

A Synopsis of the Regulatory Environment Affecting California Specialty Crops

Report prepared for the California Institute for the Study of Specialty Crops

Sean Hurley*

Department of Agribusiness
California Polytechnic State University—San Luis Obispo

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*Sean Hurley is an Assistant Professor in the Department of Agribusiness at the California Polytechnic State University—San Luis Obispo. Funding for this project has been made available by the Governor’s Buy California Initiative, the California Department of Food and Agriculture (“CDFA”) and the U.S. Department of Agriculture (“USDA”). The content of this publication does not necessarily reflect the views or policies of CDFa or USDA, nor does any mention of trade names, commercial products and organizations imply endorsement of them by CDFa or USDA.

EXECUTIVE SUMMARY

California specialty crop producers face multiple regulatory bodies from both the state and federal government. These producers face regulations pertaining to labor, the environment, marketing, and food safety. When it comes to regulations, ignorance is not bliss. This project develops an informational source for finding federal and state regulations affecting California agricultural producers and provides a perspective of what the California agricultural regulatory environment looks like.

This report presents a visual diagram of the top two tiers of federal and state governmental agencies affecting the California agricultural regulatory environment. The visual diagram is set-up with web links to these regulatory bodies. Next, the report gives a brief discussion of the regulatory process along with a list of web resources that can assist producers in tracking regulations and participating in the regulatory process. Following this discussion, results from two surveys of the County Agricultural Commissioners are presented. These surveys were meant to obtain the commissioners' perspective of the regulatory environment affecting agricultural producers in California. The report ends with a brief synopsis of the California regulatory environment that draws heavily upon the results of the commissioners and a set of policy implications.

There are several key findings from the surveys administered to the County Agricultural Commissioners. These results are the following:

- The commissioners had difficulty pinpointing which regulations are causing producers the most difficulty. This might suggest that there is no single regulation that is causing producers the greatest difficulty from the commissioners' perspective.
- Eighty-four percent responded that budget was the most important factor dictating the number of staff members a commissioner employs for regulatory enforcement.
 - Only twelve percent of the commissioners responded that it was related to the number of regulations.
 - None of the commissioners responded that non-compliance of regulations dictated the number of staff for regulatory enforcement.
- Seventy-six percent of the commissioners who responded have staff that specializes in enforcing particular regulations, while seventy-two percent have staff specializing for a particular program and/or commodity.
- Eighty percent of the commissioners indicated that they did not have a large enough budget to enforce all the regulations they are mandated to enforce, while ninety-seven percent of the commissioners reported that they do not always receive a budget augmentation for a new regulation they are mandated to enforce.

- Every County Agricultural Commissioner reported that they have an educational outreach program for producers regarding regulations.
 - Thirty-six percent of the commissioners reported that they always offer educational outreach for new regulations, while sixty-one percent reported they usually offer some sort of educational outreach.
- There is a wide diversity of reasons that inspections are usually generated.
 - Complaints by the public were not one of the reasons indicated.
 - The reason that inspections are most often undertaken is because it is mandated by the regulations.
- Sixty-four percent of the commissioners believe that regulatory compliance has increased over the past five years, while only seven percent of the commissioners notice that regulatory compliance has decreased.
- Fifty-seven percent of the commissioners believe that new regulations are increasing at a constant rate, while thirty-nine percent believe that new regulations are increasing at an increasing rate.
- Eighty-six percent of the commissioners believe that urban sprawl is causing regulation compliance complaints to increase.
- The top five aspects of the regulatory environment that the commissioners believe are causing producers the most difficulty complying with regulations are:
 - Number of regulations (25 responses)
 - Complexity of regulations (20 responses)
 - Cost of regulations (13 responses)
 - Answering to multiple regulatory agencies (13 responses)
 - Agriculture-urban interface (13 responses)

There are three main policy implications that arise from this research. These are the following:

- With the current complexity of the regulatory environment, a policy should be instituted that all new regulations must have an educational outreach component to the potentially affected parties.
- Any new regulation to be instituted should come with a budget augmentation to enforce the regulation including money devoted to educational outreach.
- The third policy implication is that an examination of how each regulation affects the whole regulatory environment should be incorporated in the regulatory analysis process, not just an examination of the cost to the producer and to the agencies involved.

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Introduction

California is one of the most diverse agricultural economies in the world, as well as being one of the largest agricultural exporters (California Farm Bureau). In 2002, California agriculture generated nearly \$25.7 billion in cash receipts, making the state the largest agricultural producer in the country (Hurley). The producers of the state have managed this level of production while inhabiting the most populous state in the nation.

While population has increased in the state, there has been an increase in federal and state regulations that have potentially affected the agricultural producers in the state. With both population and regulations increasing, the potential for agriculture urban interface problems becomes greater which necessitates that producers become ever more vigilant with the current and future regulatory environment.

In 2004, California specialty crop producers face multiple regulatory bodies from both the state and federal government. At the state level, producers must follow the regulations set forth by California Environmental Protection Agency, the Department of Pesticide Regulations, and the California Department of Food and Agriculture. The United States Department of Agriculture, the Environmental Protection Agency, and the United States Department of Labor are a few of the federal regulators specialty crop producers must deal with at the national level. These producers face regulations pertaining to labor, the environment, marketing, and food safety.

The problem at hand for producers is that they face regulations from multiple regulatory bodies. Many times these regulations do not match-up with each other, especially when examining the federal versus the state regulations. In many cases, California regulations can be stricter than federal regulations. As an example, the California Department of Pesticide Regulations has in the past not allowed certain pesticides to be used in California even though the federal Environmental Protection Agency has deemed them safe (Federighi). Since some of California's regulations are stricter than the federal regulations, specialty crop producers must be attentive to both federal and state regulators.

While large producers may be able to hire someone to manage the regulatory issues related to their business, smaller specialty crop producers may not be able to afford to pay someone to instruct them in regulations. In either's case, both need to expend resources to maintain compliance with regulations. For producers to find the regulations that affect them in the current regulatory environment, they must wade through multiple government agencies. There does not seem to be a single good public source that brings together information on federal and state regulations. The best source of public information was found at the University of California's Agricultural Personnel Management website located at <http://are.berkeley.edu/APMP/>.

This research is a foundation for filling the informational gap by providing a single resource for finding state and federal regulations that affect agricultural producers and building a brief synopsis of the regulatory environment that California specialty crop producers face. Furthermore, this research lays the foundation for studying production and competitive costs that California specialty crop producers incur due to regulations.

Project Objectives

The primary goals of this project were to develop an informational source for finding federal and state regulations affecting California agricultural producers and provide a perspective of what the California agricultural regulatory environment looks like. To achieve these goals, primary and secondary information was gathered from federal and state agencies. This project had the following four objectives:

- ❑ Objective 1: Develop a visual diagram of the structure of the regulatory bodies that California producers must contend with.
- ❑ Objective 2: Develop a list of federal and state regulations that affect California specialty crop producers.
- ❑ Objective 3: Conduct and analyze a survey of the California Agricultural Commissioners, which will examine their perceptions as to which regulations affect specialty crop producers the most.
- ❑ Objective 4: Develop a synopsis of the California regulatory environment that California specialty crop producers have to produce in.

The rest of this report is broken-up into six sections. Section one discusses the methodology used to collect the information. The next section provides the visual diagrams of the state and federal governments. Due to the complexity of the diagram, only the top level hierarchy of the agencies is presented. The second level of hierarchy is given in Appendix C. The third section provides a list of the major laws affecting agricultural producers. Also presented in this section is a list of sources for finding current and proposed regulations. Section four discusses the results from the survey of the California Agricultural Commissioners. The fifth section gives a brief synopsis of the regulatory environment that California agricultural producers must produce in. The final section describes a few of the policy implications that stem from this research.

Methodology for Data Collection

There are two types of informational sources used to achieve the objectives of this project. The first source is secondary data primarily collected from federal and state governmental websites. The second source of information comes from a survey conducted of the California County Agricultural Commissioners. The secondary sources were used to achieve objectives one, two and four, while the primary source was used to achieve objectives three and four.

To develop the visual diagram that shows the relationship between agencies, information was gathered from websites of state and federal agencies. Each site was examined for information as to how each agency potentially interacted with each other. Information was first sought for the organizational structure of each agency. Next each agency that was on the located organizational structure was examined to see whether it had an effect on agricultural producers. If an agency did not have an organizational chart to follow, the website was fully investigated for links to other governmental agencies. While relationships between agencies can be developed at the federal level and the state level separately, there was little information found on how the federal and the state interact with each other on an agency by agency basis.

To find the relationship between the state agencies, the investigation started at the official website of the [State of California](#). This website has a link to the listing of all the state agencies that are overseen by the California government. This includes departments, boards, and commissions. Each agency website was visited and examined to see if the agency in question had any affect on agriculture either directly or indirectly. All the agencies that affected agriculture were further investigated to see how they affected agriculture. Some agencies were direct regulators, some were indirect regulators, and others were agencies that supported the regulatory process. Information taken from these pages was used to develop the visual diagrams for the state agencies. Any agency that has an effect on the regulatory process was incorporated in the visual diagram. Due to the number of agencies that affect California producers, only the major agencies were put into the visual diagram and only two levels of hierarchy are examined.

The visual diagram for the federal agencies was developed in the same manner as the state diagram except information was developed from the [FirstGov](#) website directory of agencies. This website is administered by the United States General Service Administration and is the definitive website for finding information on governmental entities. This site contains a link to a listing of the federal agencies. Each federal agency was examined to see if they affected agriculture. If they did, information was gathered on how the agency affected agriculture and how it related to other governmental agencies.

Objective two was to analyze the federal and state regulations that affect California producers. It was discovered during this research project that this is a daunting task and needed some revision. It has been found that there is an overwhelming amount of regulations affecting California agricultural producers. The California Food and Agricultural regulations comprised over fifteen hundred pages of regulations alone. These regulations are not exhaustive of all the state regulations producers must follow. They do not include all of the labor, food safety, and environmental regulations at the state level. The federal regulations are also not included in the fifteen hundred pages of California Food and Agricultural regulations, although some federal regulations mirror those of the state.

To make this objective more manageable, two modifications in the research were done which should be as useful to producers. The first modification was the development of a list of sources to find the regulations that are affecting agricultural producers at the state and federal level. This information was developed into an outline form which gives the location where the current and proposed regulations are found. When possible, web addresses were given for sites that tracked new regulations. The second modification to this objective was to present an overview of the regulatory process and develop a list of the major State and Federal laws/acts that are affecting producers. These laws/acts are what the regulations are developed from. For each legislative law/act, there are a multitude of regulations developed for the purpose of enforcing the law.

In an attempt to obtain a unique perspective of the regulatory environment affecting agricultural producers, the third objective was to conduct a survey of the County Agricultural Commissioners. This group was chosen because they have constant contact with producers while having the unique perspective of being a regulator. The commissioners deal with many different types of producers and many different types of regulations, which span across marketing, the environment, labor, etc.

There are currently fifty-six commissioners for the state. One of the primary responsibilities of these commissioners is to enforce the state's pesticide regulations (Federighi). This is not the only task that the commissioner is responsible for. According to the California Department of Food and Agriculture, the County Agricultural Commissioners are charged with the responsibility to protect California agriculture, the environment, and the public's health and safety. They accomplish this by overseeing the following programs:

- Pest Exclusion
- Pest Detection
- Pest Eradication
- Pest Management
- Pesticide Enforcement
- Seed Certification
- Nursery Inspection
- Fruits, Nuts and Vegetable Standardization
- Egg Inspection
- Apiary Inspection
- Crop Statistics

At the initial stages of this project it was envisioned that a single survey would be conducted of the commissioners to obtain their perspective on the regulatory environment and how it was affecting producers. It was found during the project that due to the complex nature of the regulatory environment that a second survey was needed.

The first survey was developed with the goal of finding out what specific regulations were causing producers the greatest difficulty complying with and which producers were having the hardest time complying with regulations. This survey is provided in Appendix A. It was chosen to do this survey as a phone survey due to the open-ended nature of many of the questions. Commissioner's phone numbers and addresses were obtained from the California Department of Pesticide Regulation website.

The procedures for the first survey were the following. The questionnaire was developed with the intention of meeting the goal outlined in the previous paragraph. Questions were formulated from knowledge developed from researching information about the County Agricultural Commissioners. Some of the questions in the survey were exploratory in nature so the researcher could obtain a better understanding of the role these commissioners play in enforcing regulations. Since there was a small amount of commissioners to survey, the first survey was developed with minimal assistance from the commissioners in order to minimize any bias.

