

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 2. SAMPLES
ARTICLE 4. REGISTRATION
ARTICLE 6. ADMINISTRATIVE PENALTIES
(Notice published March 21, 2025)

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, 2, 4, and 6, Sections 2303, 2306, 2308, 2309, 2317.5, 2320, 2320.1, and 2322.

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 at 5:00 p.m. on May 6, 2025. The Department will only consider comments received by that time.

Submit comments to:

Brittnie Williams, Regulations Coordinator
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
P.O. Box 942872
Sacramento, CA 94271-2872
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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, 14501, 14502, 14601, 14604, 14631, 14645, 14647, 14651, 14651.5, 14651.7, and 14655 of the Food and Agricultural Code (FAC), and proposes to make changes to Title 3, Division 4, Chapter 1 of the CCR to implement, interpret, or make specific FAC Sections 14513, 14513.5, 14591, 14601, 14613, 14631, 14641, 14645, 14646, 14651.5, 14653, 14655, 14681, and 14682, as well as the Code of Civil Procedure Section 1094.5

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.

A majority of these rulemaking actions provide direction and clarity related to Senate Bill (SB) 1522, which was signed by the Governor and chaptered by the Secretary of State (Chapter 208, statutes of 2024) on August 26, 2024. The rulemaking provides greater uniformity and standardization of beneficial substance claims, simplifies and provides clarity for labeling of fertilizing materials that contain beneficial substance ingredients and biochar, clarifies heavy metals laboratory analysis requirements, provides more specificity and clarity for total phosphoric acid label claims, removes an error from a subsection on investigational allowances related to laboratory analysis, provides an amended fertilizing material product registration cycle, makes corresponding text changes within "Table A: Violations Matrix" for administrative penalties, and establishes a written appeals process for when the Department refuses to issue a license or registration due to unpaid penalties or fines.

The proposed revision to the current **Section 2303(b)** more accurately describes the measurement requirements after the adoption of beneficial substances as a product category and the elimination of auxiliary soil and plant substance and packaged soil amendment categories. Moreover, it eliminates the redundant mentions of the US and metric unit requirements within both subsection 2303(b)(1) and (2) and moves that text to a single subsection (2303(b)(3)).

The proposed revision to the current **Section 2303(e)** is to consistently represent beneficial substances as a fertilizing material that replaces both auxiliary soil and plant

substances and packaged soil amendments, per SB 1522 – specifically FAC Sections 14501 and 14533.

The proposed revision to the current **Section 2303(f)** is to consistently represent beneficial substances as a fertilizing material that replaces both auxiliary soil and plant substances and packaged soil amendments, per SB 1522 – specifically FAC Sections 14501 and 14533.

The proposed deletion to the current **Section 2303(g)** removes a heading (“NONPLANT FOOD INGREDIENT”) that is only formally recognized by California and a handful of other states. In the subsequent section, this heading is amended with “BENEFICIAL SUBSTANCE(S)” as a more universally recognized and accepted term throughout the United States. Deleting this section, rather than revising, removes the requirement of ensuring the heading is in all capital letters (i.e. in quotations). The heading possesses the same meaning whether in capital letters or lower-case letters, so a requirement of capital letters is unnecessary should a manufacturer elect to not use capital letters.

The proposed revisions to **Section 2303(h) [re-lettered as (g)]** provides a standardized labeling format that was unanimously affirmed through voting by state fertilizer control officials within the Association of American Plant Food Control Officials’ (AAPFCO) Uniform Beneficial Substances Bill. The Uniform Beneficial Substances Bill is not legislative or regulatory but serves as a model bill for states to emulate elements within their own laws and/or regulations for consistency and uniformity. These proposed revisions provide a much cleaner and simpler uniform label format that will be recognized across other states which will improve inter-state commerce for fertilizing materials.

