

## 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 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, 4, and 6, Sections 2300, 2300.1, 2302, 2303, 2311, 2320.1, 2320.2, 2322.2, and 2322.3.

### **PROBLEM STATEMENT**

The objective of the proposed regulations is to clarify the statutes in the Food and Agricultural Code (FAC) related to fertilizing materials labeling, product label registration, and administrative hearings. The proposed changes and additions are necessary to provide greater transparency and clarity of fertilizing material labeling, improve flexibility and efficiency with product label registrations, and provide improved guidance for administrative penalty hearings.

### **DOCUMENT RELIED UPON**

2023 Official Publication, Association of American Plant Food Control Officials, No. 76.

## **BENEFITS**

The proposed changes to the regulations will provide improved clarity and uniformity related to fertilizing materials labeling, better explains product registration requirements, and provide additional flexibility with administrative hearings. These changes will provide benefits to growers and consumers through greater transparency with fertilizer labeling, improve disclosures for the end user, and enhanced consumer protections. This rulemaking will also provide for flexibility and improved efficiency for fertilizing product registrations. The proposed actions will provide the FMIP with improved mechanisms for firms that failed to resolve 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 2300. Fertilizing Materials – General Provisions.**

**Existing Section 2300(c)** is amended to provide the Department with increased flexibility to add validated analytical laboratory methods and to improve awareness and transparency about each laboratory method used. This is necessary to ensure that any credible analytical laboratory method for fertilizing materials can be utilized by the Department and not be limited to a subset of Association of Official Analytical Chemists (AOAC) methods. FAC 14643 provides authority that “all analyses shall be made according to a method determined by the secretary,” thereby granting flexibility beyond AOAC methods. AOAC does not have analytical methods for every fertilizing material guarantee that the Department analyzes. Additionally, there are other reliable laboratory methods that have been peer-reviewed and validated from other reputable scientific organizations. The current regulatory language restricts the use of other methods, including methods that may be more accurate. Other methods may also be the only validated method for a particular fertilizing material guarantee, so solely utilizing AOAC methods in this regard would be limiting.

These revisions are further necessary to maximize transparency, so that all methods used by the Department are published for the fertilizer industry and for public access. Publishing methods assists the fertilizer industry because they would be able to utilize the same or similar methods to ensure that all parties are measuring a product’s guaranteed values according to the same or comparable standards.

**Existing Section 2300(g)(1)** is amended to provide fertilizing material manufacturers and product guarantors additional organic labeling options 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 that are currently in regulation. This is necessary because two-color labels are a common printing format for the fertilizing materials industry, particularly for dry, bagged products, and the Department does not currently regulate a “Registered Organic Input Material” logo in this common format.

The Note Section is being amended to include FAC Section 14643 as an Authority Cited to ensure all appropriate code sections are referenced. This is necessary to ensure that the authority is clearly displayed.

#### **Section 2300.1. Definitions.**

**New Section 2300.1(m)** is adopted to provide consistency with fertilizing material labeling claims and to allow additional guidance for amino acid claims, which are constituents within protein hydrolysate. This is necessary in order to permit the term “amino acid” or “amino” as part of fertilizing material product names as it has a direct correlation to protein hydrolysate ingredients. The proposed text is a universal protein hydrolysate definition from the 2023 Official Publication of the Association of American Plant Food Control Officials (AAPFCO), which nearly every state and Canada utilize to establish uniform fertilizer labeling and regulations.

#### **Section 2302. Non-Nutritive Standards.**

**Existing Section 2302(a)(1) and (2)** is amended to clarify that non-nutritive standards are based upon the value provided on a label within a product’s guaranteed analysis for iron, manganese, zinc, and phosphate. This is necessary as there has been confusion among the fertilizing materials industry, as well as the FMIP, whether the standard was representative of the amount guaranteed on a label or the contents of the product. Section 2302(a)(3)(A) and (B), as well as Sections 2302(a)(4), (5), and (6)(A), all make similar use of the term “guaranteed”. This revision will ensure consistency and continuity through all of Section 2302.