Once the questionnaire was developed, a copy of the survey along with a letter explaining the research project was sent to all County Agricultural Commissioners. The researcher understanding the potentially difficult nature of some of the questions did this so the commissioners could prepare the answers ahead of the phone call. A week after the letter and survey were sent out, a graduate student assistant was charged with calling each commissioner and setting-up a time to collect the information from the commissioners. For those who agreed to participate, this same student later called the commissioners at the agreed upon time to gather the survey information.

The questions in the first survey can be categorized into five general areas. The first set of questions asked what county/counties they represented, who they reported to, what agencies do

they work with, and what are the top five commodities they deal with in their jurisdiction? The next set of question focused on the top five regulations enforced by their office, which commodity producers have the most difficulty following regulations, and which regulations give producers the hardest time. Questions regarding their resources and how they are allocated were asked next. The fourth set of questions asked many different questions related to inspections and regulation enforcement of producers sites. The final set of questions enquired about how inspections and compliance was related to farm size. One of the final questions asked the commissioner's opinion as to what they believe was giving farmers the most difficulty with regulation compliance.

During the survey process, the researcher received many phone calls from commissioners voicing concerns about the survey. One of their primary concerns was that questions were asked for which they did not track information for. Specifically, the questions related to farm size were difficult for them to answer. Other concerns revolved around the political nature of the questions being asked, i.e., about the regulatory environment and how it is affecting producers.

At the end of the survey process, there were thirteen respondents out of fifty-six which amounts to a response rate of twenty-three percent. Upon examination of the results from the first survey, it was found that many of the surveys that were completed had questions that were not answered. The questions left blank the most were related to farm size. Examination of this survey showed a necessity to conduct a second survey to obtain meaningful results.

To develop a more meaningful survey that would obtain a higher response rate, a meeting was set-up between the researcher and the commissioners to discuss the results of the first survey in order to pinpoint what caused the greatest difficulties in answering the questions. This meeting took place at the annual winter meeting of the County Agricultural Commissioners in November of 2004. Much information was learned that explained why the response rate was as low as it was. The biggest issue raised by this group was that some of the questions were not answerable based on the information the commissioners track and answers to the questions would only be speculative on their part.

With the information that was learned at the commissioners' winter meeting and results taken from the first survey, a second survey was crafted. The assistance of the San Luis Obispo County Agricultural Commissioner was used to ensure that the questions on the survey were more tractable to answer for the rest of the commissioners. The goal of the second survey changed slightly from the first. The primary goal of the second survey was to obtain a view of the regulatory environment from the perspective of the County Agricultural Commissioners rather than focusing on particular regulations.

It was decided that the second survey would be a mail survey rather than a phone survey. This was done in an attempt to maintain the anonymity of the respondents in order to obtain candid answers. Self-address returned envelopes were used and no information was collected about which county the commissioner was from to further ensure anonymity. Surveys were mailed to the commissioners in late December with a request for the surveys to be returned by mid-January.

The second survey is located in Appendix B. This survey can be split into five categories of questions. These categories are: a) budgeting, b) staffing, c) educational outreach, d) regulatory environment, and e) general questions. The questions regarding budgeting try to ascertain how much money is being spent on regulatory enforcement and what dictates the size of the commissioner’s budget. Questions regarding regulatory enforcement staff focused on how many staff members are being used for regulatory enforcement and whether or not the staff specializes in particular regulatory enforcement. Two questions were asked about educational outreach. The first asked whether the commissioner had any educational outreach for regulatory compliance, and if so how would they characterize the educational outreach for a new regulation. There were a multitude of questions related to the regulatory environment in general. These questions spanned how inspections are usually generated to what aspect of the regulatory environment is giving the producers the greatest difficulty of compliance.

The Organizational Structure of the State and Federal Regulatory Agencies Affecting California Producers

Chart 1 presents the highest tier of state and county government agencies that affect the regulatory environment. These agencies oversee a multitude of branch agencies that affect the California producer. The branch agencies that each one of these agency controls is located in Appendix C. This is by no means a full representation of the top level agencies affecting producers, but it does contain the most influential. Except for the County Agricultural Commissioners, the rest of the agencies are at the state level rather than the local level.

Chart 1: California State and County Government Agencies Affecting Agricultural Producers

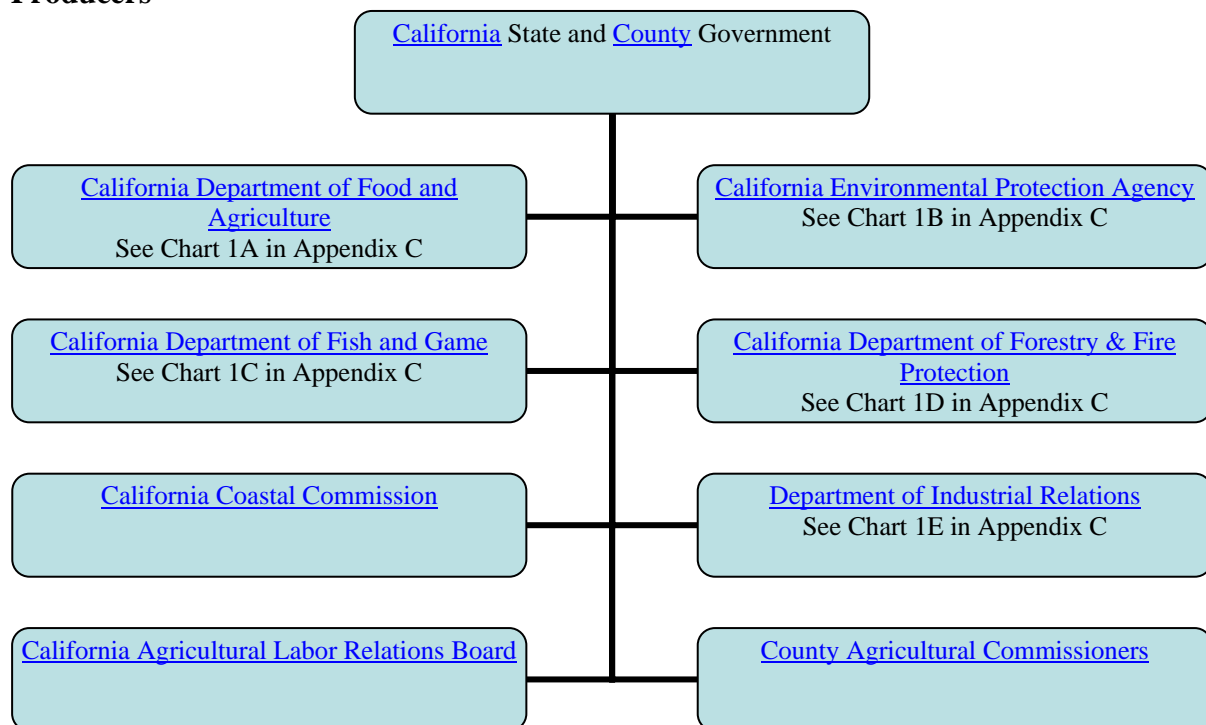
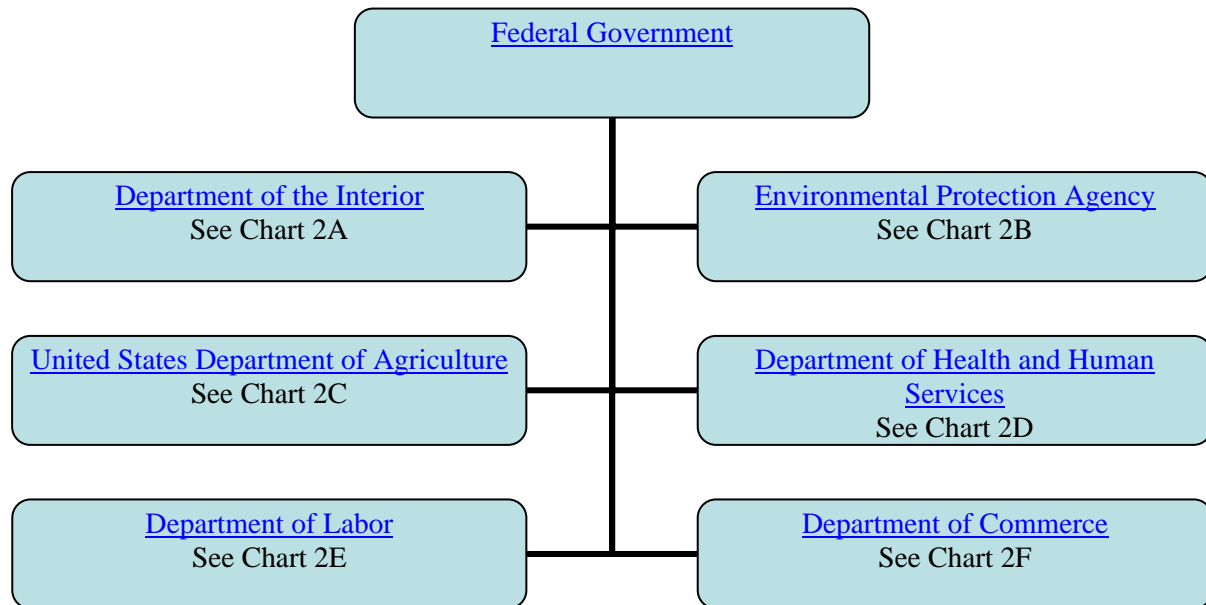


Chart 1 shows the top level agencies that report to the executive branch of the government, while Charts 1A through 1E show the different branches of each agency that affects producers either directly or indirectly. As can be seen from these charts there are many levels of agencies that producers must contend with. There are eight state and county agencies that appear to be the largest regulators of California agricultural producers and represent the top tier of regulators. The most complex agency is the California Department of Food and Agriculture. This is not surprising since they oversee the regulations of over 350 commodities in the state.

Chart 2 below represents the top tier federal regulatory bodies affecting agricultural producers. This tier is made up of six primary entities. Charts 2A through 2F located in Appendix C represent the second tier of federal agencies that affect California producers. When comparing the organizational structure of the federal government and the California government from the perspective of the producers, they look very much the same and have approximately the same level of complexity. The most complex organization at the federal level in relationship to agriculture is the United States Department of Agriculture which oversees eight agencies that affect the regulatory environment of producers. The most surprising agency to affect the producer from the researcher’s standpoint is the National Oceanic and Atmospheric Administration. This agency affects the producer because it oversees the Coastal Zone Management Act which is related to the California Coastal Commission.

Chart 2: Federal Governmental Agencies Affecting Agricultural Producers



The Federal and State Regulatory Environment

Objective two of this project was to develop a list of state and federal regulations affecting California agricultural producers. As mentioned in the methodology section, it was discovered that this was a daunting task. Instead of presenting specific regulations, this section will present informational sources for finding regulations. These sources are categorized into two areas—current regulations and new/proposed regulations. Before these sources are presented, a discussion of the regulatory process needs to be discussed.

A distinction needs to be made between a law and a regulation. According to the United States Geological Survey Environmental Affairs Program, a law is enacted by the state or federal legislature. Federal and state executive departments and administrative agencies use the authority of the law to develop regulations to carry out the objectives mandated by the legislature. According to the California Office of Administrative Law, a “regulation is a policy or procedure affecting the public or any segment of the public that implements, interprets, or makes specific a statute the state agency enforces or administers (p. 1).” Since a regulation is an interpretation of the law, it is possible for a producer to break a regulation without necessarily breaking the law.

To make tracking regulations meaningful, a rudimentary understanding of the regulatory process is necessary. Before any regulation is enacted at the federal level unless exempted, the regulation must be developed using the procedures outlined in the Federal Administrative Procedures Act. At the state level, the regulatory agencies must follow California’s Administrative Procedures Act unless it is explicitly exempted. Since the Acts are similar, only the California Act will be discussed.

When a regulation is first proposed by a regulatory agency, it may or may not get public feedback in the drafting stage of the regulation. An agency may choose to obtain public feedback while drafting the regulation. To initiate the formal process of developing a new regulation the regulatory agency must develop the following four documents: a) the written language of the proposed regulation, b) a statement explaining the need for the proposed regulation, c) a statement explaining the fiscal impact of the regulation, and d) a notice for the proposed regulation that can be sent out to interested parties and published in the California Regulatory Notice Register.

Once the notice of a new regulation has been made public, California’s Administrative Procedures Act requires a minimum forty-five day comment period where interested parties have the opportunity to submit in writing comments regarding the proposed regulation. While there is currently no requirement for a regulatory agency to hold a public hearing on the proposed regulation, interested parties have the right to call for a public hearing within fifteen days prior to the close of the written comment period. Under the Administrative Procedures Act, the regulatory agency must consider all relevant matter presented during the comment period.

