

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

CALIFORNIA CODE OF REGULATIONS  
TITLE 3. FOOD AND AGRICULTURE  
DIVISION 4. PLANT INDUSTRY  
CHAPTER 1. CHEMISTRY  
SUBCHAPTER 1. FERTILIZING MATERIALS  
ARTICLE 1. STANDARDS AND LABELING

**NOTICE OF A 15-DAY COMMENT PERIOD**

**NOTICE IS HEREBY GIVEN** that pursuant to the requirements of Government Code subsection 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Food and Agriculture (Department), is providing notice of changes made to the action described in the Informative Digest published in the California Regulatory Notice Register on June 25, 2021 [Notice File No. Z2021-0615-01, Register 2021, No. 26-Z] relating to biotics and biochar.

The Department is proposing to modify the originally proposed text for Sections 2300.1, 2304, 2306, and 2322 of Title 3, Division 4, Chapter 1, Subchapter 1, Article 1, of the CCR. Only those portions of the originally proposed text that are indicated by a double underline or ~~double strikethrough~~ have been modified. The remainder of the text remains the same as the originally proposed text.

The 45-day public comment period for the originally proposed text for this proposal began June 25, 2021 and ended on August 9, 2021. The Department is now publishing a notice of a 15-day public comment period on the modified proposed text. The purpose is to allow interested persons time to review the modifications to the proposed text and submit written comments. The 15-day public comment period begins **October 8, 2021 and ends on October 23, 2021**.

**Please note:** Any written comments are to be restricted to the recent modifications as indicated in double underline or ~~double strikethrough~~ within the enclosed language. The Department is not required to respond to comments received in response to this notice on other aspects of the proposed regulation.

**AUTHORITY AND REFERENCE**

Notice is hereby given that the Department, pursuant to the authority vested by sections 407, 14502, 14601, and 14631 of the Food and Agricultural Code (FAC), proposes to make changes to Title 3, Division 4, Chapter 1 of the CCR to implement, interpret, or make specific FAC Sections 14502, 14533, 14552, 14631, 14641, 14645, and 14646.

**SECTIONS AFFECTED**

CCR Title 3, Division 4, Chapter 1, Subchapter 1, Articles 1, Sections 2300.1, 2304, 2306, and 2322.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments regarding the newly proposed changes to the Department by mail or email. The written comment period will close on **October 23, 2021**. The Department will only consider comments received by that date.

Submit comments to:

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California Department of Food and Agriculture  
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch  
P.O. Box 942872  
Sacramento, CA 94271-2872  
(916) 900-5022  
FAX: (916) 900-5349  
[Maria.Tenorio@cdfa.ca.gov](mailto:Maria.Tenorio@cdfa.ca.gov)

All written comments received by **October 23, 2021** which pertain to the newly indicated changes will be reviewed and responded to by the Department in the Final Statement of Reasons as part of the compilation of the rulemaking file. Please limit your comments to the newly proposed modifications to the text.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of materials regarding this proposal can be accessed through the Department's website: <https://www.cdfa.ca.gov/is/Regulations.html>.

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**MODIFIED REGULATION TEXT**

Original proposed text to be adopted is displayed in underline type.  
Original proposed text to be deleted is displayed in ~~strikethrough~~ type.  
Modified proposed text to be adopted is displayed in double underline.  
Modified proposed text to be deleted is displayed in ~~double strikethrough~~ type.

**ARTICLE 1. STANDARDS AND LABELING**

**§ 2300.1. Definitions**

...

(l) The term “tackifiers” means a substance which is applied to fertilizing materials ~~mulches, soils, and/or seeds~~ to promote adhesion.

Note: Authority cited: Sections 407 and 14502, Food and Agricultural Code.  
Reference: Sections 14601 and 14631, Food and Agricultural Code; and Section 6254.7, Government Code.

**§ 2304. Biotics.**

All fertilizing materials for which claims are made relating to organisms, enzymes or organism by-products are subject to the registration requirement of Section 14601 of the Food and Agricultural Code.

(a) In addition to the information required by Section 14601 of the Food and Agricultural Code, the label of each product which contains organisms, enzymes, ~~and~~ other ~~biologically active~~ by-products of organisms for which claims are made shall state:

(a) (1) Species name of each Species microorganism, and name of each enzyme, or organism by-product, if claimed, and strains as part of the statement of composition and name of each by-product, if claimed.

(b2)(4A) The number of viable units of each microorganism ~~percentage or number of viable units of each microorganisms~~ per cubic centimeter, milliliter, or per gram for dry material.

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~~(2B) The concentration in percentage number of activity units of each enzyme or other organism by-products claimed per cubic centimeter, milliliter, or gram.~~

~~(C) The concentration in percentage of each organism by-product.~~

~~(e3) The expiration date for use.~~

~~(d4) Storage conditions.~~

(b) The following supporting documentation is required for verifying label claims:

(1) Written description of A generally accepted laboratory method(s) for both identifying and quantifying assaying the viable and attenuated units, enzyme activities, or organism and the by-products claimed.; ~~and~~

(2) A copy of the laboratory/certificate of analysis or alternate methods supporting proof of label claims, listed in subsection (a)(1) and (a)(2). The analysis results shall be no more than five (5) years old at the time of registration/renewal approval. must be submitted with the registration application.

(c) When used for the purpose intended, the product must not be pathogenic to plants or pathogenic to animals which may consume the treated plant.

(d) Biotic products claims are acceptable based on efficacy data.

Note: Authority cited: Sections 407, 14502, 14601 and 14631, Food and Agricultural Code. Reference: Sections 14594, 14601 and 14631, Food and Agricultural Code.