#### **Section 2303. Labeling Requirements.**

**Existing Section 2303(d)(1)** is amended to better convey that the last licensee distributing organic input materials is exempt from bulk commercial fertilizer and bulk agricultural mineral label guarantor requirements. This is necessary because organic input materials require product registration, while bulk commercial fertilizers and bulk agricultural minerals do not. Requiring the last licensee to act as the label guarantor for

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organic input materials would be problematic as the last licensee wouldn't be privy to the proprietary product formulation and other necessary documentation for registration, as well as incurring an additional registration fee even though the original manufacturer already possesses active registration.

**New Sections 2303(x) and (y)** are adopted to provide clarity and consensus by recognizing when amino acid or amino acid complexing label claims may be used. 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. This is necessary because there is confusion among the fertilizer industry for when amino acid claims are appropriate on product labels based upon the ingredient(s) used.

**Section 2311. Slow Released Plant Nutrients.**

**Existing Section 2311(b)(1)** is amended to provide additional clarity that water insoluble nitrogen products are not limited to the examples provided within the section. This is necessary because some fertilizer manufacturers believe they are presently limited to slow-release nitrogen claims for natural organics, urea formaldehyde, isobutylidene diurea, and oxamide; however, due to innovation and product development, new inputs may also be suitable to make slow-release nitrogen claims.

**ARTICLE 4. REGISTRATION**

**Section 2320.1. Fertilizing Materials Product Labels Submitted for Registration.**

**New Section 2320.1(d)** is adopted to provide clear specificity as to what types of revisions to registered labels require a registration update request and re-review by the FMIP. This is necessary because there is confusion among the fertilizer industry whether a label change to a product registration requires an update and re-review or whether it requires an entirely new registration based upon the criteria set forth in FAC Section 14601. This new rule makes the criteria and requirements clearer for the fertilizer industry and provides enhanced guidance.

**Section 2320.2. Registration Application for Organic Input Material Product Label.**

**Sections 2320.2(b)-(e)** are amended or adopted to eliminate the need to identify a specific, outdated version of a physical hard copy "department Organic Input Material, Fertilizing Materials Registration Application, 513-026 (Rev. 07/13)". The Application will no longer be incorporated by reference. Instead, the FMIP is identifying all of the registration application elements required for a person to obtain an Organic Input Material registration. This is necessary because fertilizer firms have the option to apply for organic

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input material registration through the FMIP's online database or a physical form. Subsequently, more clearly identifying all elements required to apply for product registration provides the fertilizer industry a clearer understanding and improves flexibility for FMIP. The amendments to this section transparently communicate all requirements regardless of the format in which the application information is submitted. None of the requested information or documentation in the proposed text is novel information as it is representative of fields within the existing physical application and online database application.

**Existing Section 2320.2(b)** is amended to convey that a person has an option to complete a product label registration via online database or physical application. It also informs that the \$500-per-product fee set forth in 3 CCR section 2320.1(a) must be submitted with the application. This information was previously provided on the application which was incorporated by reference and is necessary to inform industry that the \$500-per-product fee must be submitted with each application because the application will no longer be incorporated by reference. The term "person" is used to be consistent with the standardized term defined within FAC Section 14554.

**New Section 2320.2(b)(1)** is adopted to move the existing application requirement that the person affirm whether or not they possess a fertilizing materials license. This change is necessary because the application will no longer be incorporated by reference.

**New Section 2320.2(b)(1)(A)** is adopted to move the existing application instruction that, if the person does not possess a fertilizing materials license, they must submit a fertilizing materials license application pursuant to FAC section 14591 prior to submitting a registration application. This change is necessary because the registration application will no longer be incorporated by reference. The reference to FAC section 14591 was added to cross-reference where this requirement is codified for ease of reference and clarity to the person. FAC Section 14554 defines "person" as an "individual, partnership, association, firm, limited liability company, or corporation who assumes responsibility for the product."