After the comment period has elapsed, the regulatory agency may decide to change the regulations based on comments from the public or for other reasons. Once the changes have been made, the regulatory agency is then required to classify the changes as: a) not substantial, b) substantial and sufficiently related, or c) substantial and not sufficiently related. If the changes

are designated as “substantial and sufficiently related,” the regulatory agency must reopen the public comment period for at least fifteen days before any changes can be adopted. Changes identified as “substantial and not sufficiently related” must go through another forty-five day comment period.

When public comments are made regarding the proposed regulation, the regulatory authority must summarize the comments and provide a response to each. The response must either explain how the proposed regulation has accommodated the comment by demonstrating the change that was made due to the comment, or it must explain why the comment was not incorporated.

Within a year from the date that a notice is published in the California Regulatory Notice Register, the regulatory agency proposing the regulation must transmit to the Office of Administrative Law what action was taken on the regulation. This office has thirty days to review the proposed regulation to determine whether it has met the requirement of California’s Administrative Procedures Act. When this office is reviewing the proposed regulation, they examine it to make sure that it follows the six standards put forth in the Act. These standards are: Authority, Reference, Consistency, Clarity, Nonduplication, and Necessity.

Once the regulation is adopted at the state level, it is printed in the California Code of Regulations. At the federal level, regulations can be found initially in the Federal Register and then later printed in the Code of Federal Regulations.

In the end, how a regulation gets enforced is by the interpretation of the regulation by the specific regulatory body. This regulation itself is an interpretation of a law.

Major Federal and State Laws Affecting Agricultural Producers

There are some major laws at the federal and state level that many regulations derive their authority from. These laws cover the environment, labor, marketing, food safety, etc. This section will outline these laws and provide a link to information about the law. Each link will either take you to a website that has information pertaining to the law or the link will take you directly to the law.

Federal Environmental Laws

- [Federal Clean Water Act](#)
- [The Coastal Zone Management Act of 1972](#)
- [Safe Drinking Water Act](#)
- [Federal Clean Air Act](#)
- [Federal Insecticide, Fungicide, and Rodenticide Act](#)
- [Federal Endangered Species Act](#)
- [National Environmental Policy Act of 1969](#)
- [Pollution Prevention Act](#)
- [Toxic Substance Control Act](#)

Federal Labor Laws

- [Occupational Safety and Health Act](#)
- [Federal Migrant and Seasonal Worker Protection Act](#)
- [Federal Fair Labor Standards Act](#)

Federal Food Safety Laws

- [Federal Meat Inspection Act](#)
- [Federal Poultry Inspection Act](#)
- [Federal Food, Drug, and Cosmetic Act](#)
- [Food Quality Protection Act](#)
- [Federal Organic Foods Production Act](#)

California Environmental Laws

- [California Clean Air Act](#)
- [California Coastal Act of 1976](#)
- [California Environmental Quality Act](#)
- [California Forest Practice Act](#)
- [California Safe Drinking Water and Toxic Enforcement Act of 1986](#)
- [Porter-Cologne Water Quality Control Act](#)

California Food Safety

- [California Organic Products Act](#)

California Agricultural Labor Laws

- [California Agricultural Labor Relations Act](#)

There are many ways that producers can track regulations. Each way has its own costs and requires a different level of managerial resources. This project develops the level of internet sources the producer can use to find and track regulations. The websites presented will be the ones that producers should keep track of the most. The first set of websites presented represents the definitive websites for state and federal regulations. These sites contain all the regulations both current and proposed. The next set of websites contains the proposed regulations for the federal government related to agriculture. The third set of websites contains sources for current federal regulations that may affect California producers. The last set of websites pertain to current regulations that are overseen by California regulatory agencies.

Definitive Sources to Current and Proposed State and Federal Regulations

- [California Code of Regulations](#)
- [California Regulatory Notice Registrar](#)
- [Federal Governments Federal Regulations](#)
- [Topical Guide to Federal Regulations and Services](#)

Sources for Proposed Federal Regulations by Agency that May Affect Agriculture

- [United States Department of Agriculture](#)
- [USDA-Agricultural Marketing Service](#)
- [USDA-Animal and Plant Health Inspection Service](#)
- [USDA-Food Safety and Inspection Service](#)
- [USDA-Foreign Agricultural Service](#)
- [USDA-Forest Service](#)
- [Environmental Protection Agency](#)
- [Fish and Wild Life Service](#)
- [Food and Drug Administration](#)
- [Department of Labor](#)
- [National Oceanic and Atmospheric Administration](#)

Sources for Current Federal Regulations that May Affect Agriculture

- [Department of Labor Employment Law Guide](#)
- [Occupational Safety and Health Administration](#)
- [Fish and Wildlife Services Regulations](#)
- [Environmental Protection Agency](#)
- [Food Safety and Inspection Service](#)

Sources for State Regulations Affecting Agricultural Producers

- [California Food and Agricultural Code](#)
- [California Food and Agricultural Code-Proposed](#)
- [California Environmental Protection Agency](#)
- [California Department of Pesticide Resistance](#)
- [California Air Resource Board](#)
- [Department of Toxic Substances Control](#)
- [California Integrated Waste Management Board](#)

Survey Results of the County Agricultural Commissioners

This section provides the results of the two surveys administered to the County Agricultural Commissioners. While emphasis will be given to the results of the second survey, some interesting lessons learned from the first survey will be discussed. Twenty-nine commissioners returned the second survey giving a response rate of nearly fifty-two percent. This is over double the amount of respondents from the first survey.

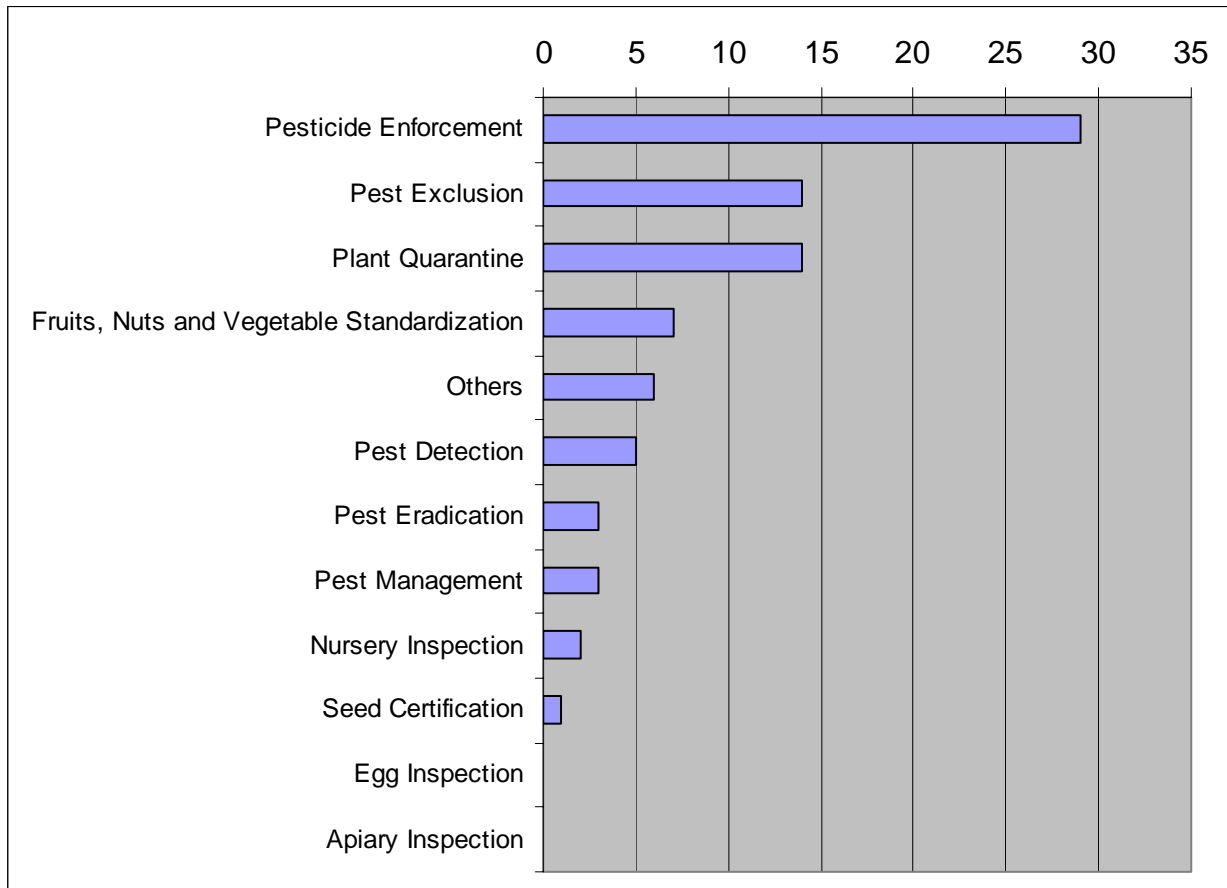
There were two key findings from the first survey. The first finding was that it was difficult for the commissioners to answer which regulations are causing producers the most difficulty. The first survey demonstrated the level of difficulty the commissioners had in pinpointing a particular regulation. After much discussion with them, it is easy to understand why. As was explained earlier, these commissioners are responsible for overseeing a multitude of programs where many of these programs have a multitude of regulations associated with them. To identify a particular regulation is difficult. This represents an interesting finding because it suggests that there is no single regulation that is causing producers the greatest difficulty. Due to this finding, one of the major changes in the second survey was to ask the commissioners which programs they enforce give the producers the most difficulty.

The second key finding from the first survey was that the commissioners did not directly track information related to regulation compliance in relationship to farm size. From the regulators standpoint, this may not be useful information to know. But from the research standpoint, it is difficult to ascertain which type of producers is having trouble without this information. It would be interesting to follow-up with other regulatory agencies to see what information they tracked. Using this information, questions related to farm size were left out of the second survey.

There were twenty one questions asked on the second survey that were meant to shed light on the regulatory environment California agricultural producers face. The key difference between the first survey and the second survey was that the first survey focused on regulations, whereas the second survey focused more on the regulatory environment. Unlike the first survey, most of the surveys returned had every question answered. It appears that this was easier for the commissioners to answer.

The first question of the survey asked, what were the top three agricultural programs the commissioners must enforce in relationship to regulations? Figure 1 provides a count of how many commissioners chose a particular program. As can be seen in the table, the top three programs the commissioners enforce are: 1) Pest Enforcement, 2) Pest Exclusion, and 3) Plant Quarantine.

Figure 1: County Agricultural Commissioner’s Top Three Regulation Programs Enforced



Question two of the survey asked if there were any commodities that were more heavily regulated by the commissioner. Seventy-eight percent of the respondents answered affirmative to this question. A follow-up to this question was that if they did say there were commodities that were more heavily regulated, which ones were they? The only commodity that stood out among the rest was nursery products. This commodity received eleven responses. The next closest commodity was grapes with seven responses. Most of the other commodities mentioned by the commissioners received less than three responses for this question. It is interesting that in question one that nursery inspections was not one of the top three programs enforced by the commissioners, but it is one of the more heavily regulated commodities.

The County Agricultural Commissioners work with a diverse group of local, state, and federal regulatory authorities. Ninety-six percent, which equates to all but one commissioner in the survey, reported that they work with other regulatory authorities to enforce regulations. The three regulators that the commissioners work with most are the California Department of Food and Agriculture, the California Department of Pesticide Regulations, and the United States Department of Agriculture. Other regulatory authorities they work with are Regional Water Boards, Regional Air Quality Boards, Department of Fish and Game, and many County departments such as County Public Health and County Code Enforcement. When examining the responses to this question and comparing them to the diagrams developed above, all state and federal agencies mentioned by the commissioners are represented in the diagrams.

A question on the survey asked the commissioners to report their total annual budget spent on regulatory enforcement which excluded money budgeted towards weights and measures. Out of the twenty-nine commissioners that sent in the survey, twenty-seven answered this question. The total amount spent on regulatory enforcement for these twenty-seven commissioners totaled 47.3 million dollars. This amount is only a lower limit on how much is being spent on regulatory enforcement by the commissioners since information was only provided by approximately one-half of them. The largest budget amount reported was nearly 7.3 million dollars, while the smallest amount was one hundred thousand dollars. The average amount spent on regulatory enforcement by this group was 1.7 million dollars.

