

PROPOSED CHANGES IN THE REGULATIONS

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

INITIAL STATEMENT OF REASONS

The California Department of Food and Agriculture's (Department) 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 FMIP is responsible for the review and registration of product labels, promoting agronomically sound and environmentally safe use of fertilizing materials through FREP, and ensuring fertilizing materials are safe and 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 (OIM) are statutorily mandated to register fertilizing materials with the FMIP.

SECTIONS AFFECTED

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, 2322, and 2322.4.

PROBLEM STATEMENT

A central objective is to align proposed rulemaking actions with the passing of 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. In part, SB 1522 defined "beneficial substance" and included it as a fertilizing material category that replaces both "auxiliary soil and plant substance" and "packaged soil amendment". The bill also modified the product label registration cycle from up to two years to up to four years.

The proposed rulemaking replaces mentions of "auxiliary soil and plant substance" and "packaged soil amendment" with "beneficial substance". It also aligns California with all other US states in adopting a standardized label format for beneficial substances. At present time, the FMIP utilizes a label format using "nonplant food ingredient" that is not universally recognized among other states and has been cumbersome for the fertilizer

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industry. As a result of differing formats between states, manufacturers have had to use different labels for the same product depending on which state they are distributing the product.

The proposed rulemaking also provides clear guidance and direction for the new four-year product registration cycle which will maintain the same “per year” cost and be revenue-neutral for the FMIP.

The remaining proposed revisions provide additional clarity for beneficial substance labeling, differentiate beneficial substances intended to condition soils through physical means (previously known as soil amendments), provide flexibility for the fertilizer industry to determine primary nutrient claims within a guaranteed analysis, clarify heavy metals laboratory analysis requirements, provide more specificity and clarity for total phosphoric acid claims, remove an investigational allowances error related to laboratory analysis, and enact matching regulatory text changes within the administrative penalty “Table A: Violations Matrix” to ensure consistency.

The proposed rulemaking also establishes a written appeals process, mandated by the new FAC 14651.7(c) statute, for when the Department refuses to issue a license, product registration, or both, due to unpaid fines or administrative penalties.

DOCUMENTS RELIED UPON

- SB 1522 – Approved by the Governor and filed by Secretary of State on August 26, 2024. Chapter 208, Statutes of 2024.
- The Association of American Plant Food Control Officials’ (AAPFCO) Uniform Beneficial Substances Bill. (2024 Official Publication, AAPFCO, No. 77, pages 66-72)

BENEFITS

The proposed regulatory changes will provide necessary clarity and direction for the recently adopted SB 1522, as it pertains to beneficial substances and the adoption of a four-year product label registration cycle. A four-year registration cycle provides fertilizing material manufacturers with the ability to lawfully distribute their products for a longer period of time than the current two-year cycle and reduces the amount of time spent preparing documentation for the next renewal cycle.

The rulemaking will also 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

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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 flexibility for the fertilizer industry to determine primary nutrient claims within a guaranteed analysis, guidance on heavy metals laboratory analysis requirements, additional clarity on the labeling of phosphorus materials, corrects an error regarding investigational allowances, and ensures that the changes are consistent with the text within the administrative penalty “Table A: Violations Matrix.”

The rulemaking also provides clear and reasonable guidance on the written appeals process, mandated by the new FAC 14651.7(c) statute, for when the Department refuses to issue a license, product registration, or both, due to unpaid fines or administrative penalties.

SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION, PER GOVERNMENT CODE SECTION 11346.2(b)(1):

The following paragraphs provide the specific purpose, rationale, and summaries of these proposed changes to the CCR related to fertilizing materials.

ARTICLE 1. STANDARDS AND LABELING

Section 2303. Labeling Requirements.

Existing Section 2303(b)(1) is amended to change “not required for soil amendments” to “not required for beneficial substances described in CCR 2303(j)”. This is necessary because soil amendments are no longer a fertilizing materials category according to the recently chaptered SB 1522, and beneficial substances intended to condition soils through physical means are the new functional equivalent. The “US and metric units statement” is moved to Section 2303(b)(3) to eliminate redundancy since it currently appears in both 2303(b)(1) and (b)(2) for dry and liquid materials.

Existing Section 2303(b)(2) is amended to change “organic input material bulk soil amendments” and “packaged soil amendments” to “beneficial substances described in CCR 2303(j)”. This is necessary because soil amendments are no longer a fertilizing materials category according to the recently chaptered SB 1522, and beneficial substances intended to condition soils through physical means are the new functional equivalent. The “US and metric units statement” is moved to Section 2303(b)(3) to eliminate redundancy since it currently appears in both 2303(b)(1) and (b)(2) for dry and liquid materials.

