to comply with minimum confinement standards requirements in 2022. Calculations assume that these farms sold about 25,000 hogs and pigs each, that would imply about 1,000 breeding pigs at each of these three larger swine farms. Nationwide, breeding pigs represent about 4% of hogs and pig inventory, which of the 96,456 hogs and pigs in California indicates there are less than 4,000 breeding pigs in California. According to the 2017 Agricultural Census, the total inventory of hogs and pigs in the United States (US) was 72 million animals. Since breeding pigs represent 4% of the total hog and pig population, California has about 0.133% of the national breeding pig herd.

California pork producers produce specialty pork, such as organic, pasture-raised, and show animals for 4-H and FFA projects. Farrowing operations with a small number of breeding pigs will likely find it easier to meet California-specific housing regulations than would commercial-sized operations. Generally, very small livestock farms have higher measured, imputed, or implied accounting costs per animal sold, but continue to operate the farm because either their

actual individual costs are lower than those imputed or implied in the studies or for non-pecuniary reasons (Whitt, McDonald and Todd).

The economic impact of proposed regulations on swine producers in California is likely concentrated on the larger operations that are more likely to have already made the capital investment in housing that based on pens and square footage allowance from traditional commercial breeding pig operations. Very small pork producers are more likely to already be compliant with confinement standards outlined in the Act or would have nominal cost adjustments to become compliant.

Data and economic analysis indicate no significant change in the size distribution of pork producers in California from the proposed regulations.

*California Egg Operations: small and large farm potential differential impacts.* Three data sources provide useful information on the distribution of egg farms in the US; WattAgNet, USDA, and the Department. WattAgNet publishes information on the largest table egg farms in the US. and the top two egg farms are located outside of California and each have about 45 million and 26.6 million egg-laying hens. According to WattAgNet the top 20 egg farms in the US represent 254.6 million egg-laying hens or 77% of the egg-laying hens producing eggs for shell and liquid egg purposes. The first California farm on the top 20 list is number 19 with 5 million egg-laying hens. Other relatively large egg farms in California have egg production operations with millions of egg-laying hens.

The 2017 USDA Census of Agriculture reports that about 94% of the egg-laying hens in California are on farms with more than 100,000 hens. This census data provides a breakdown of many different sized operations ranging from an average of 15 egg-laying hens per farm to almost 500,000 egg-laying hens per farm. Again, to qualify as a “farm” operation under the USDA definition, the operation only needs to have products that might have sold for more than \$1,000 in a year. According to the 2017 USDA Census data there are a total of 6,546 egg-laying farms, with a total of 14,194,957 egg-laying hens, giving an average of 2,168 egg-laying hens per farm. The category of farm with the smallest number of egg-laying hens is less than 50 hens and the 2017 USDA Census reported 5,717 of these small farms in California with an average of 15 hens per farm. The largest category of farms are operations with greater than 100,000 egg-laying hens and there are 28 farms that fall into that category housing a total of 13,344,294 hens with an average of 476,562 hens per farm.

The Department reported in 2019, based on its inspections of farms selling shell eggs in California, there were 728 farms with less than 3,000 egg-laying hens each. The total egg-laying hens on these small farms was 172,574 animals for an average of 237 hens per small egg-laying operation. The Department reported that in 2019 there were 95 farms with more than 3,000 hens each in the State. These large farms had about 15.35 million hens total for an average of about 161,600 hens per operation.

This data indicates that most egg-laying hens raised in California are housed on relatively large farms. In addition, there are many small boutique farms with only a few hens each. A typical

hen will lay between 20 and 25 dozen eggs per year. California compliant cage-free shell eggs will wholesale between \$1.50 and \$5 per dozen, therefore a hen may produce a gross revenue of between \$30 and \$100 each year. A large farm with one million egg-laying hens, which would likely be at the low end of the wholesale price spectrum, would then have a gross revenue of \$30 million. Margins are very tight for large commercial egg farms with most costs devoted to recurring costs for labor, feed, and pullets.