Questions six through ten of the survey asked questions pertaining to the staff the commissioners employ for regulatory enforcement. The twenty-nine respondents gave a very diverse response to the number of full time staff they have devoted to regulatory enforcement. Some commissioners have as few as one full-time employee where another has as many as eighty-five full-time staff hours devoted to regulatory enforcement. Sixty-two percent of the commissioners hire part-time staff to help out with regulatory enforcement.

When asked about the most important factor dictating the number of staff members a commissioner employs for regulatory enforcement, eighty-four percent responded that budget was the most important factor. Only twelve percent of the commissioners responded that it was related to the number of regulations. One commissioner reported that it was on the needs of the citizenry. None of the commissioners responded that non-compliance of regulations dictated the number of staff for regulatory enforcement. Seventy-six percent of the commissioners who responded have staff members that specialize in enforcing particular regulations, while seventy-two percent have staff members specializing for a particular program and/or commodity.

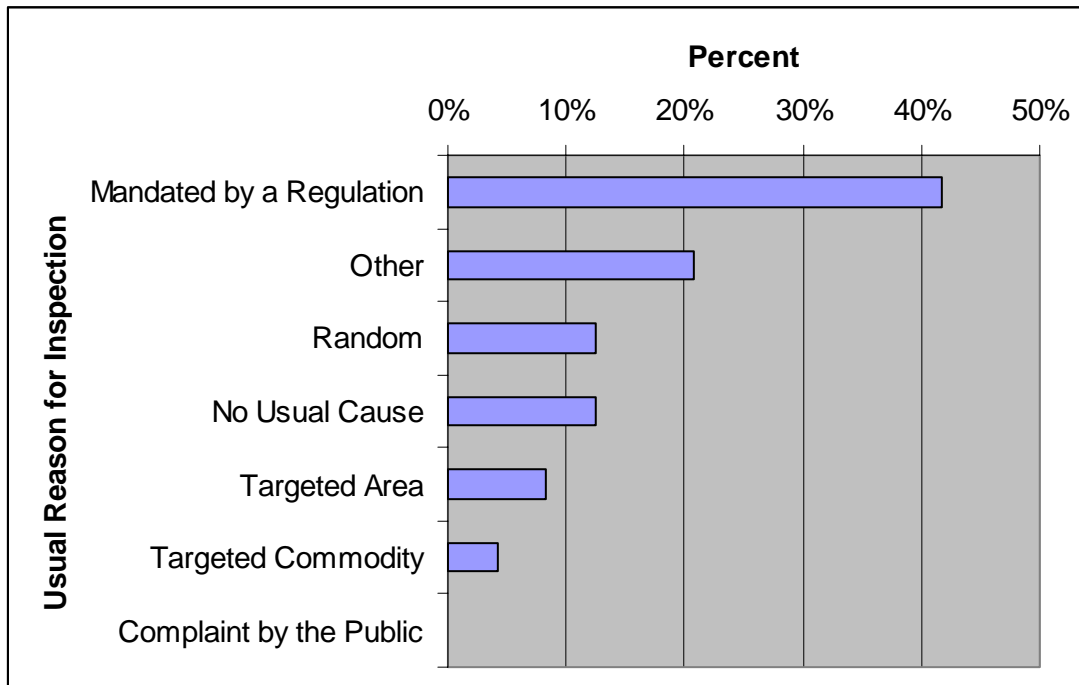
Question eleven of the survey asked whether the commissioner had a large enough budget to enforce all the mandated regulations. Eighty percent of the respondents indicated that they did not have a large enough budget to enforce all the regulations they are mandated to enforce. When asked whether the commissioner always received a budget augmentation when a new regulation was mandated to be enforced by them, only three percent indicated in the affirmative. If the commissioners do not have a large enough budget to enforce the current amount of regulations and they do not always receive a budget augmentation for each new regulation they have to enforce, is it realistic to expect that they can enforce all the regulations?

There were two questions related to educational outreach on the survey. It is encouraging to see that every commissioner that responded to the survey stated they had an educational outreach program for regulations. When a new regulation is going to be enforced, thirty-six percent of the commissioners always offer educational outreach, while sixty-one percent usually offer some sort of educational outreach.

Question fifteen represents one of the most interesting findings of the survey. The question posed to the commissioners was when you must inspect a producers operation, how are these inspections usually generated. They were asked to only choose one reason out of a list. Out of the twenty-nine respondents to the survey, twenty four were usable for this question. Figure 2

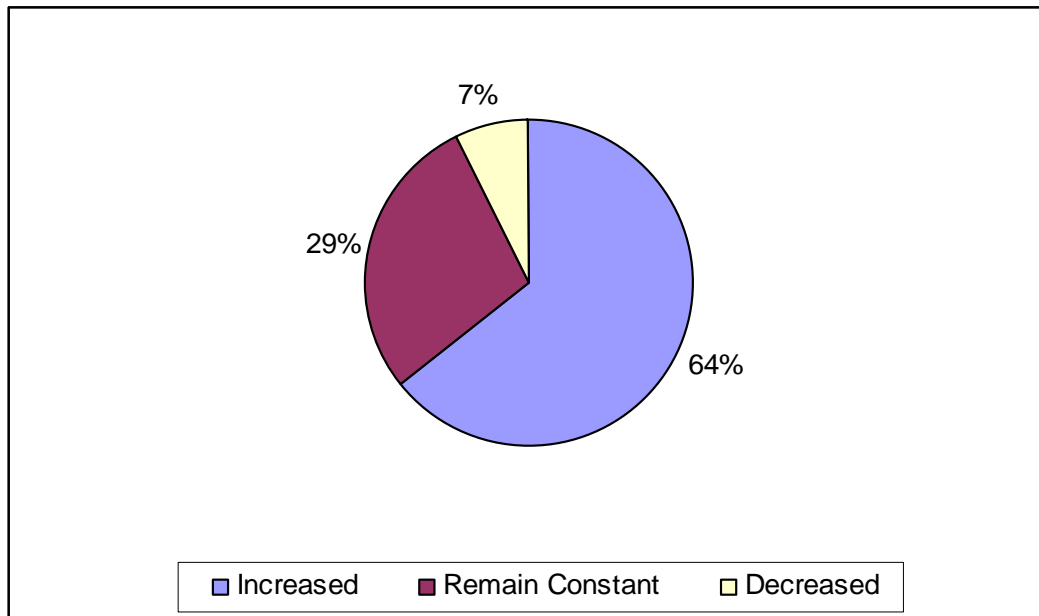
shows the responses given by the commissioners. Over forty percent of the respondents indicated that inspections are usually generated due to a mandate of the regulation. On the other end of the spectrum, complaints by the public received no responses. What makes this such an interesting finding is the diversity of reasons for inspections being generated. The diversity is very apparent considering the category for Other was the second highest reason for inspections being generated.

Figure 2: The Usual Reason for Inspections Being Generated



A question on the survey asked whether compliance of regulations by producers has increased, remain constant, or decreased over the past five years. As can be seen in Figure 3 below, sixty-four percent of the commissioners believe that regulatory compliance has increased over the past five years. Only seven percent of the commissioners notice that regulatory compliance has decreased. Hence, it appears that California producers are doing a better job now than in the past with regulatory compliance. It would be interesting to know what has caused this increase in compliance.

Figure 3: Percent of Commissioners Reporting an Increase, Decrease, or Constant Level of Compliance over the Past Five Years



A follow-up question on the compliance question was related to the perception of the Agricultural Commissioners as to whether the rate of change of new regulations in the past five years was increasing at an increasing rate, increasing at a constant rate, increasing at a decreasing rate, or no increase at all. Fifty-seven percent of the commissioners believe that new regulations are increasing at a constant rate. Thirty-nine percent believe that new regulations are increasing at an increasing rate. There was one commissioner who believes that there was no increase in regulations and none responded that the rate was decreasing. Given the results of the previous question on regulatory compliance, it is encouraging to see that producers are perceived as better complying with regulations in an environment where it appears that new regulations are being added at either a constant or increasing rate.

Question eighteen asked the commissioners if they believe that urban sprawl is causing regulation compliance complaints to increase. Eighty-six percent answered in the affirmative to this question. It should be noted that a complaint does not necessarily indicate that a regulation has been broken. This result will be tied with other results in the synopsis section.

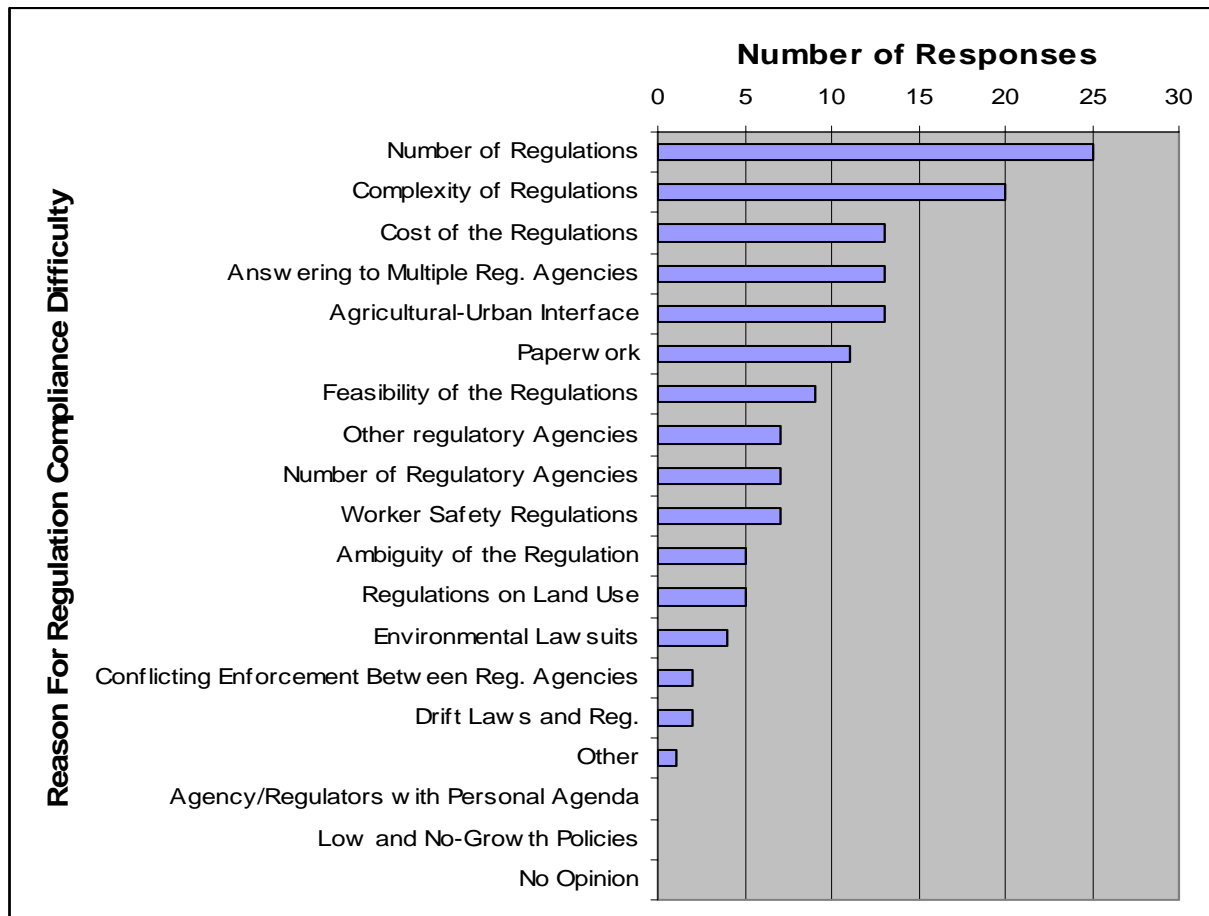
A follow-up question to number two above was number nineteen which asked whether the commissioner believed there were certain commodity groups having more difficulty with compliance in comparison to other commodity groups. This question is a modification from a question in the first survey which asked which commodity groups were having more difficulty. Fifty-five percent believe that there are some commodity groups that are having more trouble than others.

Question twenty of the survey provided a list of aspects of the regulatory environment that might be causing agricultural producer's difficulty complying with regulations. The commissioners were asked to choose the top five items that they believed were giving the producers the most

difficulties. The list for this question was generated from the first survey which asked a similar question. Figure 4 below gives the range of possibilities that the commissioners had to choose from as well as the number of responses for each category. From this figure, it can be seen that the five items that received the most responses from the commissioners were:

- Number of regulations (25 responses)
- Complexity of regulations (20 responses)
- Cost of regulations (13 responses)
- Answering to multiple regulatory agencies (13 responses)
- Agriculture-urban interface (13 responses)

Figure 4: Aspects of the Regulatory Environment Giving Producers Difficulties



The final question on the survey asked whether there were any issues of concern with the regulatory environment as it pertains to agriculture in California. Out of the twenty nine Commissioners that participated in the survey, fourteen of them provided feedback to this final question. The two themes that stand out most when reading through these comments are: 1) the cost of regulatory compliance is getting more and more expensive over time for producers, and 2) the producers are having difficulty with the current water quality and air quality regulations. One of these themes echoes the sentiment given in question twenty, i.e., the cost of regulations is perceived by the commissioners as causing producers difficulty complying with regulations.