**New Section 2320.2(b)(2)** is adopted to move the existing application requirement that the person provide the firm name as it appears on their fertilizing materials license. This change is necessary because the application will no longer be incorporated by reference. This requirement is also being changed to refer to the "firm name" instead of the "doing business as" name. This change is necessary because the "firm name" is how the FMIP matches this application to the license to confirm that the person holds a fertilizing materials license. Companies may have a different name on their fertilizing materials license than their "doing business as" name. The FMIP also has licensed "firm names" that incorporate both names (e.g., "AZ Enterprises Inc. DBA Organic Ag Products").

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**New Section 2320.2(b)(2)(A)** is adopted to ensure consistency between a name on a fertilizing materials license and their product label. This is necessary because FAC Section 14611 and 3 CCR Section 2326.1 makes the connection for mill assessments between the licensee name and that which appears on a label. Similarly, FAC Section 14541 defines “label guarantor” as the entity responsible for the material and the licensee is that same entity.

**New Section 2320.2(b)(3)** is adopted to move the existing application requirement that the applicant provide their full name. This change is necessary because the application will no longer be incorporated by reference. This requirement is also being changed to remove the requirement that the name provided be that of the owner or owners. This change is necessary because many applicants are individuals other than an “owner”, and many firms do not have an “owner”. FMIP only needs to identify the applicant acting on behalf of the firm.

**New Section 2320.2(b)(4)** is adopted to move the existing application requirement that the applicant identify the type(s) of Organic Input Material contained in the product being registered as listed in FAC section 14550.5. The reference to FAC section 14550.5 is being used in lieu of listing each type, as all types listed in the application are listed in that statute. These changes are necessary because the application will no longer be incorporated by reference.

**New Section 2320.2(b)(5)** is adopted to require that, for each product to be registered, the applicant list the product name and indicate whether it is a liquid product. Identifying the product name is necessary because the application will no longer be incorporated by reference and the FMIP needs to know what product it is registering. The FMIP needs to identify liquid products because the USDA’s National Organic Program (NOP) has special approval and inspection guidance for liquid OIMs containing over 3% Nitrogen as noted in FAC 14550.5 and what is presently 3 CCR Section 2320.2(b)(8).

**New Section 2320.2(b)(6)** is adopted to move the existing application requirement that the applicant certify that the information contained in the application is true and correct. This change is necessary because the application will no longer be incorporated by reference.

**New Section 2320.2(b)(6)(A)1 and 2** are adopted to list the requirements to complete the certification. These requirements are being changed to clarify that, if the applicant prints their name, it needs to be “clearly” printed. This change is necessary to ensure that the FMIP can accurately read the name. Additionally, this requirement is being changed to require that the applicant provide their job title. This change is necessary to help further identify the firm’s authorized representative. Lastly, the option to check the appropriate online agreement box is added as an alternative to signing and dating the application.

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This change is necessary because the FMIP's online database does not have the capability to generate or capture an electronic signature.

**New Section 2320.2(b)(6)(B)** is adopted in order to explain that pertinent information of registered Organic Input Materials (*licensed firm name, license identification, product name, whether or not the product is an OIM, NOP annotations, registration identification, registration status, label nutrient guarantees, non-nutritive metal content, and OIM product type(s)*) will be conveyed in the public domain to communicate to the organic industry about OIM products. This is necessary because certified crop advisers, organic material review organizations, organic growers, and other organic industry personnel require this information as set forth by the USDA NOP to make purchasing decisions and apply usage information about organic fertilizing materials. The necessity to specifically include and identify *licensed firm name, license identification, product name, whether or not the product is an OIM, registration identification, registration status, and OIM product type(s)* is so the organic industry can be certain that they are correctly identifying a product and manufacturer, as well as ensuring an accurate registration status for an OIM product. It should be noted that *NOP annotations* is a term generally familiar within the organic industry and is necessary to convey specific USDA NOP requirements for how an organic operation must use a particular organic input material. *Label nutrient guarantees* is necessary to communicate about a product's nutritive composition so that organic growers can make informed decisions about a OIM product they may want to use. *Label nutrient guarantees* are also publicly disclosed on the product label. *Non-nutritive metal content* is previously codified within 3 CCR section 2303(s) and (w), and section 2302 (non-nutritive standards) and is necessary to convey for public and environmental safety. Lastly, 3 CCR section 2330.5 establishes that the secretary shall maintain a list of registered fertilizing materials on the department's website.