The proposed revisions to **Section 2303(i) [re-lettered as (h)]** provides the ability for fertilizing material manufacturers and product guarantors to determine what primary plant nutrients (total nitrogen, available phosphoric acid, soluble potash) they want to claim within a label’s guaranteed analysis (e.g. “if claimed”). Presently, “if claimed” is the present standard for other components within the guaranteed analysis, including secondary and micronutrients, liming material, gypsum, and gypsum equivalent. At present time, even trace amounts of primary nutrients can be interpreted as required to be claimed. In those instances, a manufacturer or product guarantor may not have intentionally added primary nutrients within a product formula and it may be the result of unintended extraneous material. The addition of “if claimed” brings primary nutrients in line with other components of a guaranteed analysis thereby allowing a manufacturer or product guarantor whether or not to affirm a minimum guaranteed amount within a product.

The proposed revision to **Section 2303(j) [re-lettered as (i)]** is a re-lettering amendment only due to the proposed deletion of subsection (g). There are no proposed text changes to this subsection.

The proposed amendment to **Section 2303(k) [re-lettered as (j)]** provides a clearer distinction of labeling guidance for beneficial substances that are intended to condition soils through physical means (known previously as packaged soil amendments and organic input material bulk soil amendments). The amended text distinguishes labeling differences between beneficial substances that may benefit plants or soils through biological means (e.g. microorganisms) or other biochemical mechanisms versus beneficial substances that work solely through physical means (e.g. soil amendments). As a result, this section incorporates soil amendment-related text previously within FAC 14552 and CCR Section 2308(e).

The proposed amendment to **Section 2303(l) [re-lettered as (k)]** provides a standardized labeling format that was unanimously affirmed through voting by state fertilizer control officials within the AAPFCO Uniform Beneficial Substances Bill. The Uniform Beneficial Substances Bill is not legislative or regulatory but serves as a model bill for states to emulate elements within their own laws and/or regulations for consistency and uniformity. These proposed revisions provide a much cleaner and simpler uniform label format that will be recognized across other states which will improve inter-state commerce for fertilizing materials. This format differs from Section 2303(h) [re-lettered as (g)] in that it follows a nutrient guarantee area (aka “guaranteed analysis”) for applicable labels.

The proposed revisions to **Section 2303(m) [re-lettered as (l)]**, **Section 2303(n) [re-lettered as (m)]**, and **Section 2303(o) [re-lettered as (n)]**, **Section 2303(p) [re-lettered as (o)]**, **Section 2303(q) [re-lettered as (p)]**, are re-lettering amendments only due to the proposed deletion of subsection (g). There are no proposed text changes to these subsections.

The proposed revisions to **Section 2303(p) [re-lettered as (o)]** and **Section 2303(q) [re-lettered as (p)]**, simply correct the applicable label references from “section 2303(a) through (o)” to “section 2303(a) through (n)” due to the re-lettering.

The proposed revisions to **Section 2303(r) [re-lettered as (q)]**, and **Section 2303(s) [re-lettered as (r)]**, are re-lettering amendments only due to the proposed deletion of subsection (g). There are no proposed text changes to these subsections.

The proposed amendment to **Section 2303(t) [re-lettered as (s)]** better explains that submitted heavy metals analysis results should be no more than five years old whether for an initial product registration application or for a registration renewal application. The prior text implied that the heavy metals analysis information was required only for registration renewals. As a matter of environmental and public health, recent heavy metals analysis is important at the onset of registration, as well as for registration renewal periods.

The proposed revisions to **Section 2303(u) [re-lettered as (t)]**, **Section 2303(v) [re-lettered as (u)]**, and **Section 2303(w) [re-lettered as (v)]**, are re-lettering amendments only due to the proposed deletion of subsection (g). There are no proposed text changes to these subsections.

The proposed revision to **Section 2306** more clearly identifies that biochar is required to appear within a fertilizing material label's ingredient list. Biochar is a beneficial substance intended to condition soils through physical means, so an ingredient list is more appropriate than a "statement of composition". This is also consistent with the proposed amendment to **Section 2303(k) [re-lettered as (j)]**.