Existing Section 2303(b)(3) [original 2303(b)(3) is now re-numbered to Section 2303(b)(4)] is revised to eliminate the current redundancy of having a “US and metric units” statement in two subsections 2303(b)(1) and (b)(2). This is necessary to appear in this subsection because the “US and metric units” statement should appear immediately following Sections 2303(b)(1) and (b)(2) so it is clear that it applies to both dry materials and liquid materials. It is also necessary to maintain this “US and metric units requirement” as it is believed to be a universal label standard across states.

Existing Section 2303(b)(3) [re-numbered as new Section 2303(b)(4)] is being re-numbered due the inclusion of the “US and metric units” requirement in the prior subsection. This is necessary for clarity, will maintain proper formatting and organization of the regulations, and allow for ease of reading for the public.

Existing Section 2303(e) is amended because the chaptered SB 1522 eliminated auxiliary soil and plant substances and packaged soil amendments as fertilizing material categories and replaced them with beneficial substances. This is necessary to be consistent with updated statute – specifically FAC Sections 14501 and 14533.

Existing Section 2303(f) is amended because the chaptered SB 1522 eliminated the auxiliary soil and plant substance and packaged soil amendment categories and replaced them with beneficial substances. This is necessary to be consistent with updated statute – specifically FAC Sections 14501 and 14533.

Existing Section 2303(g) is deleted to remove a heading (“NONPLANT FOOD INGREDIENT”) that is only recognized by California and a limited number of states. This heading is being replaced with “BENEFICIAL SUBSTANCE(S)” as a universally recognized and accepted term throughout the United States. Deleting this section, rather than revising it, removes the requirement of mandating the heading is in all capital letters, as the header is in quotations. The heading possesses the same meaning whether in capital letters or lower-case letters, so a requirement of capital letters is not essential should a manufacturer elect to not use capital letters.

Existing Section 2303(h) [re-lettered as (g)] is amended to ensure the verbiage and label format is aligned with other states for purposes of uniformity. The revised text and format represents years of collaborative work between fertilizer control officials of other states to develop a simplified label format that would be universally accepted throughout the United States to improve standardization and enhance interstate commerce of fertilizing materials. In February 2024, this label format was unanimously voted “official” by state fertilizer control officials and memorialized within AAPFCO’s Uniform Beneficial Substance Bill (AAPFCO’s 2024 Official Publication, No. 77, pages 66-72). It is critical and necessary to provide this uniformity for the fertilizer industry, so fertilizer

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manufacturers can use one label that would be compliant across all states, thereby saving time, money, and labor.

Existing Section 2303(i) [re-lettered as (h)] is amended to provide 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 a guaranteed analysis, including secondary and micronutrients, liming material, gypsum, and gypsum equivalent. At present time, even trace amounts of primary nutrients are 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. This is necessary to ensure that primary nutrients are 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.

Existing Section 2303(j) [re-lettered as (i)] is being re-lettered due to the repeal of section 2303(g). This is necessary for clarity, will maintain proper formatting and organization of the regulations, and allow for ease of reading for the public.

Existing Section 2303(k) [re-lettered as (j)] is being amended to provide 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). This is necessary to distinguish 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).

New Section 2303(j)(1) is being adopted from text previously found in FAC Section 14552 for packaged soil amendments to provide tangible examples of beneficial substances that condition soils through physical means. This is necessary so the fertilizing materials industry and the public can view clear examples of these types of beneficial substances and draw a correlation to common soil amendment ingredients that are now within this category.

New Section 2303 (j)(2) is representative of text that was previously found in Section 2308(e) under "Packaged Soil Amendments". This text is more appropriately suited for this code section because the verbiage directly relates to ingredient labeling for beneficial substances intended to condition soils by physical means. This is necessary because both "wetting agents" and "tackifiers" are ingredients that may be included in these products and this level of identification is important to the fertilizing materials industry and public.

Existing Section 2303(l) [re-lettered as (k)] is amended in order to make the verbiage and label format aligned with other states for purposes of uniformity. The revised text and format represents years of collaborative work between fertilizer control officials of other states to develop a simplified label format that would be universally accepted throughout the United States to improve standardization and enhance interstate commerce of fertilizing materials. In February 2024, this label format was unanimously voted “official” by state fertilizer control officials and memorialized within AAPFCO’s Uniform Beneficial Substance Bill (AAPFCO’s 2024 Official Publication, No. 77, pages 66-72). It is critical and necessary to provide this 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.

Existing Sections 2303(m) [re-lettered as (l)];

2303(n) [re-lettered as (m)];

2303(o) [re-lettered as (n)] are being re-lettered due to the repeal of section 2303(g). This is necessary for clarity, will maintain proper formatting and organization of the regulations, and allow for ease of reading for the public.

Existing Sections 2303(p) [re-lettered as (o)];

2303(q) [re-lettered as (p)] are updating the section references applicable to labeling from “section 2303(a) through (o)” to “section 2303(a) through (n)” due to the re-lettering stemming from the repeal of section 2303(g). This is necessary to accurately communicate the applicable sections.