**New Section 2320.2(c)** is adopted to list the documentation that a person is required to submit along with their registration application. This change is necessary because, in addition to the information required in the application, CDFA needs the additional documentation listed in this subdivision to determine whether the product is suitable for registration as an Organic Input Material.

**New Section 2320.2(c)(1)** is adopted to require that the applicant submit a declaration that the person agrees to comply with the Department's laws and regulations for Organic Input Materials. This change is necessary for the FMIP to maintain its International Organization for Standardization (ISO) accreditation, which ensures that CDFA meets USDA NOP criteria as a recognized organic material review organization.

**New Section 2320.2(c)(2)** is adopted to require that the applicant submit a declaration stating that the product being registered is not subject to or produced with excluded organic methods, such as using genetically modified organisms, ionizing radiation, or

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sewage sludge. This change is necessary because these are requirements set forth by the USDA NOP which establishes specific provisions to produce an Organic Input Material. These criteria are defined within the USDA NOP's standards for Organic Input Materials, 7 CFR Part 205.105, 205.203(c)-(e), 205.601 and 205.602.

**New Section 2320.2(c)(3)** is adopted to relocate **existing Section 2320.2(b)(2)**. This requirement was also codified in the application as requiring that a person provide the "complete formula of [the] material". This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.

**New Section 2320.2(c)(4)** is adopted to relocate **existing Section 2320.2(b)(3)**. This requirement was also codified in the application as requiring that a person provide the "complete description of the manufacturing process for each ingredient and the final product". "OIM" was changed to "product" with the purpose and necessity to maintain consistency throughout the section. This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.

**New Section 2320.2(c)(5)** is adopted to relocate **existing Section 2320.2(b)(4)**. This requirement was also codified in the application as requiring that a person provide the "intended use of [the] product". This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.

**New Section 2320.2(c)(6)** is adopted to relocate **existing Section 2320.2(b)(5)**. This requirement was also codified in the application as requiring that a person provide the "supplier of ingredients". This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.

**New Section 2320.2(c)(7)** is adopted to relocate **existing Section 2320.2(b)(6)**. This requirement was also codified in the application as requiring that a person provide the "alternate formulation". This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.

**New Section 2320.2(c)(8)** is adopted to relocate **existing Section 2320.2(b)(7)**. The term "third-party" is being hyphenated as a spelling correction. This requirement was also codified in the application as requiring that a person provide the "third party formulated ingredients". This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.



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**New Section 2320.2(c)(9)** is adopted to require that the applicant provide ingredient proof of purchase for each ingredient used in the product. This change is necessary to validate that all ingredients reviewed by FMIP for suitability to grow organic crops are actually purchased or acquired by the person. The examples of an invoice or weight certificate are provided as examples because both are common and suitable forms of proof of purchase. “Weight certificate” is a term generally familiar within the fertilizing materials industry to represent specific inventory of an ingredient that might not be purchased or represented on an invoice, like greenwaste or unprocessed manures. “Weight certificate” appears in two other sections: 3 CCR Sections 2300.1(f) and 2303(b)(1) and (b)(2).

**New Section 2320.2(c)(10)** is adopted to require that the applicant provide laboratory analysis results, when analysis is required by USDA NOP standards or Department regulations. This change is necessary to ensure that registration application review meets USDA NOP requirements and adheres to existing Department regulations, such as 3 CCR sections 2303(w) and 2304(b)(2) for analysis of heavy metals and/or biotics. The terms “laboratory analysis” or “analysis” are generally familiar terms within the fertilizer industry.