A Brief Synopsis of the California Regulatory Environment

To state the obvious, the California regulatory environment is extremely complex. California producers face multiple agencies enforcing multiple regulations derived from multiple federal, state, and local laws. Not only is the environment complex, the regulations that are developed from the regulatory environment are complex. This is seen in the survey where complexity of regulations was the second highest reported aspect of the regulatory environment causing producers the most difficulty with regulation compliance.

To examine the complexity of the regulatory environment, the first objective of this project was to develop a visual diagram of the federal and state agencies that are affecting California producers. It was found that there are multiple layers of agencies that are affecting agricultural producers. The charts in Appendix C represent a culmination of what this researcher considers are the top two tiers of the federal and state government agencies affecting producers. Even below these two layers, there are another set of layers in some cases.

With so many agencies having the ability to regulate agriculture, it is easy to see the difficulty that producers face trying to comply with regulations. Forty-five percent of the commissioners identified that one of the top five aspects of the regulatory environment causing producers difficulty with compliance is answering to multiple regulatory agencies. Each of these agencies has its own mission and priorities. Since different federal and state agencies are enacting regulations to enforce laws, it is possible that the regulations developed could be from different interpretations of the law. From California's perspective, the Office of Administrative Law is charged with making sure that a regulation does not duplicate another regulation. Although, the problem that producers face may not be so much that regulations are being duplicated, but rather there are multiple agencies interpreting and enforcing regulations based on their own missions and goals.

The County Agricultural Commissioners have the opportunity to see first hand the problems with multiple agencies. They work with multiple agencies at the local, state, and federal level. They are in a unique and in some sense unenviable position when it comes to the regulatory environment because they are regulators charged with the responsibility to protect California agriculture, the environment, and the public's health and safety. There are times when these responsibilities can conflict with each other.

The second objective of this project was to develop a list of federal and state regulations that are affecting California agricultural producers. It became obvious early on in the research process that this was not a feasible objective as stated. There are a vast amount of regulations that producers must contend with. To make this objective manageable, two changes were made. First, a list of the major laws was compiled instead of a list of regulations. While there are a multitude of laws, there are multiple regulations that stem from each law. It is clearer which laws are the major ones in comparison to regulations. Second, a list of sources was developed to aid producers in finding regulations in the easiest format possible. This list in itself was not a brief list given all the agencies involved.

To understand the difficulty with identifying particular regulations, one only needs to look at the results from the first survey conducted of the commissioners. In this survey, it was discovered that no single regulation could be identified as a major problem from the standpoint of the commissioners. They could identify which regulatory programs producers were having difficulty with, but not the specific regulations. This would imply that from the standpoint of the commissioner, there does not seem to be certain regulations that stick as overly problematic.

Given this result, analyzing a particular regulation or law and its impact on the producers may not be enough analysis when a regulation is being reviewed. This would imply that a different look at the problem may be necessary. Rather than looking at just the regulation, it may be better to focus on the regulatory environment and how a new regulation will affect that environment. Eighty-six percent of the commissioners believed that the number of regulation was one of the top five aspects of the regulatory environment causing producers difficulty with regulatory compliance. Hence a study that looks at just the cost of a particular regulation on a producer does not necessarily take into account the cross effects that a regulation may have with other regulations or the regulatory environment itself.

An interesting problem is potentially on the horizon in relationship to the agricultural-urban interface and regulatory compliance. As more of the urban population of California moves to more agricultural parts of the state, there exists a potential for more conflict. One commissioner writes, "I am concerned that a lot of regulations which impact agriculture originate from urban areas. I am also concerned that when agriculture meets the current level of compliance, they are requested to meet a new stricter level of compliance." This statement in itself is interesting because it may imply that there is a regulation treadmill effect related to producers in relationship to complying with regulations, much like the technology treadmill producers are already on. It also may indicate that as the urban population moves out to the rural areas, there will be a greater demand for regulations. But, this is not the heart of the potential problem.

The heart of the potential problem can be seen in the following. One commissioner commented that the "department's cost of enforcement and agricultural cost for compliance is increasing." This statement is backed up by forty-five percent of the commissioners who believe that the cost of the regulations is one of the top five aspects of the regulatory environment causing producers difficulty complying with regulations. Coupling this result and the comment from the commissioner with the result given above that eighty percent of the commissioners do not always get a budget augmentation for each new regulation they must enforce, an interesting regulatory environment is being developed in California. The current environment may provide incentive to the producers to selectively follow regulations—especially if producers know that the regulators do not have a large enough budget to enforce regulations. For those producers who choose to follow all the regulations, they find themselves in an environment where regulations are either increasing at a constant rate or increasing at an increasing rate. If this environment continues, it is expected that over time producer will become more and more vocal about the regulatory environment.

Even though budgets of the regulatory agencies may not be large enough to enforce every regulation, they may find the population demands it; especially those who are moving out into the rural areas. As urban people move out to where the producers are, they in effect become

monitors of agriculture that the government itself may not be able to provide. Hence, if a producer chooses a strategy of avoiding certain regulations due to their cost, they will find over time that the urban fringe will complain. As was seen above, many commissioners identified the agricultural-urban interface as a major problem for producers when it comes to regulatory compliance. Many also believe that complaints have increased due to urban sprawl. The urban fringe will potentially drive up the demand for more inspections of producers operations. Regulators who are strapped with inadequate budgets to enforce regulations could find themselves in a political firestorm.

Policy Implication

There are three policy implications that come from this research. First, with the current complexity of the regulatory environment, a policy should be instituted that all new regulations must have an educational outreach component to the potentially affected parties. With the sheer quantity of regulations and regulatory bodies, this would help those producers that do not have many resources available to searching out new regulations. It would also ensure that producers cannot plead ignorance if they fail to follow a regulation.

The second policy implication is that any new regulation to be instituted should come with a budget augmentation to enforce the regulation including money devoted to an educational outreach. This budget augmentation should have a source for the funds and should not take away from the regulatory enforcement costs of another regulation. If the current system of not funding all new regulations is left in place, government agencies in the future will have to deal with a populace wondering why the government is not enforcing particular regulations.

The third policy implication is that an examination of how the regulation affects the whole regulatory environment should be incorporated, not just an examination of the cost to the producer and to the agencies involved. As was shown above, it does not seem to be a particular regulation that is causing difficulty to producers, but rather it is the regulatory environment where the interrelationship between regulations and regulatory bodies is causing the difficulty.

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Appendix A

Instructions: Please answer these questions using the most recent fiscal year for which you have a full year worth of information. Your participation in this study is strictly voluntary and you are able to discontinue your participation at anytime during the phone interview. You also have the right to not answer any question posed to you. By participating in this phone survey, you are providing your consent to be a part of this research project. Any questions asking your opinion will be kept anonymous.

1. What County or Counties does your office cover? _____

2. Which branch of the California government do you report to? _____
(DPR, CDFA, etc.)

3. Are there any regulatory authorities you work with?
If yes, who? _____

4. What are the top 5 agricultural commodities that you deal with?

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

5. What are the top 5 agricultural regulations you have to enforce?

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

6. Which commodities have the most difficulty following regulations? (list in order of difficulty up to five)

1. _____

2. _____

3. _____

4. _____

5. _____

7. Which regulations do producers have the hardest time following? (list in order of difficulty up to five)

1. _____

2. _____

3. _____

4. _____

5. _____

8. What is your total annual budget? _____

A. How much is spent on educational outreach related to regulations? _____

Is this mandatory? _____

B. What percent of the budget is spent on protection of CA agriculture? _____
(trapping, etc)

C. What percent of the budget is spent on protection of environment? _____

D. What percent of the budget is spent on protection of Public Health and Safety? _____

9. How many full time inspectors does your office employ? _____
10. How many part-time inspectors does your office employ? _____
11. What dictates the number of inspectors you employ? (i.e. budgetary, non-compliance, etc)

12. How many full-time hours per week are devoted to regulation inspections? _____
13. What is the average years of experience your full time inspectors have? _____
14. How many employees are allocated to regulation enforcement? _____
15. How many employees are specifically allocated to pesticide enforcement? _____
16. How many farms are checked on average per year? _____
17. What percent of your inspections is complaint-driven? _____
18. What percent of your inspections is not complaint driven? _____
19. How are non-complaint inspections generated? (rank in order of relevance 1-5)
- _____ Random
- _____ Targeted Area
- _____ Targeted Commodity
- _____ Targeted Regulations
- _____ Other: Please specify _____

20. What percent of complaints come from the general public? _____
21. What percent of complaints come from inspections? _____
22. What percent of complaints come from farmers? _____
23. What percent of farms in your area are being inspected on an annual basis? _____
- A. What percent of farms making \$0-250,000 are being inspected? _____
- What percent of these farms are found to be non-compliant? _____
- B. What percent of farms making \$250,000-500,000 are being inspected? _____
- What percent of these farms are found to be non-compliant? _____
- C. What percent of farms making \$500,000-1 million are being inspected? _____
- What percent of these farms are found to be non-compliant? _____
- D. What percent of farms of making over \$1 million are being inspected? _____
- What percent of these farms are found to be non-compliant? _____
24. Which size farms in gross revenue terms are the largest non-compliance offenders? (rank in order of offenses 1-4)
- _____ \$0 - \$250,000
- _____ \$250,000 - \$500,000
- _____ \$500,000 - \$1,000,000
- _____ over \$1,000,000

25. Which size farms in gross revenue terms are the largest repeat offenders? (rank in order of repeat offenses 1-4)

_____ \$0 - \$250,000

_____ \$250,000 - \$500,000

_____ \$500,000 - \$1,000,000

_____ over \$1,000,000

26. Do you believe producers have had more difficulty complying with regulations in the past three years compared to the past?

27. What do you think is giving farmers the most difficulties with regulation compliance?

28. Which fiscal year were the answers to the above questions primarily taken from? _____

Thank you for your participation.

Appendix B

Instructions: Please answer the questions below on your views of the regulatory environment in California as it pertains to your office. When answering the questions below, please exclude considerations to your enforcement of weights and measures. Be advised that your participation in this study is strictly voluntary. You have the right to not answer any question posed to you. By participating in this survey, you are providing your consent to be a part of this research project. All questions will be kept strictly anonymous.

1. In your county, what are the top three agricultural programs you must enforce in relationship to regulations?

- a. _____
- b. _____
- c. _____

2. Are there any commodities in your county that are more heavily regulated by your agency? _____Yes _____No

If yes, which three commodities in your county are the most heavily regulated by your agency?

- a. _____
- b. _____
- c. _____

3. Are there any Local, State, or Federal regulatory authorities you work with to enforce regulations? _____Yes _____No

If yes, who?

4. Excluding money budgeted towards weights and measures, what is your total annual budget spent on regulatory enforcement? _____

5. How many full-time staff members does your office employ for regulatory enforcement?

6. How many part-time staff members does your office employ for regulatory enforcement?

7. Approximately how many full-time hours per week are devoted to regulatory enforcement? _____

8. What is the most important factor that dictates the number of staff members you employ for regulatory enforcement?

_____ Budgetary

_____ Non-compliance of regulations

_____ Number of regulations to enforce

_____ Other: Please Specify _____

9. Do you have staff members that specialize in enforcing particular regulations?

_____ Yes _____ No

10. Do you have staff members that specialize in enforcing regulations for a particular program and/or commodity? _____ Yes _____ No

11. Excluding regulations pertaining to weights and measures and given your current resources, do you believe that you have enough resources to enforce all regulations your office is mandated to enforce? _____ Yes _____ No

12. When a regulation is passed and you are mandated to enforce it, is there always an augmentation to your budget to enforce the new regulation? _____ Yes _____ No

13. Do you have an educational outreach related to regulations? _____ Yes _____ No

14. When a new regulation is going to be enforced by your office, which statement best describes your educational outreach for this new regulation?