Existing Sections 2303(r) [re-lettered as (q)];

2303(s) [re-lettered as (r)] are being re-lettered due to the repeal of section 2303(g). This is necessary for clarity, will maintain proper formatting and organization of the regulations, and allow for ease of reading for the public.

Existing Section 2303(t) [re-lettered as (s)] is amended to provide clarity on testing results for heavy metals. This is necessary to ensure accurate laboratory test results that are representative of currently available fertilizer products. Lab results older than five years are usually not representative of the products in the channels of trade, thus not an accurate portrayal to consumers. The existing language indicates that it applies to registration renewals, but it is also necessary that initial registration applications are held to the same standard.

Existing Sections 2303(u) [re-lettered as (t)];

2303(v) [re-lettered as (u)];

2303(w) [re-lettered as (v)] are being re-lettered due to the repeal of section 2303(g). This is necessary for clarity, will maintain proper formatting and organization of the regulations, and allow for ease of reading for the public.

Section 2306. Biochar.

Existing Section 2306(a) is amended to more clearly identify that biochar is required within a fertilizing material label's ingredient list. This is necessary because biochar is a beneficial substance intended to condition soils through physical means, so representation on an ingredient list is more appropriate than a "statement of composition". A statement of composition typically requires an ingredient percentage, but since biochar isn't considered to be a biological or chemical ingredient, a percentage would not be appropriate.

Section 2308. Packaged Soil Amendments. [re-named "Beneficial Substances Through Physical Means"]

Existing Section 2308 is amended to further codify the change from packaged soil amendments to beneficial substances that is consistent with SB 1522 – specifically FAC Sections 14501 and 14533. This is necessary to ensure that California is standardized with other states throughout the United States. For the purposes of uniformity, the AAPFCO recognizes soil amendments as a beneficial substances that condition soils through physical means.

Existing Section 2308(a) is deleted because it is redundant from the measurement requirements found in Section 2303(b)(2). This is necessary because the most appropriate location for this information is within the labeling requirements section.

Existing Section 2308(b) [re-lettered as (a)] is amended to account for the re-lettered exceptions identified in this section – (d), (e), and (f) being re-lettered to (c) and (d). This is necessary for clarity, will maintain proper formatting and organization of the regulations, and correctly identify the exceptions of this section.

Existing Section 2308(c) [re-lettered as (b)] is amended because the chaptered SB 1522 eliminated the packaged soil amendment category and replaced it with beneficial substances. Additionally, "single-ingredient" was added for improved clarity of the type of specific material. This is necessary to be consistent with updated SB 1522 statute – specifically FAC Sections 14501 and 14533, as well as for improved clarity the meaning of "single-ingredient specific material."

Existing Section 2308(d) [re-lettered as (c)] is amended because the chaptered SB 1522 eliminated the packaged soil amendment category and replaced it with beneficial

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substances. Additionally, “ingredient” replaced “amendment” for improved clarity. This is necessary to be consistent with updated statute – specifically FAC Sections 14501 and 14533.

Existing Section 2308(e) is deleted from this section, so that it could be moved to a more appropriate section (Section 2303(j)(2)). This text is more appropriately suited for Section 2303(j)(2) because the verbiage directly relates to ingredient labeling for beneficial substances intended to condition soils by physical means. This is necessary because both “wetting agents” and “tackifiers” are ingredients that may be included in these products and this level of identification is important to the fertilizing materials industry and public. Retaining similar text within this section would be redundant and unnecessary.

Existing Sections 2308(f) [re-lettered as (d)];

Section 2308(g) [re-lettered as (e)] are being re-lettered due to the repeal of sections 2308(a) and (e). This is necessary for clarity, will maintain proper formatting and organization of the regulations, and allow for ease of reading for the public.

Section 2309. Phosphorus Materials.

Existing Section 2309(a) is amended to combine three phosphorous acid disclosure statements (subsections (a)(1), (a)(2), and (a)(3)) into one larger section. The necessity of the amendment is because some labels place each disclosure statement in different, unrelated areas of the label which was not the intent of the disclosure for maximum transparency and disclosure to growers and the general public. It is important for the related disclosure statements to appear in successive text for transparency. These disclosure statements could previously be re-worded on a label, so the inclusion of quotations ensures that the disclosure statement will be communicated completely and with the original intent. Section 2309(a)(1) includes the addition of the asterisk (*) in reference to the disclosure statements, so it is consistent with Section 2309(a)(1)(A). This is necessary because a grower/consumer would have an expectation of available phosphoric acid as nutrient content and the asterisk references the disclosure statements which communicate that the phosphorous is not immediately available to plants, if a manufacturer chooses to include total phosphoric acid within a product's grade. Additionally, “Total Phosphoric Acid” is amended by capitalizing the first letters, which is necessary to ensure consistency of similar label formatting.

Existing Section 2309(b) is amended to clarify necessary label requirements for phosphorous products. This is necessary because the revisions identify the correct label format for products containing phosphoric acid and phosphorous acid, not just phosphoric acid alone. Additionally, “if greater than zero” is a supportive statement that is necessary to reinforce Section 2300(e) which states that “zero” guarantees are not permitted.