The proposed revisions to **Section 2308** emphasize that beneficial substances which condition soils through physical means are replacing packaged soil amendments as a fertilizing material category. **Subsection 2308(a)** is being deleted because Section 2303(b) sufficiently addresses measurement of dry and liquid fertilizing materials. **Subsection 2308(b) [re-lettered as (a)]** is being revised to account for subsection 2308(e) being deleted and subsequent re-lettering led to subsection 2308(f) no longer existing. **Subsection 2308(c) [re-lettered as (b)]** is revised to consistently represent beneficial substances as a fertilizing material that replaces packaged soil amendments, per SB 1522 – specifically FAC Sections 14501 and 14533, and this subsection is made clearer by specifying that this subsection relates to single-ingredient material. **Subsection 2308(d) [re-lettered as (c)]** is also revised to consistently represent beneficial substances as a fertilizing material that replaces packaged soil amendments, per SB 1522 – specifically FAC Sections 14501 and 14533. **Subsection 2308(e)** is deleted from this section and is more appropriately placed within Section 2303(k) [re-lettered as (j)](2). The proposed revisions to **subsection 2308(f) [re-lettered as (e)]** and **subsection 2308(g) [re-lettered as (e)]** are re-lettering amendments only due to the proposed deletion of subsections (a) and (e).

The proposed amendment to **Sections 2309(a), (a)(1), and (a)(1)(A)**, provide clarity for products containing phosphorous acid and merges three disclosure statements into one. Section 2309(a) simply capitalizes letters for label formatting consistency. Sections 2309(a)(1) and (a)(1)(A) merge three disclosure statements into one statement to ensure that the statements appear together on a label instead of being potentially separated on other areas of a label.

The proposed amendment to **Sections 2309(b)** provides additional clarity regarding label formatting for products that contain both phosphoric acid and phosphorous acid. The addition of "if greater than zero" reaffirms Section 2300(e) which communicates that guaranteed percentage claims on label formatting aren't required if a percentage is zero.

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The proposed amendment to **Section 2317.5(b)(2)(B)** amends an incorrect statement and formula that was accidentally omitted from revision in 2022 rulemaking (Notice File Z2022-0405-08). In 2022 rulemaking, the Department deleted a statement from Section 2317.5(b) that “The maximum allowance when calculated in accordance to the above (*investigational allowances*) shall be 1 unit (one percentage point).” At that time, the Department should have also deleted a similar statement and related formula from Section 2317.5(b)(2)(B) for consistency and accuracy.

The proposed revision to **Section 2320** is to consistently represent beneficial substances as a fertilizing material that replaces both auxiliary soil and plant substances and packaged soil amendments, per SB 1522 – specifically FAC Sections 14501, 14533 and 14601.

The proposed amendment to **Section 2320.1** provides clarity and direction for a new four-year product registration cycle established by SB 1522 – specifically FAC Sections 14601 and 14603.

The proposed revisions to **Section 2322(b), Table A: Violations Matrix** ensures that every section’s text changes within this rulemaking are also accurately communicated within the administrative penalty guidelines – specifically “Table A: Violations Matrix”.

The proposed addition of **Section 2322.4** interprets and implements the written appeals process stated within the new statute (FAC Section 14651.7(c)) if the Department refuses to issue a license, product registration, or both, due to a firm’s unpaid fines or administrative penalties.

Anticipated Benefits of the Proposed Regulations:

The proposed regulations are to interpret and implement statutes in the recently passed SB 1522. The proposed regulatory changes will provide label standardization and uniformity for beneficial substance label claims because the proposed verbiage and format has been unanimously approved by other state departments of agriculture through official voting of the AAPFCO Uniform Beneficial Substances Bill. It is critical to provide uniformity for the fertilizer industry, so fertilizer manufacturers can use one label that would be compliant across all states thereby saving time, money, and labor. The proposed regulations simplify the label format which will bring greater clarity to growers and consumers, as well as meeting an industry need for manufacturers to provide a compliant label that meets the requirements of all states. This rulemaking also provides guidance on heavy metals analysis, additional clarity on the labeling of phosphorus materials, and corrects an error regarding investigational allowances.

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:

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- (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
- (4) As stated above, updating labelling requirements will benefit the health and welfare of California residents, specifically, fertilizer manufacturers, growers, and consumers, at all stages from production to licensing and registration. Proper labelling would also affect worker safety and the state's environment in terms of more precise identification of fertilizer materials.

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 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

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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, Regulations Coordinator
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 Brittnie 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 FINAL STATEMENT OF REASONS

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

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