_____ Our office always offers educational outreach

_____ Our office usually offers educational outreach

_____ Our office never offers educational outreach

15. When you must inspect a producers operation, how are these inspections usually generated? (Please choose only one.)

- Random
- Targeted area
- Targeted commodity
- Mandated by a regulation
- Complaint by the public
- Other: Please specify _____
- There is no usual cause for an inspection

16. Over the past five years, do you believe regulation compliance for the regulations you must enforce has: Increased Remained Constant Decreased

17. In the past five years, has the rate of change of new regulations that you must enforce increased at a(n):

- Increasing rate (E.g., More regulations added this year in comparison to last year)
- Constant rate (E.g., Same amount of regulations added this year in comparison to last year)
- Decreasing rate (E.g., Less regulations added this year in comparison to last year)
- There has not been an increase of regulations over the last five years.

18. Do you believe that urban sprawl is causing regulation compliance complaints to increase? Yes No

19. Of the commodities that you must enforce regulations for, do you find any commodity group or groups having more difficulty with compliance in comparison to other commodity groups? Yes No

20. Out of the list given below, please mark up to five items with an **X** related to aspects of the regulatory environment you believe are giving producers the most difficulties with regulation compliance?

- _____ Number of regulations
- _____ Ambiguity of the regulation
- _____ Feasibility of the regulations
- _____ Cost of the regulations
- _____ Complexity of regulations
- _____ Paperwork
- _____ Other regulatory agencies
- _____ Agency/regulators with personal agenda
- _____ Conflicting enforcement between regulatory agencies
- _____ Answering to multiple regulatory agencies
- _____ Number of regulatory agencies
- _____ Worker safety regulations
- _____ Drift laws and regulations
- _____ Low and no-growth policies
- _____ Regulations on land use
- _____ Environmental lawsuits
- _____ Agriculture-urban interface
- _____ Other: Please specify _____
- _____ No Opinion

21. Are there any issues of concern with the regulatory environment as it pertains to agriculture in California that you would like to mention?

Thank you for your participation.

Appendix C

Chart 1: California State and County Government Agencies Affecting Agricultural Producers

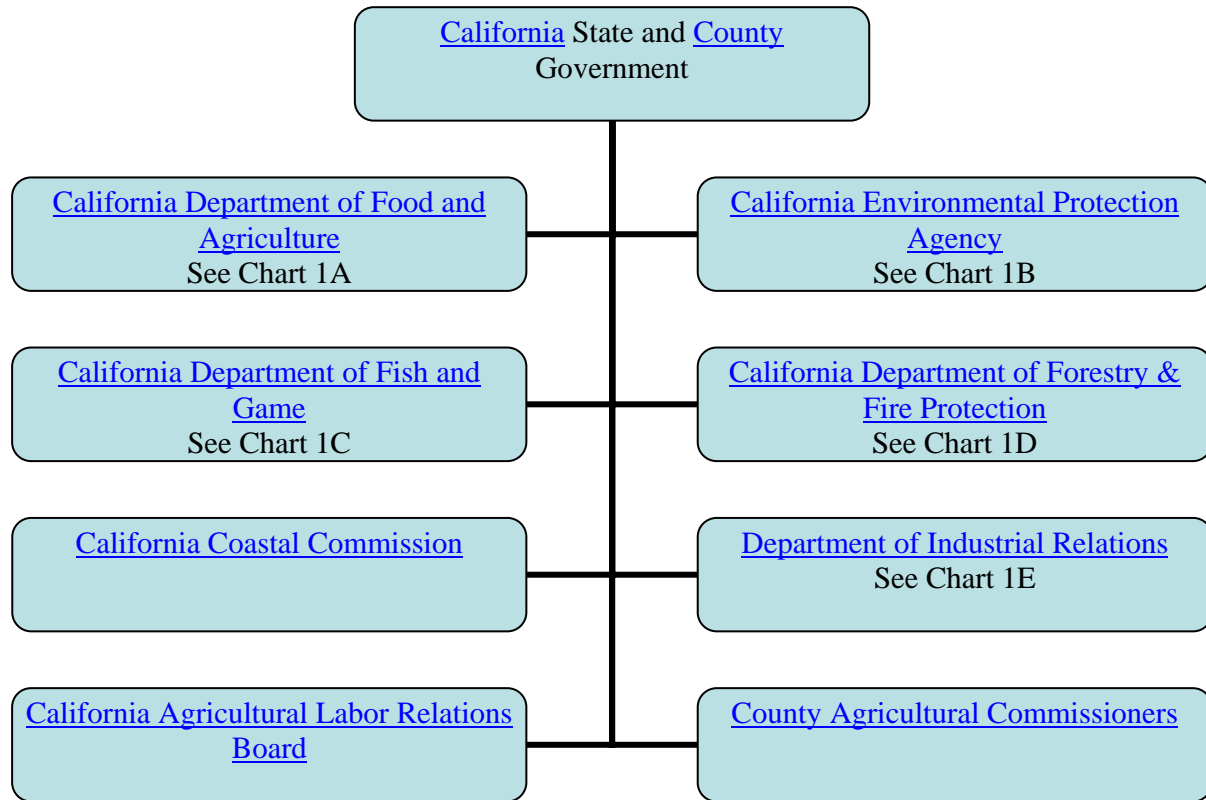


Chart 1A: Structural Relationship of the California Department of Food and Agriculture

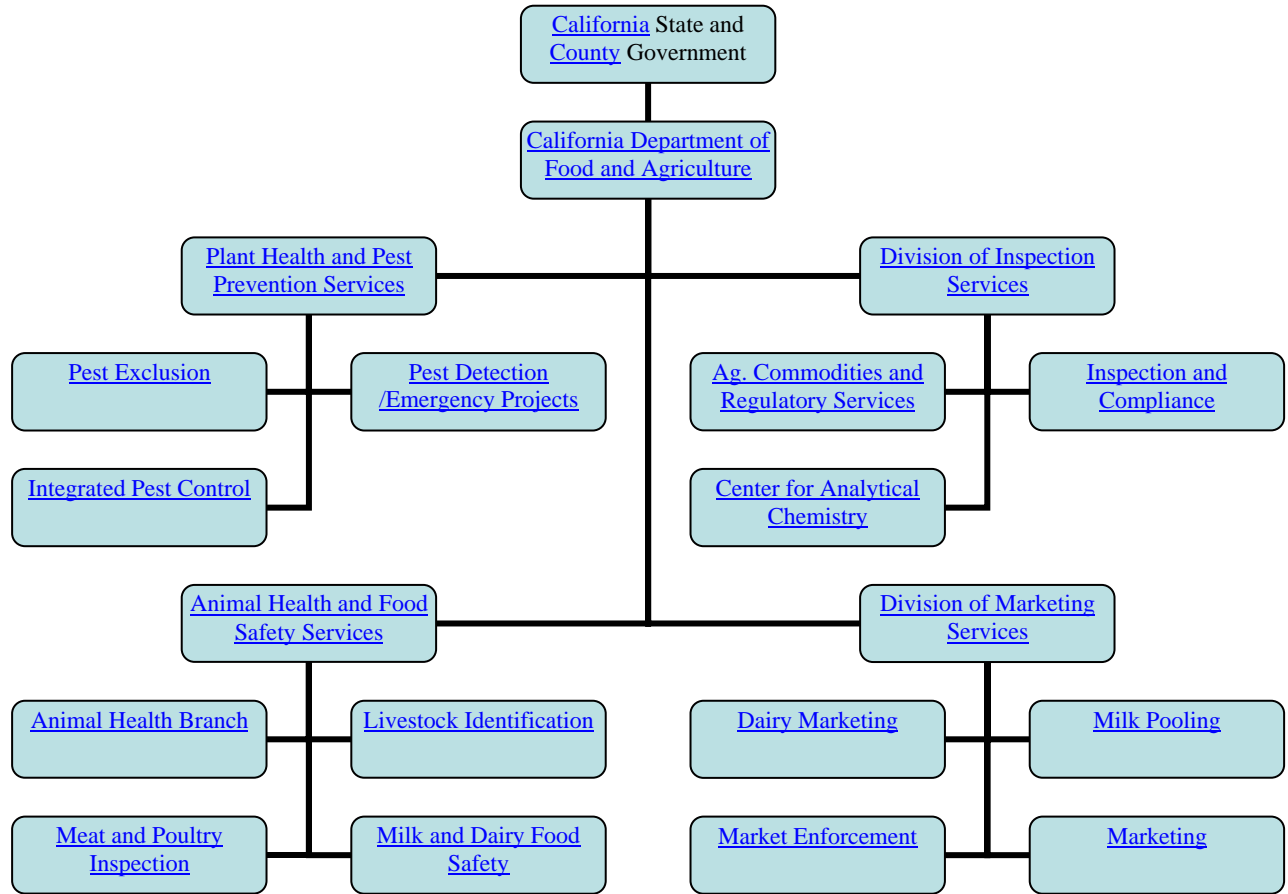


Chart 1B: Structural Relationship of the California Environmental Protection Agency