ARTICLE 2. SAMPLES

Section 2317.5. Investigational Allowances.

Existing Section 2317.5(b)(2)(B) is amended to remove an incorrect statement and formula that was accidentally overlooked from revision in 2022 rulemaking (Notice File Z2022-0405-08). In the 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 from Section 2317.5(b)(2)(B) for consistency and accuracy. The original necessity from the 2022 rulemaking similarly applies here: the current investigational allowances did not provide any additional buffer for inherent lab analysis variance for manufacturers who produce secondary nutrients with a guaranteed analysis over 16% or micronutrient guarantees at 3.4 – 10% or more, as they are capped at one percentage point. This may result in these products to be more frequently, and potentially incorrectly, found in violation due to perceived deficiencies within their high analysis products.

ARTICLE 4. REGISTRATION

Section 2320. Registration.

Existing Section 2320 is amended because the chaptered SB 1522 eliminated the auxiliary soil and plant substance and packaged soil amendment categories and replaced them with beneficial substances. This is necessary to be consistent with updated statute – specifically FAC Sections 14501, 14533, and 14601.

Section 2320.1. Fertilizing Material Product Labels Submitted for Registration.

Existing Section 2320.1 is amended because SB 1522 modified the fertilizing materials product label registration cycle from “up to two years” to “up to four years” and correspondingly modified the registration fee authority from up to \$200 for conventional fertilizing materials and up to \$500 for organic input materials to up to \$400 for conventional fertilizing materials and up to \$1,000 for organic input materials. Rulemaking is required to interpret and implement these changes.

The current registration cost is \$100 per product for conventional registration and \$500 per product for organic input material registration for two years. This rulemaking would change the registration cost to \$200 per product for conventional registration and \$1,000 to organic input material registration for four years. Because the registration cycle will go from two years to four years, the cost is adjusted to reflect the additional two years. Therefore, the relative cost will remain unchanged. Despite going from two

years to four years, the annual amount would remain \$50 per year for conventional registration and \$250 per year for organic input materials.

This change is necessary not only to implement the amended statutes from SB 1522, but because they are also beneficial to the fertilizer industry by reducing the frequency that registrants must go through the registration process and will assist in ensuring that the full spectrum of approved fertilizing products remains in the California channels of trade.

ARTICLE 6. ADMINISTRATIVE PENALTIES

Section 2322. Administrative Penalty Guidelines.

Existing Section 2322(b), Table A: Violations Matrix is amended to ensure the Violations Matrix text communicates regulation text changes made to the other sections within this rulemaking. This is necessary for uniformity and to ensure that the violations matrix text matches the text in the regulation code sections.

Section 2322.4. Written Appeals Process for Refusal to Issue a License or Registration.

New Section 2322.4 is being created to interpret and implement the written appeals process mandated within the new statute (FAC Section 14651.7(c)) when the Department refuses to issue a license, product registration, or both, due to a person's unpaid fines or administrative penalties. This is necessary to provide clear guidance to communicate the requirements of the written appeals process and provide appropriate due process.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The proposed regulatory changes are based upon feedback from the fertilizing materials industry, the Fertilizer Inspection Advisory Board, fertilizer control officials from other states, and FMIP staff. For Sections 2303(h) [re-lettered as (g)] and 2303(l) [re-lettered as (k)], the Department relied upon AAPFCO's Uniform Beneficial Substances Bill. (2024 Official Publication, No. 77, pages 66-72). This bill was voted unanimously by state control officials as model legislation and/or rulemaking. Legislation is recently chaptered (SB 1522) as statute for other critical aspects of this Uniform Beneficial Substances Bill, including a definition of "beneficial substance" and updating the fertilizing material categories of "auxiliary soil and plant substance" and "packaged soil amendment" into the new classification of "beneficial substance".

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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The proposed regulatory actions are technical in nature and will provide clarity to the regulated industry and end users of fertilizing materials regulations specified in statute. These clarifying changes will not have an economic or fiscal impact on the fertilizing materials industry, related businesses, or the general public.

The Department concludes that these regulations will not:

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

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

Section 2303(b)(1) – There is no adverse economic impact as the measurement standard for labeling remains the same. The proposed text changes are due to soil amendment terminology being replaced by beneficial substances in the updated statutes arising from SB 1522, but there will be no economic impact to the fertilizer industry or public. The requirement for “US and metric units” is simply being moved to Section 2303(b)(3).

Section 2303(b)(2) – There is no adverse economic impact as the measurement standard for labeling remains the same. The proposed text changes are due to soil amendment terminology being replaced by beneficial substances in the updated statutes arising from SB 1522, but there will be no economic impact to the fertilizer industry or public. The requirement for “US and metric units” is simply being moved to Section 2303(b)(3).