At the other end of the size spectrum, a small farm with 300 egg-laying hens marketing organic or pasture-raised eggs may generate a gross farm revenue of about \$30,000, and potential to increase their net income per hen if the small farm also had a distinct business structure to retail shell eggs directly to consumers like at a farmer's market or egg delivery service.

Small egg farms are less likely to face the cage-free facility investment cost because the hens are more likely to be already cage-free, free-range, or pasture based. Small egg operations are also less likely to produce eggs to be sold as liquid eggs or a similar processed egg product. Therefore, the average compliance cost to convert to California cage-free is expected to be progressively lower per hen for the smaller sized egg farms.

Data and economic analysis indicate no significant change in the size distribution of egg farms in California from the proposed regulations.

*Finance comment #2: Small businesses that rely on regulated products such as small restaurants, who tend to have a thin profit margin, might increase prices or close if cost increases cannot be absorbed.*

a. Effects on restaurants that are small businesses

The National Restaurant Association estimates that there were about 76,200 eating and drinking establishments in California in 2018, with \$97 billion in retail sales, and employing 1.83 million food service workers. Of course, these statistics are pre-pandemic and the long-term effects of COVID on restaurant businesses in California is not known. The Small Business Association (SBA) has specific definitions to include these food services as a small business; full-service restaurants, mobile food services, "drinking places," caterers, and Snack and Nonalcoholic Beverage Bars if they have less than \$8 million in annual revenues. Limited-service restaurants are small businesses if they have less than \$12 million in annual revenues. Cafeterias and buffets are small businesses if they have less than \$30 million in annual revenues. And food service contractors are small businesses if they have less than \$41.5 million in annual revenues. Under these definitions established by the SBA, most restaurants in California are considered small businesses.

By National Restaurant Association estimates, average annual revenues of an "eating and drinking establishment" in California in 2018 were \$1.27 million, less than one-sixth of the maximum revenue for an (SBA-defined) "small business." A restaurant in California with average revenue for its industry is thus considered a small business as defined by the SBA.

Thus, most impacts on restaurants identified in the SRIA are primarily impacts on small businesses.

Within the restaurant category, sit-down family restaurants or “fine dining” restaurants tend to be smaller businesses than fast-casual or fast-food restaurants. Veal is unusual among most restaurant categories in that it is primarily consumed at high-end restaurants. Popular restaurant veal dishes include veal chop, veal parmigiana, and veal marsala and will cost more for restaurant patrons to enjoy after full implementation of the Act and proposed regulations because it is assumed the increase in veal meat wholesale prices will be passed along to the customer. Californians may not be willing to bear an increase in veal meal prices on the menu; alternatively, many restaurants may simply stop including veal on their menu or serve fewer portions of veal. Thus, the Act and this proposal will have a significant impact on those small businesses in California that have historically had veal dishes on their menus.

Restaurants or other food service places that purchase covered pork and egg products that are cage-free, crate-free, or otherwise already meet or almost meet the confinement standards in the Act would face lower costs of adjusting to the new standards. The impact for those restaurants serving pork is less severe because the price impact is small on menu prices, given the high share of whole pork meat in food service food prices. The other category of restaurants likely to be significantly affected are those with menu items that have significant covered egg product content. Certain large quick-serve chains, like McDonald’s, declared plans to shift to cage-free eggs independent of the Proposition 12 initiative, but few had completed that adjustment before the Act was passed into law. There is no data to indicate that their costs of shifting or maintaining confinement standards to meet the requirements outlined in the Act would be different per unit of sales than other independent food service places. There is no data to suggest that the Act’s standards have a particular impact by size of establishment.

b. Grocery stores and retail that are small businesses

A substantial portion of grocery stores and convenience stores in California sell covered pork and egg products and are also classified as “small businesses” under the SBA definition.

