

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Division 4. Plant Industry
Chapter 1. Chemistry
Subchapter 1. Fertilizing Materials
(Notice published February 21, 2014)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to adopt Title 3, sections 2326, 2326.1, 2326.2, and 2326.3 of the California Code of Regulations (CCR).

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted via facsimile (FAX) at (916) 900-5349 or by e-mail to Amadou.Ba@cdfa.ca.gov. The written comment period closes at **5:00 p.m. on April 7, 2014**. The Department will only consider comments received at the Department by that time. Submit comments to:

Amadou Ba, Environmental Program Manager I
Feed, Fertilizer, and Livestock Drug Services Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5022; Fax: (916) 900-5349

AUTHORITY AND REFERENCE

Notice is hereby given that the California Department of Food and Agriculture, pursuant to the authority vested by sections 407, 14501, 14502, 14611, and 14613, of the Food and Agricultural Code (FAC), and to implement, interpret, or make specific sections 14501, 14517, 14533, 14551, 14611, and 14613, of the FAC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Food and Agriculture's (CDFA's) Fertilizing Materials Inspection Program (FMIP) is statutorily tasked with licensing and label registration, tonnage reports, field inspections, and administration of the Fertilizer Research and Education Program (FREP). The Fertilizing Materials Inspection Program is responsible

for reviewing and registering product labels, promoting agronomically sound and environmentally safe use of fertilizing materials through FREP, and ensuring fertilizing materials are safe, effective, and meet the nutrients guaranteed by the manufacturer. Producers of specialty fertilizer, packaged agricultural mineral, auxiliary soil and plant substance, organic input material, and packaged soil amendment are statutorily mandated to register with the FMIP.

These proposed regulations are intended to set the mill assessment rate for the Fertilizing Materials Inspection Program (FMIP) and for the Fertilizer Research and Education Program (FREP). The California Code of Regulations, Article 6. Inspection Fees, Section 14611(a) mandates that a licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales. Section 14611(b) states an additional assessment may be imposed by the secretary not to exceed one mill (\$0.001) per dollar of sales for all sales of fertilizing materials, to provide funding for research and education regarding the use and handling of fertilizing materials.

Anticipated Benefits of the Proposed Action: The Department anticipates by increasing the mill assessment rate, operational costs for funding the activities of research and education, including nitrate remediation projects, will assist the Department in focusing on consumers receiving safe, effective fertilizing materials, and meeting the quality and quantity guaranteed by the manufacturer; thus, ensuring the protection of public health and safety in the agricultural community.

There is no existing, comparable federal regulation or statute regulating fertilizing materials. The Department is the only agency which can implement regulations pertaining to fertilizing materials. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative person or business: \$1,144 yearly.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has initially determined that the proposed regulatory action would cost each licensee who pays a mill assessment approximately an additional \$1,144 yearly.

There are 2,312 fertilizer licensees who would be impacted; hence the impact to the entire fertilizer industry impact will be approximately \$2,644,196.

These regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within the State of California; or
- (3) Affect the expansion of businesses currently doing business within the State of California.
- (4) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The proposed regulatory adoptions will benefit the regulated industry by funding research projects related to nitrate loading in groundwater. For additional information on benefits, please see Anticipated Benefits under the Informative Digest/Policy Statement Overview.

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action *will* directly affect businesses statewide, including small businesses, the Department concludes that the adverse economic impact, including the ability of California businesses to compete with business in other states, *will not* be significant.

Significant effect on housing costs: None.

CONSIDERATIONS OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the actions is proposed. It 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.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or, if requested, at a scheduled hearing.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Amadou Ba, Environmental Program Manager I
Feed, Fertilizer, and Livestock Drug Services Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5022; Fax: (916) 900-5349

The backup contact person for these inquiries is:

Maria Tenorio
Feed, Fertilizer, and Livestock Drug Services Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5022; Fax: (916) 900-5349

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Maria Tenorio at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons and Fertilizer Inspection Advisory Board Meeting Minutes dated October 11, 2013. Copies may be obtained by contacting Maria Tenorio at 2800 Gateway Oaks Drive, Sacramento, CA 95833 or at the phone number provided 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 regulations as revised. Please send requests for copies of any modified regulations to the attention of Maria Tenorio at the address provided. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Maria Tenorio at the address provided.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: <http://www.cdfa.ca.gov/is/regulations.html>.