Section 2303(b)(3) [original 2303(b)(3) re-numbered to 2303(b)(4)] – There is no economic impact as the “US and metric units” verbiage was merely moved from Sections 2303(b)(1) and (b)(2) to eliminate redundancy.

Section 2303(b)(3) [re-numbered as Section 2303(b)(4)] – There is no economic impact as this section is merely re-numbered to maintain proper formatting and organization of the regulations.

Section 2303(e) – There is no adverse economic impact as there are no new additions or changes to fertilizing material labeling requirements. The changes are due to SB 1522 becoming statute which eliminated the auxiliary soil and plant substance and packaged

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soil amendment classifications and replaced them with a combined beneficial substance classification. No new regulatory criteria have been established that would incur additional cost or possess an economic impact.

Section 2303(f) – There is no adverse economic impact as there are no new additions or changes to fertilizing material labeling requirements. The changes are due to SB 1522 becoming statute which eliminated the auxiliary soil and plant substance and packaged soil amendment classifications and replaced them with a combined beneficial substance classification. No new regulatory criteria have been established that would incur additional cost or possess an economic impact.

Section 2303(g) – There is no adverse economic impact as the proposed deletion would not affect any registered fertilizing material products currently in the channels of trade. Moreover, the Department would reasonably accept a revised heading whether in capital letters or not, moving forward.

Section 2303(h) [re-lettered as (g)] – There is no adverse economic impact as the amended label format and verbiage will be uniform across all states, unlike the current format and text which often varies state-by-state. For labels that display the current format, they are not required to immediately revise or reprint labels. Manufacturers may utilize their current labels until updated versions are created during their next subsequent four-year registration renewal cycle as a regular course of business. This proposed amendment would most likely save manufacturers time, money, and labor because moving forward they will more easily be able to distribute a label that is compliant across all states instead of having to navigate different label requirements across states.

Section 2303(i) [re-lettered as (h)] – There is no adverse economic impact because the proposed revision provides fertilizing material manufacturers and product guarantors with increased flexibility for plant nutrient claims on labeling. The proposed change ensures consistency with all subsequent numbered subsections (1 – 6) as only primary plant nutrients (total nitrogen, available phosphoric acid, soluble potash) currently do not allow for the “if claimed” criteria. Under current circumstances, a fertilizing material manufacturer or product guarantor would have to “guarantee” a specific percentage of primary plant nutrients on a product label if a trace amount of primary nutrients are detected in a lab analysis report, even if the manufacturer/guarantor does not intentionally add primary nutrients as an ingredient during manufacture. Manufacturers/guarantors do not want to “guarantee” an element that they don’t purposely include and be responsible to ensure that an unintended percentage is always consistent with a guaranteed amount.

Section 2303(j) [re-lettered as (i)] – There is no economic impact as this section is merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2303(k) [re-lettered as (j)] – There is no adverse economic impact as these amendments are attempting to provide 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 changes do not introduce any new label requirement that would incur costs for fertilizing material manufacturers and there would be no resulting impact to the agriculture industry or public.

Section 2303(j)(1) – There is no adverse economic impact as this subsection merely provides tangible examples of beneficial substances that condition soils through physical means. Much of the proposed text was previously located in FAC Section 14552 for packaged soil amendments, which is now represented as a beneficial substance.

Section 2303 (j)(2) – There is no adverse economic impact as this subsection simply identifies that wetting agents and tackifiers are beneficial substance ingredients. Nearly identical text was previously located in Section 2308(e) under “Packaged Soil Amendments,” but the text is more appropriately suited for this code section because the verbiage directly relates to ingredient labeling aspects for beneficial substances intended to condition soils by physical means.

Section 2303(l) [re-lettered as (k)] – There is no adverse economic impact as the amended label format and verbiage will be uniform across all states, unlike the current text which often varies state-by-state. For labels that display the current format, they are not required to immediately revise or reprint labels. Manufacturers may utilize their current labels until updated versions are created during their next subsequent four-year registration renewal cycle as a regular course of business. This proposed amendment would most likely save manufacturers time, money, and labor because moving forward they will more easily be able to distribute a label that is compliant across all states instead of having to navigate different label requirements across states.

Sections 2303(m) [re-lettered as (l)];

2303(n) [re-lettered as (m)];

2303(o) [re-lettered as (n)] – There is no economic impact as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Sections 2303(p) [re-lettered as (o)];

2303(q) [re-lettered as (p)] – There is no economic impact to these amendments as these are nonsubstantive changes that simply provide section re-lettering corrections that occurred from the repeal of Section 2303(g). Specifically, “section 2303(a) through (o)” is being updated to “section 2303(a) through (n),” and there is no economic impact to this technical revision.

Sections 2303(r) [re-lettered as (q)];

2303(s) [re-lettered as (r)] – There is no economic impact as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2303(t) [re-lettered as (s)] – There is no economic impact to these proposed regulations as they are merely to help clarify label and lab analysis requirements. Manufacturers already regularly and routinely provide these results to California and other state departments of agriculture.