IBISWorld (2019) reports that there are about 8,000 supermarkets and grocery stores in California employing about 300,000 people. The California Grocers Association (2020) reports having about 6,000 member-businesses. The National Association of Convenience Stores (2020) reports that there are about 12,000 convenience stores in California.

Meat markets, fish and seafood markets, fruit and vegetable markets, baked goods stores, confectionery and nut stores, and other specialty food stores are classified by the SBA as small businesses if they have less than \$8 million in annual revenues. Convenience stores are small businesses if they have less than \$32 million in annual revenues. Supermarkets and other grocery stores are small businesses if they have less than \$35 million in annual revenues. Thus, a substantial portion of grocery stores and convenience stores are small businesses, although large chains have a greater presence in the grocery and convenience store category than in the restaurant category.

Consumers shopping at small or large grocery stores, or convenience stores, are likely to respond to higher shell egg, liquid egg, whole veal meat, and whole pork meat prices by buying less of the covered pork, veal and egg products, and are also likely to substitute some or all of their covered product spending for spending on other food products, including non-covered pork such as ready-to-eat or ground pork products. The covered egg, veal and pork products represent a small share of total consumer food spending at grocery stores and even less at convenience stores. Therefore, no disproportionate impact of the Act's standards on small grocery or other retail companies is expected.

*Finance comment #3: Effects on individual SNAP and food subsidy program benefits*

a. SNAP: Low income Californians pay a higher share of their total income on food

Covered pork, and especially covered egg products will become more expensive to consumers starting in January 2022 because of the animal confinement standards mandated in statutes. Eggs are purchased by low-income consumers as a higher share of their food budgets compared to middle- and high-income consumers.

Many low-income consumers in California are enrolled in USDA food and nutrition service programs such as school meals, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and Supplemental Nutrition Assistance Program (SNAP), which in California is administered as the Cal Fresh program. These programs enroll millions of Californians, many of whom participate in several programs. For example, there were almost 4 million SNAP recipients (about 10% of the population in California in 2019). Supplemental Nutrition Assistance Program benefits averaged about \$1,700 annually per household member in 2019. However, not all low-income consumers are enrolled in programs and many face higher food costs with little assistance. It is not yet clear the extent, if any, to which federal program benefits will be adjusted to fully cover the added food costs of consumers beginning in 2022. For example, the typical consumer (across all ages and other characteristics) consumes about 21 dozen eggs and 40 pounds of pork meat annually, and estimated increase in food costs are approximately \$2 per dozen shell eggs and \$0.20 per pound of whole pork meat. This means covered egg and pork costs go up by \$42 and \$8 per year respectively for a total of \$50 per person per year starting in 2022. This increase in food costs does not include veal because it is assumed lower-income households are not purchasing veal. These calculations are based on economic results which repeatedly find that the quantity purchased by low-income households of broad food items like shell eggs or whole pork meat do not fall proportionately to when the price increase (demand is price inelastic). Meaning, when price rises, the expenditure on that item also rises. The increased cost of \$50 per person will need to be included in federal benefits for California recipients otherwise their real food purchasing power will fall.

Therefore, the Act will disproportionately reduce food purchasing power of low-income consumers. However, since some of the food budget of low-income consumers is covered by federal programs, they may not be differentially affected, as a group, relative to consumers with

higher incomes that are not eligible for food assistance. Food consumers most affected will be those low-income consumers that are not enrolled in assistance programs.

Consumers least affected are those who already consume cage-free shell and liquid eggs and whole pork meat from hogs for whom the mother pig experienced additional space during gestation. These tend to be higher income consumers.

b. Other food subsidy benefit programs

In addition, as noted above, there are federal meal subsidy programs serving other populations such as daycare for younger children and eldercare facilities. A brief summary of the Federal Child and Adult Care Food Program is provided by the USDA Economic Research Service (USDA, ERS 2019). The program is designed to improve nutrition with meals and snacks for infants, children, and adults. Providers are reimbursed for meals and snacks. In 2018-19 Federal reimbursement for the California program was \$485 million and state reimbursement was about \$2.1 million. Almost all the outlays were for childcare centers and in-home daycares. (CDE, 2020). In addition, the state cost of the Federal Child and Adult Care Food Program is \$2.1 million. The best estimate of added cost of these programs is about 0.5% times \$2.1million, equaling an added cost due to the Act's confinement standards of about \$11,000 per year.