**Existing Section 2320.2(b)(1)** is being re-lettered and re-numbered to **Section 2320.2(c)(11)**. An amendment was included to specify that a “complete, legible” label is required. This is necessary to ensure that FMIP staff can clearly read a label to review and evaluate the claims. This replaces the text on the application currently in regulation (513-026 Rev. 07/13) which specifies an 8 ½” by 11” label copy. Since labels can be submitted electronically, a specific size is no longer necessary. Another amendment adds “product” before “label,” which is necessary for consistency of prior mentions of “product label”.

**Existing Section 2320.2(b)(8)** is being re-lettered and re-numbered to **Section 2320.2(c)(12)**. The word “and” is being added to the end of this paragraph since it is the penultimate item in the list and every item in the list is required. This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.

**Existing Section 2320.2(b)(9)** is being re-lettered and re-numbered to **Section 2320.2(c)(13)**. This sentence was also amended to further clarify that that additional information deemed necessary by the secretary would be “to support compliance with NOP standards or Department regulations.” This is necessary to ensure that all requested documentation submitted with an Organic Input Material registration application is listed in a clear and cohesive manner.

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**New Section 2320.2(d)** is adopted to disclose that registration application fees are nonrefundable and cannot be prorated. The original form currently in regulation (513-026 Rev. 07/13), referenced in 3 CCR Section 2320.2(b), also stated that the application fees were not refundable. This is necessary because the FMIP's registration staff invests significant labor during registration application review, including review of the product label, supporting documentation, and possible efficacy data. The labor costs are spent regardless of whether or not a firm discontinues their application during the review process.

**New Section 2320.2(d)(1)** is adopted to clarify that the information requested within subsections (b) and (c) is mandatory with the necessity that the FMIP can appropriately and comprehensively review that a product meets USDA NOP requirements and adheres to existing Department regulations. It also conveys that an incomplete submission may delay the processing of an application which is necessary for complete transparency.

**New Section 2320.2(d)(1)(A)** is adopted to communicate that the Department will return an incomplete application due to missing information or documentation identified within 3 CCR sections 2320.2(b) and (c). The reference to 3 CCR section 2320.1(c) was added as a codified cross-reference that a person can resubmit a complete application without an additional registration fee within 180 days from the date the Secretary initially returned the application. This is necessary to clearly and transparently communicate that incomplete applications will be returned and re-state the timeline for resubmission of a complete application.

**New Section 2320.2(e)** is adopted to provide a person with the ability to submit a registration application with fee in the mail, rather than use the FMIP's online database. This is necessary because not everyone has access to, or is comfortable with using, a computer for submitting registration applications and fees.

When comparing the suggested revisions to the form currently in regulation (513-026 Rev. 07/13), the following elements have been removed:

- The requirements that the applicant provide their phone and fax numbers. This is necessary because this information is not pertinent for product registration applications.
- The requirement that the applicant provide their email address and their licensed address as it appears on the label. This is necessary because email and the physical address(es) and mailing address(es) have already been captured by FMIP during fertilizing materials licensing. There is no purpose or necessity to re-capture the same information.
- The requirement that the submitted copy of the label be "8 ½" x 11". The necessity for this removal is because labels can be submitted in many formats, including

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electronically, and size is not relevant. As long as a label is legible, the FMIP can appropriately review it.

- The definition of “labeling” and the reference to FAC section 14542. The definition was a restatement of FAC section 14542. Existing Section 2320.2(b)(1) (re-lettered and re-numbered to (c)(11)) uses “label”, which is defined in FAC section 14540.
- The statement that registration expires on December 31 of every odd-numbered year is also not being retained. This is necessary as 3 CCR Section 2320.1(b) provides for a differing registration expiration schedule alphabetically based upon firm name.
- “Do not send coin or currency”. This is no longer necessary as the FMIP has never had a firm attempt to submit coin or currency in the last twenty years. Should a firm send coin or currency, the FMIP will address it on a case-by-case basis.
- The requirement to identify a “wetting agent” and whether or not it is confidential. This is no longer needed because wetting agents are already identified within a product’s disclosed formula and conditions of confidentiality and the protection of trade secrets are already identified within 3 CCR Sections 2300.2 and 2300.3.
- Fields that were for CDFA/office use only are not being retained since these were only used internally and did not require anything from the applicant.