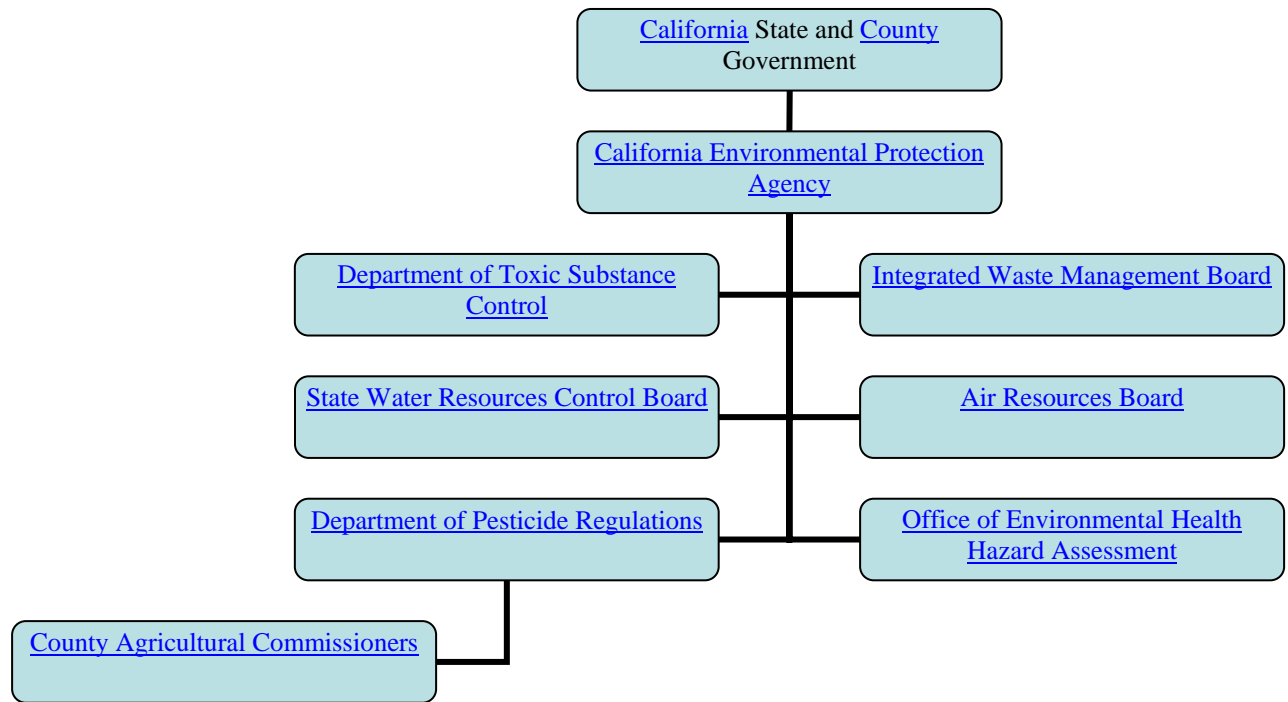


Chart 1C: Structural Relationship of the California Department of Fish and Game

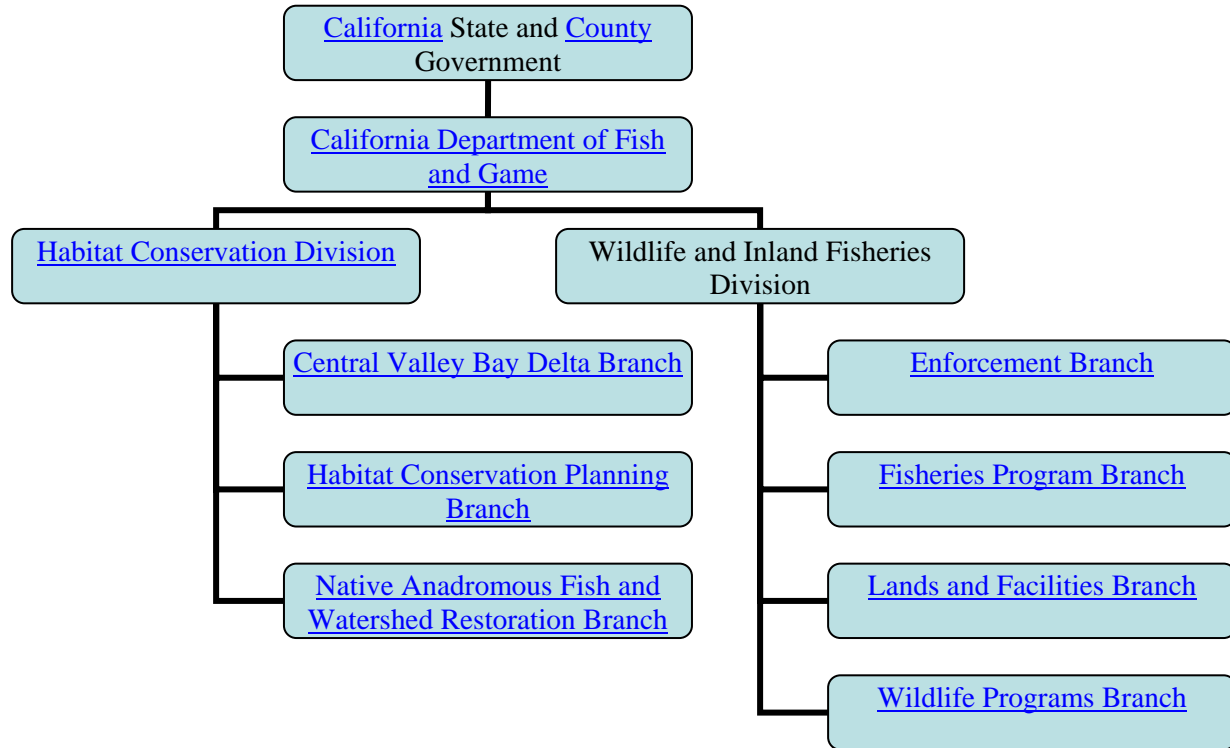


Chart 1D: Structural Relationship of the California Department of Forestry & Fire Protection