*Finance comment #4: Fiscal cost calculations must be disclosed and include all costs to state and local governments. Costs should be broken down by category including but not limited to certification, registration, enforcement, and other administrative costs.*

The Department's proposed program for implementation of Proposition 12 initiative is titled the Animal Care Program and total fiscal cost for 22/23 fiscal year for this program is \$4,936,485. This is the first full fiscal year after the Act's timelines are all in effect for covered animals and costs have been broken down into administration, compliance audits, investigations, and registration/certification/accreditation. Within each of these categories the expenses are further divided into personal services and operating expenses and equipment. More specifically, total administration costs are \$1,047,157 (\$557,661 for personal services and \$489,496 for operating expenses and equipment), total compliance audits costs are \$3,024,377 (\$1,858,393 from personal services and \$1,165,984 from operating expenses and equipment), total investigations costs are \$456,058 (\$349,186 from personal services and \$106,872 from operating expenses and equipment), and total registration/certification/accreditation costs are \$408,893 (\$350,021 from personal services and \$58,872 from operating expenses and equipment).

No fiscal costs to local governments.

*Finance comment #5: The SRIA must evaluate impacts on other government agencies that are consumers of the covered products, such as schools and prisons.*

a. Fiscal impact on California schools

Schools in California served 288 million breakfasts and 536 million lunches in the 2018-2019 academic year. Of those meals, 233 million breakfasts and 405 million lunches were served free of charge to needy children. The total funds expended for school meal programs were \$2.27 billion with the State contributing \$161 million or about 7% of this budget in 2018-2019. Of these state funds, \$103 million were expended for lunches, and \$58 million were expended for breakfast meals. In addition, summer meal programs in the 2018-2019 school year served 14.8 million meals, including 3.2 million breakfast meals and 9.5 million lunch meals. Total funds expended for the summer meal programs were \$46.1 million with State funds contributing \$1.7 million or about 3.7% of the total budget. Of these state funds for the summer meal program, \$1.2 million were expended for lunches and \$495 thousand for breakfast meals (CDEa).

To estimate the increase in covered egg and pork costs beginning in 2022, the same average annual increase in food costs is used as in the SNAP explanation above of \$50 per person or  $\$50 / (3 \times 365) = \$0.0457$  per meal increase in food costs. This estimate was then rounded down to \$0.04 per meal because these meals are mostly lunch and breakfast, the average consumption of children from 6 to 18 is less than the average person, and schools have access to bulk buying and economies in covered egg and pork purchases. Applying this \$0.04/meal to the free school-year meals of 638 million meals gives an increased cost of about \$25.5 million. The California budget pays about 7% of the total or about \$1.80 million ( $\$25.5 \text{ million} \times 0.07$ ). For summer meals the added total cost is \$0.6 million, and the California cost is \$0.042 million ( $\$0.6 \text{ million} \times 0.07$ ). In total, California state government costs for these school meals are about \$1.84 (\$1.80 million plus \$0.042 million) million in the 2022-23 school year.

Besides federal cash contribution to school meals programs USDA has provided direct food purchasing of egg products to some school districts at a discounted rate. Two frozen liquid egg products and an egg patty product have been available (USDA Foods) for schools to purchase. California egg producer housing standards have been distinct from those in the rest of the US for retail sales since 2015, but the California egg production is mainly for shell eggs which are not often used in school meal programs. Under the proposed regulations, liquid eggs and egg products included in the Egg Products Inspection Act are also included as covered product needing to come from cage-free hens and therefore California schools may not be able to purchase low-cost covered egg products from USDA Foods.