Sections 2303(u) [re-lettered as (t)];

2303(v) [re-lettered as (u)];

2303(w) [re-lettered as (v)] – There is no economic impact as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2306 – There is no economic impact as the proposed amendment is providing clarity that biochar should be identified only within a label's ingredient list and no longer provide an option within a statement of composition. This clarification is because biochar is now more clearly identified as a beneficial substance intended to condition soils through physical means. There are no currently registered fertilizing materials products with biochar where it appears within a statement of composition, so this change will not result in any cost to manufacturers or product guarantors. If products did exist where biochar was within a statement of composition, manufacturers could utilize their current labels until updated versions are created during their next subsequent four-year registration renewal cycle as a regular course of business.

Section 2308 – There is no economic impact as the amendments further codify the change from packaged soil amendments to beneficials substances that is consistent with SB 1522 – specifically FAC Sections 14501 and 14533. Packaged soil amendments were previously represented in this section and those products are now represented as beneficial substances through physical means. No new regulatory criteria has been established that would incur additional cost or possess an economic impact.

Section 2308(a) – There is no economic impact as this proposed deleted text within this subsection is more appropriately represented within the measurement requirements found in Section 2303(b)(2).

Section 2308(b) [re-lettered as (a)] – There is no economic impact as this section is amended to account for the re-lettered exceptions identified in this section – (d), (e), and (f) being re-lettered to (c) and (d).

Section 2308(c) [re-lettered as (b)] – There is no economic impact as the proposed changes are due to SB 1522 becoming statute which eliminated the packaged soil

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amendment classification, and these ingredients are now considered beneficial substances. No new regulatory criteria has been established that would incur cost or possess an economic impact.

Section 2308(d) [re-lettered as (c)] – There is no economic impact as the proposed changes are due to SB 1522 becoming statute which eliminated the packaged soil amendment classification, and these ingredients are now considered beneficial substances. No new regulatory criteria has been established that would incur cost or possess an economic impact.

Section 2308(e) – There is no economic impact as the proposed deleted text is more appropriately suited for Section 2303(j)(2) because the verbiage directly relates to ingredient labeling for beneficial substances intended to condition soils by physical means.

Sections 2308(f) [re-lettered as (d)];

Section 2308(g) [re-lettered as (e)] – There is no economic impact as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2309(a) – There is no economic impact to these proposed revisions as they are primarily non-substantive changes. The changes merely include combining three disclosure statements into one larger disclosure statement to ensure that the statements are included in succession on applicable labels, as well as requiring uppercase letters for a phosphorous material (from “Total phosphoric acid” to “Total Phosphoric Acid”). For any firm who has separated the three disclosure statements on a label, they may continue to utilize their current labels until updated versions are created during their next subsequent four-year renewal cycle as a regular course of business and label re-printing periods.

Section 2309(b) – There is no economic impact to these proposed revisions as they only seek to provide more clarity and specificity regarding the labeling of phosphorous materials. Most of the firms that this proposed revision affects already label their products according to the proposed regulations. For any firms that do not utilize the proposed text, firms may utilize their current labels until updated versions are created during their four-year renewal cycle as a regular course of business and label re-printing periods.

Section 2317.5(b)(2)(B) – The proposed amendment provides correction and consistency regarding laboratory investigational allowances that are technical in nature and would not have an adverse economic impact.

Section 2320 – There is no adverse economic impact as the changes are due to SB 1522 becoming statute which eliminated the auxiliary soil and plant substance and packaged soil amendment classifications and replaced them with a combined beneficial substance classification. No new regulatory criteria has been established that would incur additional cost or possess an economic impact.

Section 2320.1 – There is no adverse economic impact as the change from a two-year product registration cycle to a four-year product registration cycle is revenue neutral. The per-year product registration cost remains the same for both conventional fertilizer and organic input materials.

The chaptered SB 1522 granted authority to move from a two-year conventional registration cost is not to exceed \$200 per product label and the two-year OIM registration cost is not to exceed \$500 to a four-year conventional registration cost up to \$400 and a four-year OIM registration cost up to \$1,000.

The current registration cost is \$100 per product for conventional registration and \$500 per product for organic input material registration for two years. This rulemaking would modify the registration cost to \$200 per product for conventional registration and \$1,000 to organic input material registration for four years. Because the registration cycle will go from two years to four years, the cost is adjusted to reflect the additional two years. Therefore, the relative cost will remain unchanged. Despite going from two years to four years, the annual amount would remain \$50 per year for conventional registration and \$250 per year for organic input materials.

The amendments to the product registration cycle may also have a positive economic impact on the fertilizer industry, as the lengthy registration product review process will only be required every four years, versus every two years. The industry could conceivably expect lower labor costs due to considerable saved time of the cumulative product registration process.

Section 2320(b), Table A: Violations Matrix – There is no economic impact as the amended text communicates regulation text changes made to the other sections within this rulemaking. The changes made within this section are to ensure the consistency and accuracy of the text.