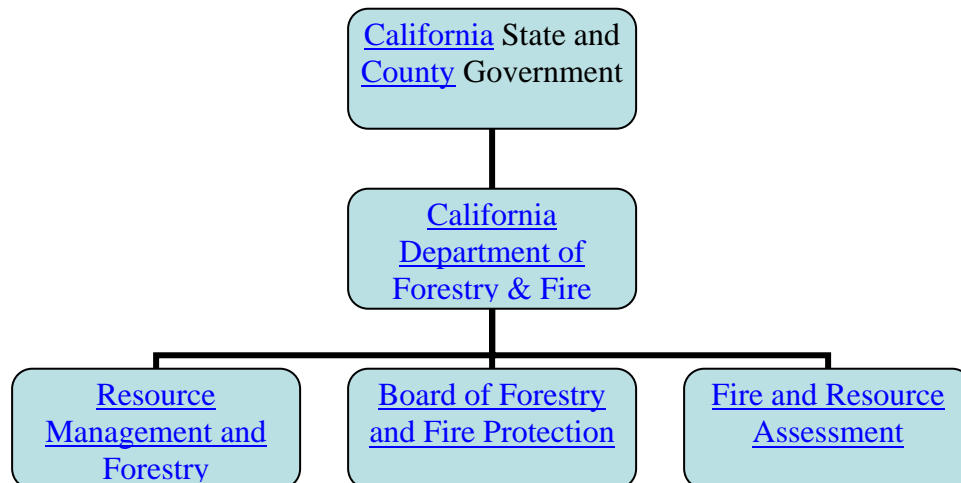


Chart 1E: Structural Relationship of the Department of Industrial Relations

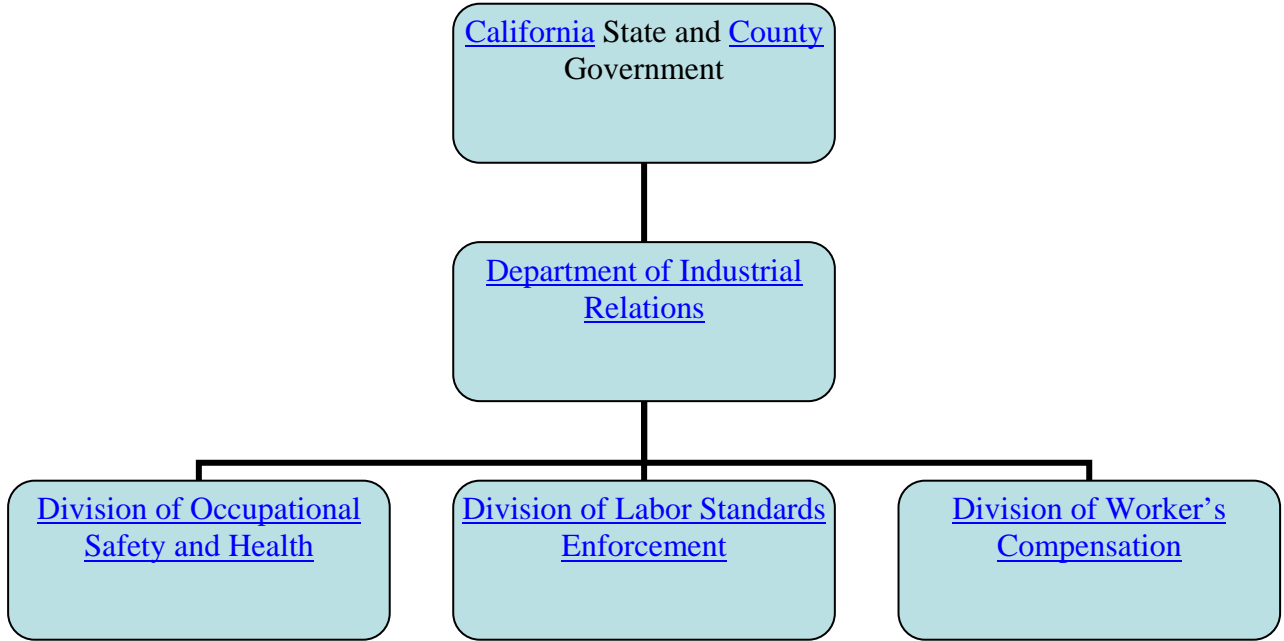


Chart 2: Federal Governmental Agencies Affecting Agricultural Producers

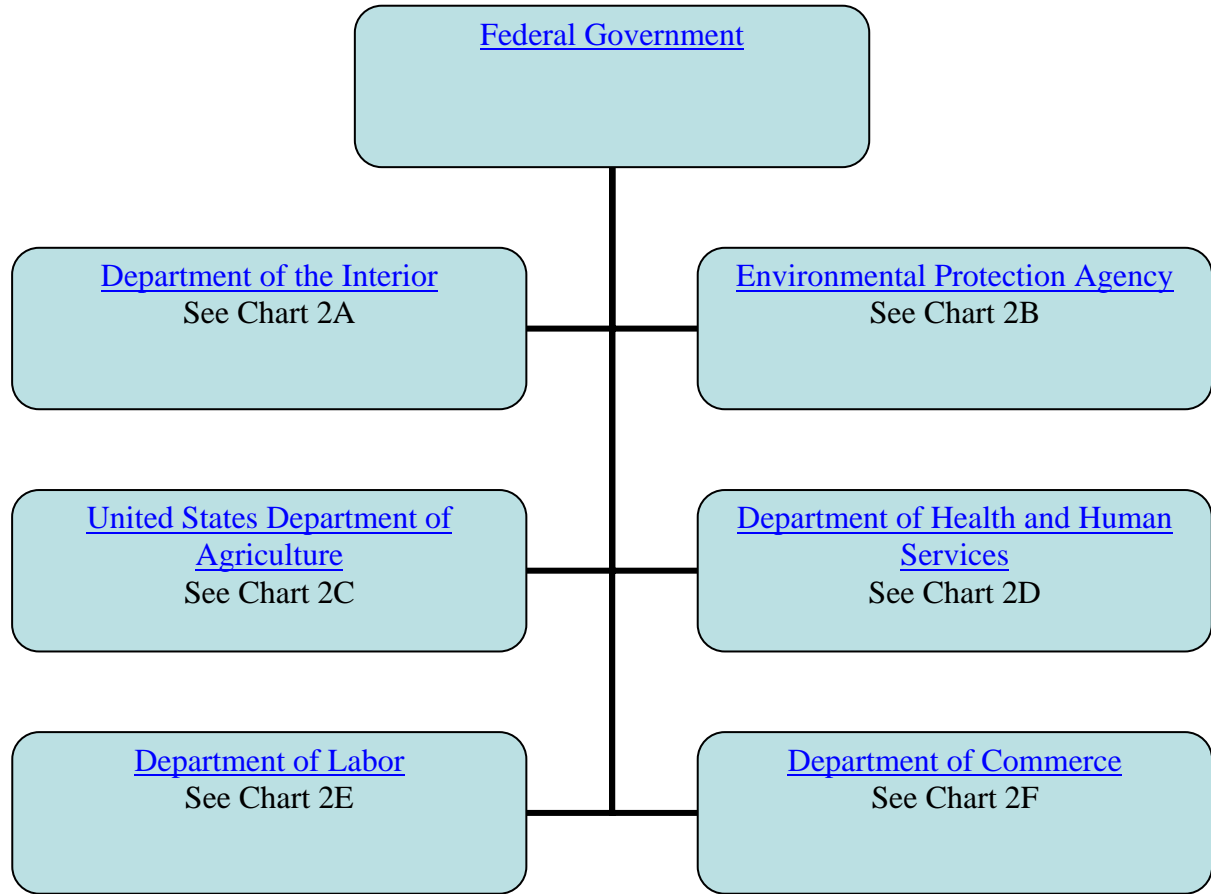


Chart 2A: Structural Relationship of the Department of Interior

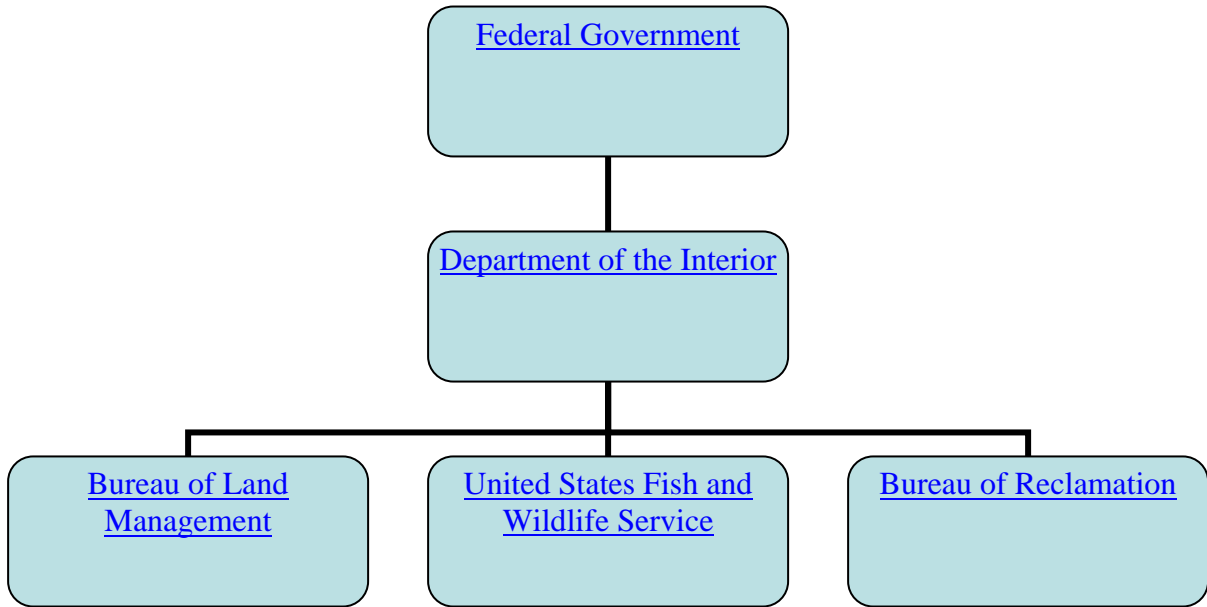


Chart 2B: Structural Relationship of the Environmental Protection Agency

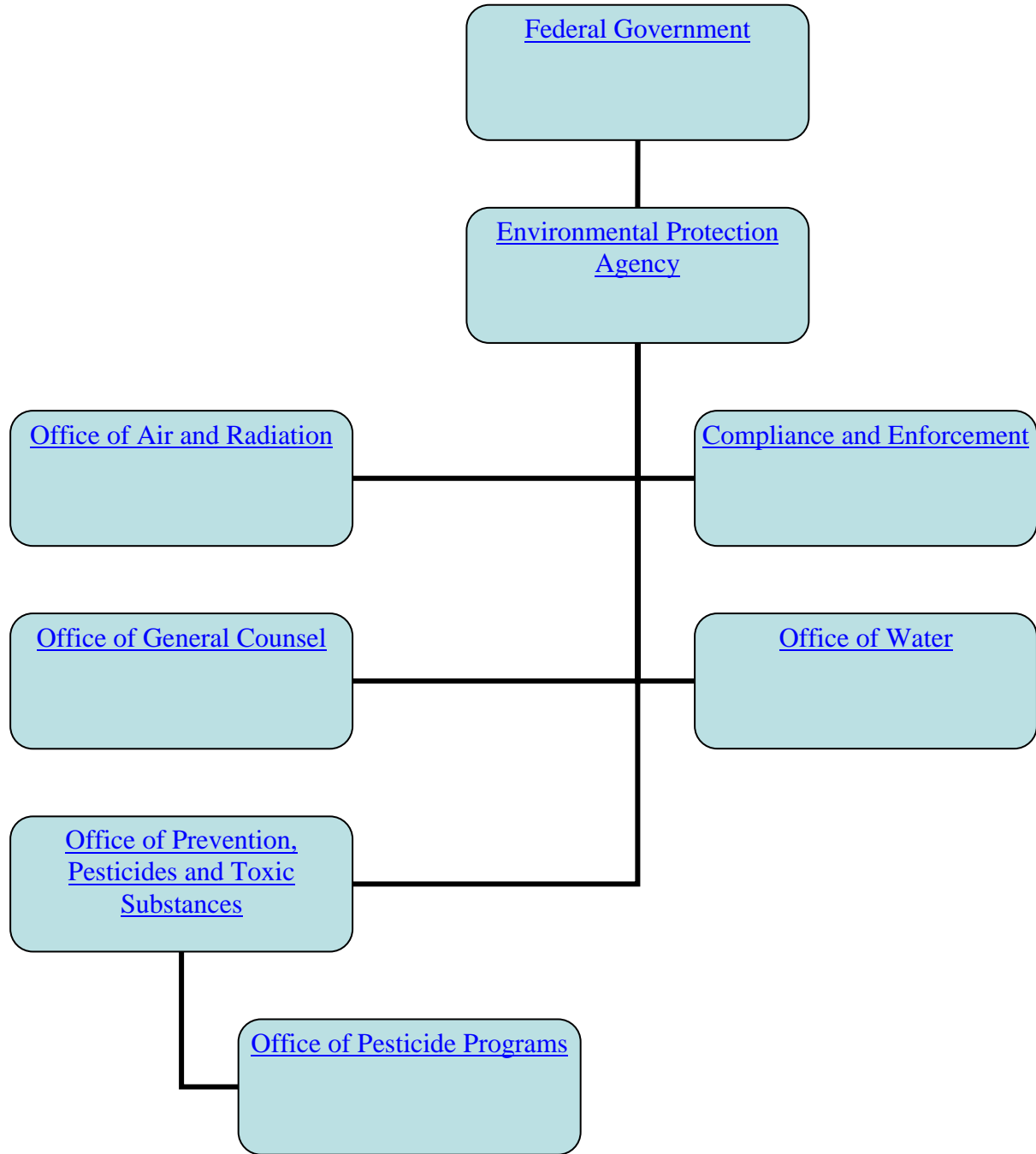


Chart 2C: Structural Relationship of the United States Department of Agriculture

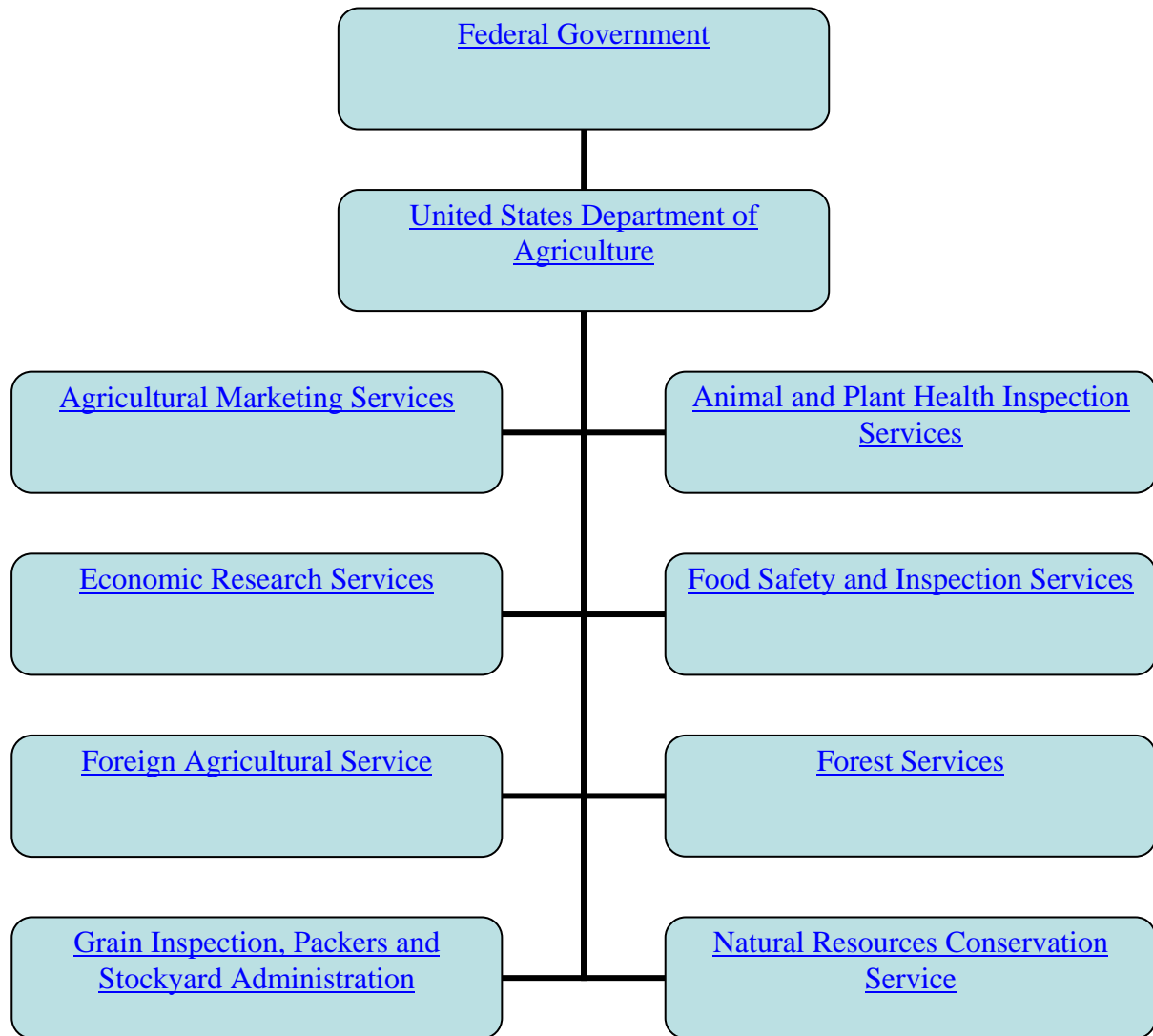


Chart 2D: Structural Relationship of the Department of Health and Human Services

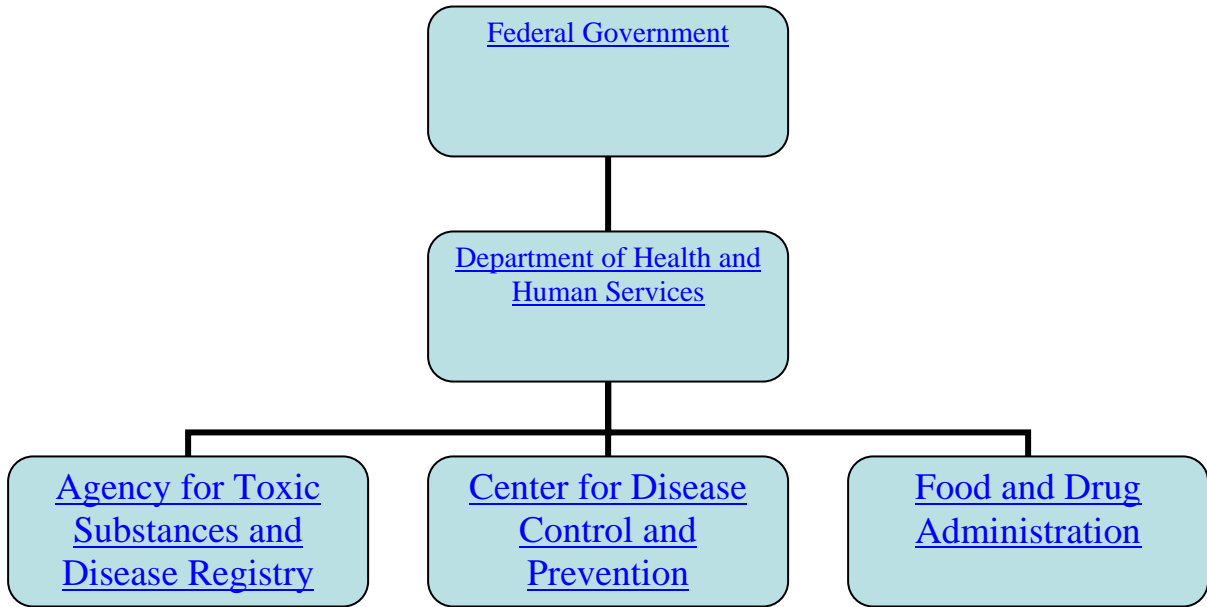


Chart 2E: Structural Relationship of the Department of Labor

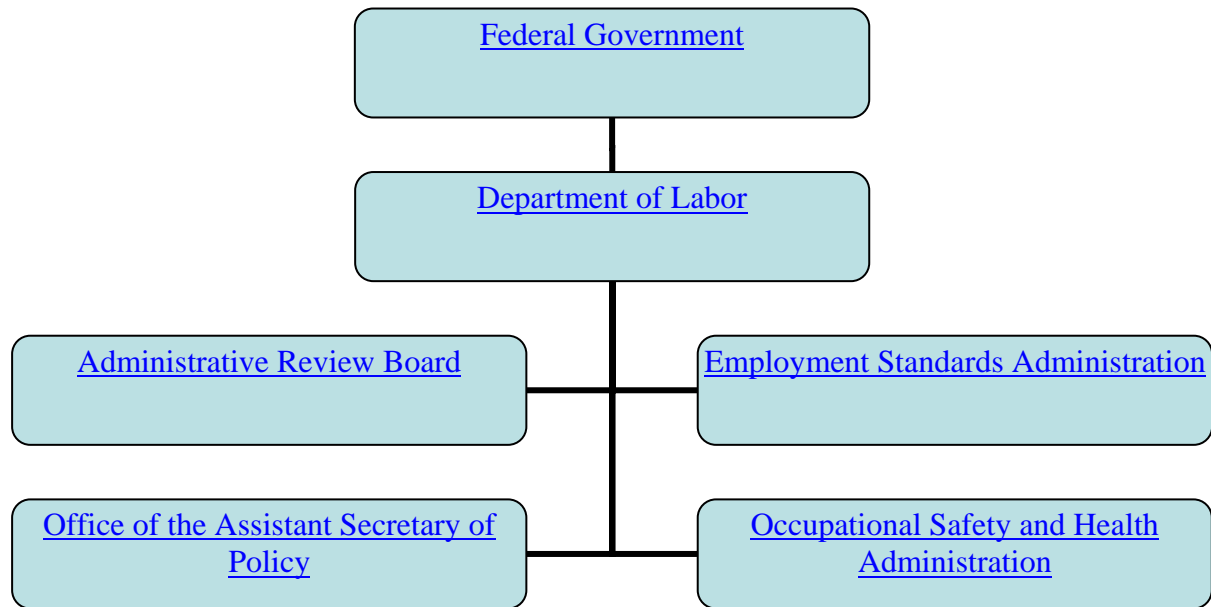


Chart 2F: Structural Relationship of the Department of Commerce