It is not known whether USDA will provide USDA egg products to California schools that meet California cage-free standards. If not provided, this source of benefit may be lost to school meal programs in California. If USDA is unwilling to use egg products that meet California standards this will reduce the benefit of school meal programs in California, unless menu planners avoid the use of covered egg products. Alternatively, USDA may use cage-free eggs to produce compliant USDA egg products for use in California schools.

#### b. Fiscal impact on California colleges and universities

The impact of the Act and this proposal on food costs for California state colleges and universities is small and accounted for in meal plan fees to students. The University of

California system and the California State University system together enroll about 700 thousand undergraduates (The Regents of the University of California 2020, The California State University 2020, USDE/NCES 2020). About 110 thousand UC and CSU students live on campus and most of those are enrolled in campus meal plans. The number of students living on campus is calculated using the average percentage of undergraduates living on campus for each UC and major CSU campus from Carnegie Dartlett (2020). On most campuses, basic meal plans are included in room and board fees and vary from about \$100 to over \$200 per week. Cost of meal plans for each campus was obtained from the corresponding campus website. On average, meal plans cost about \$175 per student, per week, for an equivalent of three meals per day, seven days a week. A typical school year not including summer school consists of about 32 weeks. Using 32 weeks as the length of an average school year, the total cost of meals per student amounts to \$5,600 per year. For the total student population living in campus housing on the UC and CSU campuses, student meal plans amount to \$616 million per year ( $\$5,600 \times 110,000$ ).

Estimates of increased covered egg and pork costs (veal is not served on college campuses) for meals served beginning in 2022 take into account the nine-month academic year and a slight increase in total eggs consumed based on the demographic and ability to purchase in bulk. The total increase is \$40 per person annually for purchasing covered eggs and pork. This total uses college student consumption of 23 dozen eggs per year (shell and liquid), but average 3/4 of the year (9 months) on the meal plan so egg cost increase is  $(0.75) \times 46 = \$34.50$  due to the price of cage-free eggs and rounded up to \$35 per year. Increase in costs due to increase in the price of whole pork meat is \$5 ( $\$8 \times 0.75 = \$6$ , rounded down to \$5) because of slightly lower prices due to bulk purchases. The increase in food costs totals \$40 per person or a total of \$4.4 million per year for students living on campus taking part in a meal program ( $\$40 \times 110,000$ ). The cost to the State of California due to this increase in cost of covered eggs and pork depends on the expenditure to cover meal plans for students on state-subsidized scholarships that include coverage of room and board fees.

About 30% of California public college and university students receive financial benefits that will be affected by meal plan costs and 70% of added meal plan costs are paid by the students or their families. Therefore, the estimated cost of the Act and this proposal on State costs for meal plan student subsidy is about 30% times \$4.4 million or \$1.32 million during the first academic year after full implementation in 2022 ( $\$4.4 \text{ million} \times 0.30$ ).

c. California and local jurisdictions operate prisons and jails that provide meals

California's state prison population is projected to remain at about 117 thousand people for the next several years (California Department of Corrections and Rehabilitation 2020). About 117 thousand inmates is a five-year rolling average projection for 2021 and 2022 based on prison population for 2015–2019. This gives a total of 42.7 million prison-days per year, or just over 128 million meals (assuming three meals per person per day).

California county jail population is totaled at about 73 thousand in 2018 and 2019 (Board of State and Community Corrections Jail Profile Survey August 25, 2020 report). Using the same

calculation for county jail inmates as state inmates yields about 80 million meals served each year.

An increase in the price of covered eggs and pork as a result of the mandated statute and proposed regulations will increase the annual costs of meals per prisoner by about \$40 per year starting in 2022, which is mostly the higher costs of cage-free shell eggs and liquid eggs, but with a small amount for cost of whole pork meat and no added cost for whole veal meat. This was calculated by estimating that the increase in meal costs provided to prisoners will be lower than for the average Californian by about 20%, so additional costs of covered eggs and pork would be \$40 per year ( $\$50 \times 0.8$ ). At the current and projected incarceration population numbers, this would increase the total costs of meals for the state prisons by about \$4.68 million per year ( $\$40 \times 117,000$ ). For county jails, this will be an added cost of about \$2.92 million per year ( $\$40 \times 73,000$ ) for meals served to its 73,000 inmates.