Section 2322.4 – There is no economic impact as this new section seeks to implement an interpret a written appeals process mandated within the new FAC 14651.7(c) statute. A written appeal is free.. Any outstanding administrative penalty or fine that a person possesses has previously been determined by a hearing officer's decision, superior court judgment, or a defaulted stipulated settlement deadline, and the written appeals process is separate and distinct from penalties accrued.

**REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT’S
REASONS FOR REJECTING THOSE ALTERNATIVES**

Section 2303(b)(1) – No alternatives were considered for the replacement of “soil amendments” with “beneficial substances described in Section 2303(j)” because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522. The Department did consider retaining the “US and metric units” verbiage, but ultimately decided not to have redundant mentions within 2303(b)(1) and (b)(2) and moved the text to its own subsection.

Section 2303(b)(2) – No alternatives were considered for the replacement of “organic input material bulk soil amendments” and “packaged soil amendments with “beneficial substances described in Section 2303(j)” because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522. The Department did consider retaining the “US and metric units” verbiage, but ultimately decided not to have redundant mentions within 2303(b)(1) and (b)(2) and moved the text to its own subsection.

Section 2303(b)(3) [original 2303(b)(3) re-numbered to 2303(b)(4)] – The alternative is to retain the “US and metric units” verbiage in both 2303(b)(1) and (b)(2). That is a viable alternative, but ultimately the Department decided not to have redundancy and move the text to its own subsection immediately following those two subsections.

Section 2303(b)(3) [re-numbered as Section 2303(b)(4)] – No alternatives were considered as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2303(e) – No alternatives were considered because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522.

Section 2303(f) – No alternatives were considered because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522.

Section 2303(g) – The alternative is to not delete the text of this section, but revise “NONPLANT FOOD INGREDIENT” to “BENEFICIAL SUBSTANCE”. However, it was determined that it is not critical for the updated heading to be in capital letters in quotations. Other states do not require this heading in capital letters and for improved consistency throughout the United States, the Department felt that it would be unnecessarily restrictive to continue to require it.

Sections 2303(h) [re-lettered as (g)] and 2303(l) [re-lettered as (k)] – The Department considered the text of “Genus and species of microorganism,” but FMIP staff scientists concluded that “Species of microorganism” automatically encompassed inclusion of “Genus” so including that word would be redundant and unnecessary. No other alternatives were considered because the proposed amendments represent years of collaborative work between fertilizer control officials of other U.S. states to develop a simplified label format that would be universally accepted throughout the United States to improve standardization and enhance interstate commerce. This label format was unanimously voted in favor by state fertilizer control officials and memorialized within AAPFCO’s Uniform Beneficial Substance Bill.

Section 2303(j) [re-lettered as (i)] – No alternative was considered as the section is merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2303(i) [re-lettered as (h)] – Three alternatives were discussed within the Department and the Fertilizer Inspection Advisory Board (FIAB): (1) Create a primary nutrient threshold requirement where a manufacturer/guarantor would disclose total nitrogen, available phosphoric acid, and/or soluble potash when a product contained a certain percentage (for example, 1 percent or more, 2 percent or more, 5% or more, 10% or more, or other determined amount); (2) Provide exemption criteria for primary nutrients were the result of unintended extraneous material (i.e. when not primary nutrient ingredient were intentionally added); and (3) Enforce the interpretation of the existing regulation – that primary nutrient guarantees are required for any amount of primary nutrients, even trace amounts that weren’t purposely added to the formulation.

The Department and FIAB decided against (1) because there was no rationale or scientific validation behind establishing an arbitrary nutrient threshold to mandate a manufacturer guarantee. If a manufacturer doesn’t intentionally add a primary nutrient and the presence is unintended, a manufacturer should not be forced to guarantee certain percentage in a consistent fashion.

The Department and FIAB decided against (2) because exemption criteria would not need to be established if the decision was left up to the manufacturer/guarantors.

The Department and FIAB decided against (3) because it would be unreasonable to hold manufacturers/guarantors responsible to maintain a consistent guaranteed amount of primary nutrients within a product if the firm does not add a specific ingredient to ensure it can reliably meet that guarantee. Additionally, many of these primary nutrient detections are at miniscule, trace amounts that would serve no functional purpose to growers or the public.

Sections 2303(m) [re-lettered as (l)];

2303(n) [re-lettered as (m)];

2303(o) [re-lettered as (n)]; – No alternatives were considered as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Sections 2303(p) [re-lettered as (o)];

2303(q) [re-lettered as (p)]; – No alternatives were considered it was necessary to update these sections with the correct label regulation references, revising from “section 2303(a) through (o)” to “section 2303(a) through (n)” within the regulation text for accuracy.