## **ARTICLE 6. ADMINISTRATIVE PENALTIES**

### **Section 2322.2. Hearing Schedule and Notification.**

**Existing Sections 2322.2(c)** is amended to provide additional flexibility by permitting the Department’s legal office to determine the location of an informal hearing and provide an option to hold hearings virtually through Internet video conferencing. This is necessary because the COVID-19 pandemic actualized the need to be able to hold informal hearings via virtual Internet conferencing for health and safety reasons. This proposed text is necessary because it provides the Department’s legal office with the ability to physically hold hearings anywhere in the state or virtually, based upon the needs and accommodation of the responding party and the Department. An additional amendment to section 2322(c)(2) removes the need to provide a “facsimile number”. This is necessary to remove an outdated technological reference that is no longer widely used.

### **2322.3. Hearing Procedures.**

**Existing Section 2322.3(g)(1)** is amended to provide clarification as to when administrative penalty payments would be due after a written hearing decision is rendered in favor of the Department. This is necessary because administrative penalty decisions have been issued in favor of the Department, but there is no guidance as to when the penalty is due. As written, the Department can request penalty payment immediately

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upon decision, but it would be more reasonable to allow the respondent up to thirty days unless a written stipulated payment plan has been agreed to between the parties.

**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, and FMIP staff. For Section 2300.1(m), the Department relied upon 2023 Official Publication, Association of American Plant Food Control Officials, No. 76.

**ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

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 2300(c)** – There would be no economic impact for this amendment because the expansion of laboratory methods beyond AOAC methods merely provides more options and flexibility for the fertilizer industry and the Department, while publishing these methods provides for more transparency and improved communication. Unlike the existing regulation, if a third-party or fertilizer industry laboratory is unable to perform a specific method, other validated methods that are similar or comparable may be acceptable.

**Section 2300(g)** – There would be no economic impact as the Department is not requiring any business to use the Registered Organic Input Material logo. The logos are optional.

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**Section 2300.1(m)** – There is no economic impact because this proposed regulation is merely a term and a definition for an ingredient that is already used within the fertilizer industry. The term and definition would not inhibit sales or distribution of these products.

**Section 2302(a)(1) and (2)** – There is no economic impact with the proposed amendment as the added text simply clarifies the existing regulation and does not create any new standard or requirement.

**Section 2303(d)** – There is no adverse economic impact as the proposed amendment seeks to clarify and correct the existing regulation. In the regulation’s existing form, there have been misunderstandings that the last licensee distributing organic input materials would need to re-register the original manufacturer’s product(s) at \$500 per product. This proposed amendment would ensure that no new registrations or fees would be required. The clarifying text ensures that organic input materials would continue to have the original registrant as the label guarantor.

**Section 2303(x) and (y)** – The proposed text provides guidance and consistency regarding “amino acid” and “amino acid complex” label claims and would not have an adverse economic impact. The proposed regulation expands a fertilizer manufacturer’s ability to make “amino acid” or “amino acid complex” label claims. If a fertilizer manufacturer meets the criteria described in the proposed language, a label claiming “amino acid” or “amino acid complex” is voluntary and there are no new restrictions that would limit distribution.

**Section 2311(b)(1)** – The proposed amendment does not have any economic impact as the revised text serves to clarify the existing regulation.

**Section 2320.1(d)** – The proposed amendment would not have an adverse economic impact. The new text provides additional clarification and guidance FAC Section 14601 to better convey what registered product label updates would require re-review. There is no fee for re-review of existing registrations. The re-review is required to ensure that a registrant’s label revisions do not require a new registration according to the criteria already specified within FAC Section 14601.