## **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

The two alternatives considered do not vary the basic requirements of the Act itself, for example, the alternatives did not consider whether eggs must be cage-free, or by when. The two alternatives considered the economic impacts of the Department's discretionary choices, namely through definitions and procedures, used to implement the Act. The two alternative regulations considered and ultimately rejected include (1) lower-cost regulations and (2) higher-cost regulations:

Alternative 1: Under the lower-cost alternative, annual farm cost and consumer expenditure increases by \$982 million; = \$19.5 billion in present value at a 5% discount rate.

The lower-cost regulations apply a narrower interpretation of which food products are covered and which businesses are subject to annual registration and certification requirements. Intent of the Act is not fully applied across sales of covered products and therefore California residents would not be able to confidently purchase and consume covered products knowing they were sourced from covered animals raised according to the confinement standards of the Act, regardless of origin of product. The lower-cost alternative would be confusing for the California consumer because there would be a mix of compliant and non-compliant covered product for

sale in California. The lower-cost regulations are defined in detail in SRIA 4.2.1, however some key variations in the lower-cost regulations, versus the proposed regulations, are as follows:

- “Shell eggs” include only raw or pasteurized eggs with the shell still intact, therefore, excluding all forms of hard-cooked eggs such as peeled, sliced, or chopped.
- “Liquid eggs” include only eggs broken from the shell with the yolks and whites in their natural proportions, or with the yolks and whites separated, mixed or mixed and strained as defined by the Code of Federal Regulations, therefore excluding other forms of liquid eggs such as frozen, dried, cooked, and prepared egg products (e.g. egg patties or egg “pucks” consisting of mostly eggs except for added seasoning and flavoring).
- The Act’s confinement requirements are limited to sales of shell eggs, liquid eggs, whole veal meat, or whole pork meat at the retail level to a consumer.
- Restaurants, prepared food vendors, and food processing facilities are not required to source shell eggs, liquid eggs, whole veal meat, or whole pork meat compliant with the Act for their business of further processing those ingredients.

The Department rejected this option because the narrow definitions of shell eggs and liquid eggs did not coincide with the intent of the Act that was overwhelmingly passed by voters to ensure eggs purchased and consumed by Californians were not from egg-laying hens confined in a cruel manner. Whether the shell egg consumed is purchased raw or hardboiled, peeled, and included in a snack pack, the Department determined that hardboiled eggs need from be from egg-laying hens confined according to the Act’s standards to meet the expectations of Californians. Californians that voted to ensure liquid eggs purchased in California were from egg-laying hens not confined in a cruel manner are most likely not aware of all food manufacturing processes or the extensive list of egg products defined in the Egg Products Inspection Act. Due to the versatile use of liquid eggs in food processing, and food service, the Department adopted the definitions of liquid egg to include all products in the federal Egg Products Inspection Act. The Department feels confident this was the expectation of voters when they voted for the Proposition 12 initiative in 2018. Whether the liquid eggs are frozen, dried, or cooked into a patty, if the covered egg product is sold in California, then it must have originated from egg-laying hens not confined in a cruel manner.

The Department also rejected this lower-cost alternative option because there would be a mix of compliant and noncompliant covered products sold in California and it would be difficult for the consumer to know if they were purchasing shell eggs, liquid eggs, whole veal meat, and whole pork meat from animals not confined in a cruel manner. Also, the lower-cost alternative would be more difficult to regulate because wholesale and retail costs of covered products coming from covered animals not confined in a cruel manner are significantly higher than the prices of covered products from animals housed in a cruel manner. With a narrower scope of products included in the lower-cost alternative option and compliant and noncompliant covered products in the California marketplace, there would more opportunities for cheating, greater challenges

for enforcement, and unfair cost burden put on California small businesses, mostly restaurants who purchase shell eggs, liquid eggs, whole veal meat, and whole pork meat from a retailer.

