

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
ARTICLE 4. REGISTRATION
ARTICLE 6. ADMINISTRATIVE PENALTIES
(Notice published August 18, 2023)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to adopt or make changes to the California Code of Regulations (CCR), Title 3, Division 4, Chapter 1, Subchapter 1, Articles 1, 4, and 6, Sections 2300, 2300.1, 2302, 2303, 2311, 2320.1, 2320.2, 2322.2, and 2322.3.

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 comment 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 by mail, fax, or email. The written comment period closes on October 3rd, 2023. The Department will only consider comments received by that time.

Submit comments to:

Brittnie Williams, Associate Governmental Program Analyst
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
brittnie.williams@cdfa.ca.gov

Following the written comment period or public hearing, if one is requested, the Department, at its own motion or at the request of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

Notice is hereby given that the California Department of Food and Agriculture, pursuant to the authority vested by sections 407, 14502, 14601, 14604 14631, 14643, 14651, 14651.5, and 14682 of the Food and Agricultural Code (FAC) and Section 11400.20 of the Government Code, proposes to make changes to Title 3, Division 4, Chapter 1 of the CCR to implement, interpret, or make specific FAC Sections 14501, 14502, 14550.5, 14601, 14631, 14641, 14642, 14643, 14653, 14655, 14681, and 14682, as well as Sections 6254.7, 11501, 11502, 11503, 11425.50, and 11445.10 of the Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's Fertilizing Materials Inspection Program (FMIP) is statutorily tasked with licensing, product label registration, and field inspection of fertilizing materials in the State of California. The FMIP is responsible for reviewing and registering product labels, and ensuring fertilizing materials are safe, effective, and meet the nutrients guaranteed by the manufacturer. Producers of specialty fertilizers, packaged agricultural minerals, auxiliary soil and plant substances, packaged soil amendments, and organic input materials are statutorily mandated to register fertilizing materials with the FMIP.

These rulemaking actions provide greater transparency and clarity for fertilizing materials labeling, enhances consumer protections, better explains product registration requirements, and provides additional flexibility with administrative hearings. It will also provide the FMIP with improved mechanisms for firms that failed to resolve administrative penalties.

The proposed amendment to Section 2300(c) improves transparency by publishing laboratory analysis methods. It also creates greater flexibility by recognizing additional validated laboratory methods in addition to those already utilized by the Association of Official Analytical Chemists (AOAC).

The proposed amendment to Section 2300(g)(1) provides additional flexibility to fertilizing material manufacturers and product guarantors by permitting a two-color "Registered Organic Input Material" logo on product labels, in addition to the existing four-color and one-color logo options.

The proposed adoption of Section 2300.1(m) provides clarity and consensus by adopting a universal definition of "protein hydrolysate," a common ingredient in liquid fertilizing materials. This definition has been officially recognized within the 2023 Official Publication of the Association of American Plant Food Control Officials, which most states and Canada utilize to create uniform fertilizer regulations.

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The proposed amendment within Sections 2302(a)(1) and (2) provides clarity for non-nutritive metals by demonstrating that the standards are based upon the value provided on a label within a product's guaranteed analysis for iron, manganese, zinc, and available phosphate.

The proposed amendment for Section 2303(d)(1) better explains that organic input materials are exempt from bulk commercial fertilizer and bulk agricultural mineral label guarantor requirements. Organic input materials require product registration, while bulk commercial fertilizers and bulk agricultural minerals do not.

The proposed adoption of Sections 2303(x) and (y) provide clarity and consensus by recognizing when amino acid or amino acid complexing label claims may be applied. These subsections also recognize the adoption of the "protein hydrolysate" definition within Section 2300.1(m) to ensure uniformity and consistency that certain amino acid claims can be made when protein hydrolysate is used as an ingredient.

The proposed amendment to Section 2311(b)(1) provides additional clarity that water insoluble nitrogen products are not limited to the existing examples provided within the section.

The proposed adoption of Section 2320.1(d) provides clear specificity as to what types of revisions on registered labels require a registration update request and what elements are required for re-review by FMIP.

