

May 15, 2023

## California's Proposition 12 – Update

In legal moves late last year, the pork industry brought appeal to the Supreme Court after the U.S. Court of Appeals for the Ninth Circuit upheld Proposition 12. Proposition 12 makes it a criminal offense and civil violation to sell whole pork meat in California unless the pig it comes from is born to a sow housed within 24 square feet of space and in conditions that allow a sow to turn around without touching an enclosure. Proposition 12 applies to any uncooked pork sold in the state, regardless of whether it was raised in California. The pork producers appeal, with backing from the Solicitor General of the United States, Elizabeth B. Prelogar, claimed Proposition 12 violated the Interstate Commerce Clause of the U.S. Constitution.

Last Thursday, in a 5-to-4 decision, a Supreme Court majority decided against the pork industry stating the type of meat sold in California does not create any constitutional problems for the state's voter-approved Proposition 12. The five justices in the majority were conservatives Neil Gorsuch, Clarence Thomas, and Amy Coney Barrett, and liberals Sonia Sotomayor and Elena Kagen.

Oral arguments presented by the state of California stated that “the only Proposition 12-compliant pork that out-of-state businesses must produce is the pork they choose to supply to California's market. They are free to make as many other pork products as they want and to sell them to markets outside of California.”

Justice Gorsuch wrote the majority opinion: “We affirm. Companies that choose to sell products in various states must normally comply with the laws of those various states. Assuredly, under this court's dormant Commerce Clause decisions, no state may use its laws to discriminate purposefully against out-of-state economic interests. But the pork producers do not suggest that California's law offends this principle.”

Major pork producers like Hormel and Tyson Foods -- who initially opposed Prop 12 -- say they have been preparing to fully comply with at least parts of the law because of growing demand for humanely raised meat. Hormel says many of its products are already Prop 12 compliant.

Agriculture groups said that if the California law was upheld, it would not be long before other states adopted separate requirements making it difficult for producers to meet a maze of requirements. No telling where this may go from here.

As a reminder to Distributors selling whole meat pork in or into California, as well as other covered product (shell eggs, liquid eggs, whole veal meat) subject to Proposition 12 (Farm Animal Confinement), that as of January 1, 2023, you were required to register with the California Department of Food and Agriculture (CDFA) Animal Care Program.

Application for distributor registration and additional resources to answer stakeholder questions can be found at the [Animal Care Program's website](#). You can also email your questions to: [animalcare@cdfa.ca.gov](mailto:animalcare@cdfa.ca.gov).

Further, by January 1, 2024, the regulations require certification by a certifying agent (any private entity accredited by the Department as a third party certifying agent for the purpose of certifying a production or distribution operation as a certified operation) to ensure that persons operating as distributors under the regulation have been verified as sourcing covered products from farms or suppliers that are certified operations in compliance with California's animal confinement standards. Distributors can self-certify that they are in compliance prior to the compliance date.

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

Records: The regulations require a distributor to document, in a traceable manner, that covered products being sold or distributed originate from certified producers that house covered animals in compliance with the regulation and must document where physical possession of covered product takes place for each sales transaction.

**Full text of the Regulation:** [Full Text of Animal Confinement 3 CCR § 1320-1326](#)

Thank you.



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