Alternative 2: Under the higher-cost alternative, annual farm and consumer expenditure increases by \$1.263 billion; = \$25.26 billion in present value at a 5% discount rate.

Higher-cost regulations impose more stringent restrictions on some covered products moving through California and expand the definition of covered products; they imply larger negative economic consequences, including reduced California port activity. Benefits may be larger under the higher-cost alternative if more covered animals are not raised in a cruel manner. The higher-cost regulations are defined in detail in SRIA section 4.2.2. Specifically, the higher-cost regulations include all the requirements of the proposed regulations plus the following additional requirements:

- Raw ground veal, raw ground pork, and their products (meaning foods composed of raw ground veal or pork plus seasonings, coloring, curing agents, etc.) are considered cuts of “whole veal meat” and cuts of “whole pork meat,” and thus subject to the Act’s requirements.
- The Act’s requirements apply to covered food products moving through California for sale and end-use in another state or country.
- Consumer-facing labeling is required for all covered products or prepared foods containing a covered product. Labels would allow the buyer to scan a QR code at retail or when consuming a prepared food made with covered product and see record of the Act’s animal confinement certification and traceability of product back to farm of origin.

The Department rejected this option because in the Act definitions of whole veal meat and whole pork meat exclude processed or prepared foods such as hot dogs. Raw ground and comminuted products made from veal or pork are specifically identified in these regulations as not needing to be included under the definitions of covered products. This decision was made based on informal feedback from pork stakeholders and due to the definitions in statute. Analysis for the SRIA include calculations with and without ground pork because there has been mixed informal feedback from stakeholders regarding the exclusion of ground and comminuted products.

The higher-cost alternative option to apply the Act’s confinement standards of covered products only moving through California and destined for export, use on cruise ships, or sale in other states was rejected because the Department did not think including these products under the Act’s animal confinement standards was the intention of the law. California has busy ports for export and import and if all shell eggs, liquid eggs, whole veal meat, and whole pork meat moving through these ports had to be compliant with the Act and these regulations, then import/export business in California would be devastated and moved to other states. The Department specifically excluded covered products moving through the State for a destination outside of the State or country in these regulations for stakeholders to understand the processes and expectations for these types of products.

The final suggestion in the higher-cost alternative option was rejected by the Department because the requirement for a consumer facing labeling with a unique QR code was determined to be overly burdensome for stakeholders including restaurants which are often independently owned and classified as small businesses. Instead of putting the burden of proof to defend and communicate that a food is or contains covered product from covered animals not confined in a cruel manner to the Department on these small businesses, the Department decided to move this compliance one level up in the supply chain to a distributor. In addition, many of the final consumer facing packaging of liquid eggs, whole veal meat, and whole pork meat are under inspection of USDA, FSIS and any labeling of those products would need to be approved by FSIS.

This proposal is necessary for compliance with section 25990, 25991, 25992, and 25993 of the HSC.

## **CONTACT PERSONS**

Inquiries and any written comments concerning this proposal are to be addressed to the following:

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## **AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION, AND TEXT OF REGULATIONS**

The Department has prepared and has available for public review an Initial Statement of Reasons for the proposed action, all the information upon which the proposal is based, and the express terms of the proposed regulations. A copy of the Initial Statement of Reasons and the proposed regulations in underline may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. Requests should be directed to Dr. Elizabeth Cox at the mailing or email address specified above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the revised regulations. Any person interested may obtain a copy of any modified regulations prior to the date of adoption by contacting Dr. Elizabeth Cox at the mailing or email address specified above.

## **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Dr. Elizabeth Cox at the mailing or email address specified above.

## **INTERNET ACCESS**

The Department has posted the information regarding this proposed regulatory action on its Internet Web site <http://www.cdfa.ca.gov/ahfss/regulations.html>