**§ 2306. ~~Fish Emulsion. Biochar.~~**

~~When a product is labeled as fish emulsion, it shall contain a minimum of 40 percent total solids.~~

a) When a guarantee of biochar appears on the label in the statement of composition or in an ingredient list, the feedstock shall be designated by prefixing the term biochar with the feedstock from which it was produced. When more than one feedstock is used, all feedstocks greater than 10% shall be listed in order of decreasing amounts present.

b) A laboratory analysis for total carbon is required for registration to verify that the ingredient meets the definition of biochar as stated in §14513.5 of the FAC. The laboratory analysis results shall be no more than five (5) years old at the time of registration/renewal approval.

Note: Authority cited: Sections 407, 14502, 14601, and 14631, Food and Agricultural Code.

Reference: Sections ~~14502~~, 14513.5, and 14631, Food and Agricultural Code.

**§ 2308. Packaged Soil Amendments.**

...

(e) Soil amendments may contain wetting agents and/or tackifiers.

- (1) The claim “wetting agent added” and/or “tackifier added” can be ~~included in the list of ingredients in lieu of~~ made without guaranteeing the specific wetting agent/tackifier or the percentage of such, but the chemical name of the wetting agent and/or tackifier must be submitted at the time of registration along with the analytical method.

...

Note: Authority cited: Sections 407, 14502, 14601 and 14631, Food and Agricultural Code. Reference: Sections 14601 and 14631, Food and Agricultural Code.

**§ 2322. Administrative Penalty Guidelines.**

Section Code	Description of Violation	Min.	Mod.	Ser.	Penalty
<del>3 CCR § 2306</del> <u>FAC 14534</u> Fish Emulsion	When a product is labeled as fish emulsion, it shall contain a minimum of 40 percent total solids.	X			<p>First violation shall receive a notice of warning / notice of violation with 30 days to comply. For each subsequent violation, the violations matrix for FAC § 14681(a) and/or (c) applies as follows: \$1,000 for the second violation. \$2,500 for the third violation. \$5,000 for each subsequent violation. For violations that arise from fraud, willful misconduct, gross negligence, or are a threat to public safety, the secretary shall assess a penalty of \$5,000 for the initial or any subsequent violation.</p> <p>Sources: FAC §§ 14533, 14534, 14540, 14542, 14651.5, 14681            3 CCR §§ 2322(a)(3), 2322(a)(2), 2322(a)(1)</p>

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Section Code	Description of Violation	Min.	Mod.	Ser.	Penalty
3 CCR § 2304 Biotics	<p>The label of each product which contains organisms, enzymes, and or other <del>biologically active</del> by-products of organisms for which claims are made shall state:</p> <p><del>(a)</del>(1) Species name of each <u>microorganism, and name of each enzyme, or organism by-product, if claimed, species and strains</u> as part of the statement of composition <del>and name of each by product, if claimed.</del></p> <p><del>(b)</del>(1)(2)(A) The <u>number of viable units of each microorganism percentage or number of viable units of microorganisms</u> per cubic centimeter, <u>milliliter</u>, or <del>per</del> gram for <del>dry material.</del></p> <p><del>(2)</del>(B) The <u>concentration in percentage number of activity units of each enzymes enzyme</u> per <u>cubic centimeter, milliliter, or gram</u> or other <del>organism by-products</del> <del>elaimed.</del></p> <p><u>(C) The concentration in percentage of each organism by-product.</u></p> <p><del>(c)</del>(3) The expiration date for use.</p> <p><del>(d)</del>(4) Storage conditions.</p>	X			<p>First violation shall receive a notice of warning / notice of violation with 30 days to comply. For each subsequent violation, the violations matrix for FAC § 14681(a) and/or (c) applies as follows: \$1,000 for the second violation. \$2,500 for the third violation. \$5,000 for each subsequent violation. For violations that arise from fraud, willful misconduct, gross negligence, or are a threat to public safety, the secretary shall assess a penalty of \$5,000 for the initial or any subsequent violation.</p> <p>Sources: FAC §§ 14514, 14533, 14540, 14542, 14651.5, 14681        3 CCR §§ 2322(a)(3), 2322(a)(2), 2322(a)(1)</p>

Modified Regulation Text  
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 3 CCR §2300.1 – 2322

Section Code	Description of Violation	Min.	Mod.	Ser.	Penalty
3 CCR § 2306 <del>Fish Emulsion</del> <u>Biochar</u>	<p><u>a) When a product is labeled as fish emulsion, it shall contain a minimum of 40 percent total solids. <del>guarantee of biochar</del> appears on the label in the statement of composition or in an ingredient list, the feedstock shall be designated by prefixing the term biochar with the feedstock from which it was produced. When more than one feedstock is used, all feedstocks greater than 10% shall be listed in order of decreasing amounts present.</u></p> <p><u>b) A laboratory analysis for total carbon is required for registration to verify that the ingredient meets the definition of biochar as stated in §14513.5 of the FAC. The laboratory analysis results shall be no more than five (5) years old at the time of registration/renewal approval.</u></p>	X			<p>First violation shall receive a notice of warning / notice of violation with 30 days to comply. For each subsequent violation, the violations matrix for FAC § 14681(a) and/or (c) applies as follows: \$1,000 for the second violation. \$2,500 for the third violation. \$5,000 for each subsequent violation. For violations that arise from fraud, willful misconduct, gross negligence, or are a threat to public safety, the secretary shall assess a penalty of \$5,000 for the initial or any subsequent violation.</p> <p>Sources: FAC §§ 14520, 14513.5, 14533, <del>14534</del>, 14540, 14542, 14651.5, 14681            3 CCR §§ 2322(a)(3), 2322(a)(2), 2322(a)(1)</p>