Sections 2303(r) [re-lettered as (q)];

2303(s) [re-lettered as (r)]; – No alternatives were considered as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2303(t) [re-lettered as (s)]; – The alternative is to insist that firms remove the heavy metals statement from labels to not be misleading for the public. Firms would then have to produce versions of labels unique to California, as the statement is required by most states. Firms would face additional costs to maintain two or more labels for each product and face logistic issues of marketing and distribution specific to each state.

Sections 2303(u) [re-lettered as (t)];

2303(v) [re-lettered as (u)];

2303(w) [re-lettered as (v)]; – No alternatives were considered as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2306 – The alternative is to retain the existing language, but since there are no scenarios where biochar would need to appear within a statement of composition rather than an ingredient list, it was determined that the best course of action was to remove the language that is no longer applicable.

Section 2308 – No alternatives were considered because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522.

Section 2308(a) – The alternative was to retain the existing language, but since this requirement exists within Section 2303(b)(2), it was deemed to be redundant and unnecessary.

Section 2308(b) [re-lettered as (a)] – No alternatives were considered because this section is amended to account for the re-lettered exceptions identified in this section – (d), (e), and (f) being re-lettered to (c) and (d).

Section 2308(c) [re-lettered as (b)] – No alternatives were considered because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522.

Section 2308(d) [re-lettered as (c)] – No alternatives were considered because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522.

Section 2308(e) – The alternative was to retain the existing language rather than delete the text, but since the information was moved to Section 2303(j)(2) and (2)(A), it was deemed to be redundant and unnecessary.

Sections 2308(f) [re-lettered as (d)];

Section 2308(g) [re-lettered as (e)] – No alternatives were considered as these sections are merely re-lettered to maintain proper formatting and organization of the regulations.

Section 2309(a) – The alternative is to continue to allow the three disclosure statements to appear in separate subsections, (a)(1), (a)(2), and (a)(3). However, the proposed regulation is as a direct result of the Department observing labels that place each disclosure statement on different, unrelated areas of the label which was not the intent for maximum transparency and disclosure to growers and the general public. Additionally, the disclosure statements could previously be re-worded on a label, so the inclusion of quotations ensures that the disclosure statement will be communicated completely and with the original intent. The alternative of the inclusion of the asterisk (“*”) at the beginning of the disclosure statements, would be to not require it. The Department opted against this option after realization that there was nothing previously tying the asterisk within section 2309(a)(1)(A) to any disclosure or requirement. The asterisk is needed for clarity.

Section 2309(b) – The alternative is to not move forward with the proposed revisions to this section. However, the Department determined that the proposed revisions represent the clearest way to indicate accurate label guidance. Additionally, the revisions more effectively communicate that the subsection applies to products that contain both phosphoric acid and phosphorous acid, and not just phosphoric acid alone.

Section 2317.5(b)(2)(B) – No other alternatives were considered because the proposed revision is intended to correct an oversight within the regulation. The previous subsection that identified a “maximum allowance of 1 unit (one percentage point)” was deleted in 2022 rulemaking, so this current section would be inaccurate unless amended.

Section 2320 – No alternatives were considered because the amendments are necessary for consistency to implement the statute changes from chaptered SB 1522.

Section 2320.1 – Three alternatives were considered within the Department: (1) Dividing the registration cycle into eight groups with each cycle starting either January 1st or July 1st over a four-year period based upon firm name; (2) Dividing the registration cycle into two groups on July 1st every even-numbered year based on firm name; (3) Dividing the registration cycle into four groups every July 1st every year based on firm name.

The advantage to (1) was to better spread out all product registration renewals across a larger period of time in order to improve review turnaround times. The Department decided against (1) because eight different groups divided over a four-year period of time was deemed to be too cumbersome for the Department and potentially too confusing for the fertilizing materials industry.

The advantage to (2) was to have the registration renewal period (July 1st, even-numbered years) as the opposite to the license renewal period (Jan 1st, odd-numbered years). In this way, Department staff could ensure ample time for licensing for quicker registration turnaround times. The Department decided against (2) because two registration renewal groups would generate too large application quantities to review in a timely manner with reasonable turnaround times.

The advantage to (3) was similar to (2) but with two additional registration groups. The Department decided against (3) because it would be extremely challenging to initiate all registration renewal periods at the start of each fiscal year on July 1 and may result in the Department having to prorate registration fees for a longer period than if the renewal cycles commenced on January 1.

Section 2320(b), Table A: Violations Matrix – No alternatives were considered as this section's amended text simply communicates the regulation text changes made to the other sections within this rulemaking to ensure consistency and accuracy.

Section 2322.4 – The alternative was to consider that the appeals language already within Section 2322.1(a) as sufficient to address the written appeals mandate from the new statute, FAC Section 14651.7. However, it was determined that Section 2322.1(a) is more specific to an appeal of an administrative penalty (i.e. adverse determination) and request an informal hearing. A written appeal of the Department's refusal to issue a license or product registration based on unpaid administrative penalties was determined to require a new procedure and regulatory guidance.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations do not duplicate or conflict with federal regulations.