The proposed amendments and adoptions within Section 2320.2(b) eliminate the need to identify a specific, outdated version of a physical, hard copy Organic Input Material Fertilizing Materials Registration Application (513-026 Rev.07/13) and replaces it by more clearly identifying all of the registration application elements that FMIP requires. Since fertilizer firms submit registration application information through either an online database or a physical form, the amendments to this section transparently communicate all requirements regardless of the format that the information is submitted. None of the requested information or documentation in the proposed text is novel as it represents fields within the existing physical application and online database application.

The proposed adoptions and amendments to Sections 2322.2(c) is to provide flexibility by having the CDFA legal office determine the location of an informal hearing and to provide the additional option to hold hearings virtually through Internet video conferencing.

The proposed adoption of Section 2322.3(g)(1) provides clarification as to when administrative penalty payments would be due after a written hearing decision is rendered in favor of the Department.

Anticipated Benefits of the Proposed Regulations:

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The Department anticipates the proposed regulatory changes will provide improved clarity and uniformity with fertilizing materials labeling requirements and fertilizing materials product registration, provide increased flexibility for administrative penalty hearings, and provides needed guidance on the failure to remit administrative penalties. Further, these changes will provide benefits to growers and consumers through greater transparency with fertilizer labeling, improved disclosures for the end user, and enhanced consumer protections. Through greater transparent labeling, enhanced consumer protections, and clarity of non-nutritive standards, these proposed regulatory changes may also positively affect the health and welfare of California residents, worker safety, and the state's environment.

Determination of Inconsistency/Incompatibility with Existing Regulations:

The Department evaluated the proposed regulations and made several determinations required by Government Code Section 11346.5(a)(3)(A) to 11346.5(a)(3)(D). The Department determined that there are no existing state laws or regulations related directly to the proposed action and the effect of the proposed action; the proposed regulations are not inconsistent or incompatible with existing state regulations.

PLAIN ENGLISH REQUIREMENT

The Department prepared the proposed regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2, subdivision (a)(1). The proposed regulations are written to be easily understood by the individuals that will use them.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate of 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.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has initially determined that the proposed regulatory action will not have an economic or fiscal impact to the fertilizer industry but will provide benefits to growers and consumers through greater transparency and clarity for fertilizing materials labeling. These proposed regulations will not:

- (1) Create or eliminate jobs within California
- (2) Create new businesses or eliminate existing businesses within the State of California
- (3) Affect the expansion of businesses currently doing business within the State of California

Anticipated Benefits:

The Department anticipates the proposed regulatory changes will provide improved clarity and uniformity with fertilizing materials labeling requirements and fertilizing materials product registration, provide increased flexibility for administrative penalty hearings, and provides needed guidance on the failure to remit administrative penalties. Further, these changes will provide benefits to growers and consumers through greater transparency with fertilizer labeling, improved disclosures for the end user, and enhanced consumer protections. Through greater transparent labeling, enhanced consumer protections, and clarity of non-nutritive standards, these proposed regulatory changes may also positively affect the health and welfare of California residents, worker safety, and the state's environment.

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations may affect small businesses, but will not have an economic impact on those businesses. The proposed actions do not involve any area that would increase fees or result in any increased costs to these businesses. Administrative penalties do not financially impact any firm compliant with the laws and regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative is considered or that has otherwise been

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identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

Written comments and inquiries concerning the substance of the proposed regulation should be directed to:

Nick Young, Environmental Program Manager I
California Department of Food and Agriculture
Fertilizing Materials Inspection Program
P.O. Box 942872
Sacramento, CA 94271-2872
nick.young@cdfa.ca.gov

Written comments and inquiries about the initial statement of reasons, proposed actions, or location of the rulemaking files; or a request for a public hearing should be directed to:

Brittnie Williams, Associate Governmental Program Analyst
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
brittnie.williams@cdfa.ca.gov

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

The Department will have the entire rulemaking file available for inspection throughout the rulemaking process. A copy of this Notice, the Proposed Regulation Text, and the Initial Statement of Reasons may be obtained by contacting Brittnie Williams at the information provided in the “Contact Persons” section.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, and Proposed Regulation Text in underline and strikethrough can be accessed through the Department’s website at <http://www.cdfa.ca.gov/is/regulations.html>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received during the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which differ, but 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 prior to amendment. Please send requests for copies of any modified regulations to the attention of Brittne Williams at the information provided in the “Contact Persons” section. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Brittne Williams at the information provided in the “Contact Persons” section.