**Section 2320.2(b)-(e)** – The proposed adoptions and amendments will have no economic impact. There are no changes to the registration application process. Rather, the text seeks to memorialize all of the required registration criteria and documentation from the physical form – Organic Input Material, Fertilizing Materials Registration Application, as well as from FMIP’s online database, and document the requirements through regulation. Nearly all of registration applications occur through FMIP’s online database and not the physical form, so these revisions capture all of the required registration criteria regardless of the application format. Lastly, the registration fee remains at \$500-per-product and

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FAC section 14601(b) has also codified that “the registration fee for organic input material shall not exceed five hundred dollars (\$500) per product.”

**Section 2322.2(c)** – There is no adverse economic impact as the proposed amendments are technical in nature, or removes an outdated technological reference (facsimile number), or simply provides for a virtual teleconferencing option for informal hearings. This proposed addition of sections 2322.2(c) and (c)(4) could ultimately save informal hearing respondents money as they wouldn’t have to incur travel expenses they may have otherwise acquired if in-person hearing attendance was required in Sacramento or another location in California.

**Section 2322.3(g)(1)** – The proposed adoption will have no adverse economic impact because it provides thirty days for administrative penalties to be paid after the date of a written decision unless a written stipulated settlement payment plan has been agreed to. The proposed text would only impact firms who have been found to be noncompliant with laws and/or regulations and will not have any impact on compliant firms.

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

**Section 2300(c)** – The alternative is to continue to have the Department only be permitted to use AOAC methods for all label guarantees. This is problematic because AOAC does not have analytical methods for every fertilizing material guarantee that the Department analyzes. Additionally, there are other reliable laboratory methods that have been peer-reviewed and validated from other reputable scientific organizations. The current regulatory language restricts the use of other methods, even if those methods may be more accurate. Other methods may also be the only validated method for a particular fertilizing material guarantee, so only utilizing AOAC methods in this regard would be limiting.

The existing regulation also does not maximize transparency. At present time, if the Department uses an AOAC method, they do not have to publish which methods are used. Publishing methods assists the fertilizer industry because they would be able to utilize the same or similar methods to ensure that all parties are measuring a product’s guaranteed values according to the same or comparable standards.

**Section 2300(g)(1)** – One alternative is to continue to only permit a four-color and one-color “Registered Organic Input Material” logo for fertilizer industry firms to print on packaging. While this alternative also may be satisfactory, the addition of a two-color logo option maximizes the flexibility a firm may have when printing their labels and packaging.

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Another alternative that was explored was to have additional logo options. However, the printing industry typically relies on three primary options: one-color (black and white), two-color (one color, as well as black and white), and four-color (a full-color option). It was determined that adding any other option would be unnecessary and/or redundant.

**Section 2300.1(m)** – One alternative would be for the Department to create its own definition of “protein hydrolysate”. This alternative may create issues regarding standardization and uniformity since the Official Publication of AAPFCO is what nearly every state (and Canada) references in their laws and regulations for official terms and definitions. AAPFCO terms and definitions have already been vetted by state control officials for fertilizing materials, including California, and gained consensus.

A second alternative would be to not include a definition of “protein hydrolysate” in regulations. If a definition were not included, however, it would be less transparent to industry what the common ingredient sources of protein hydrolysate are comprised of and what claims may be made. Including a definition is critical to illustrate a circumstance in which amino acids, a constituent of protein hydrolysate, may be claimed on labels.

**Section 2302(a)(1) and (2)** – The alternative is to not add “guaranteed” to these sections as it may already be inferred within the text of other subsections of Section 2302. However, the Department has witnessed some confusion among the fertilizing materials industry, as well as with FMIP staff, so this amendment will help improve understanding and transparency.

**Section 2303(d)** – No other alternatives were considered because the proposed revision is intended to correct an oversight within the regulation. The Department never intended the last licensee distributing registered organic input materials to serve as the label guarantor, but existing language may be incorrectly interpreted this way.

The definitions for commercial fertilizer and agricultural mineral do not include organic input materials, but the definition for organic input material does include commercial fertilizer and agricultural minerals. Since organic input materials require product registration, while commercial fertilizers and bulk agricultural minerals do not, it would be problematic for the fertilizing materials industry if this proposed revision was not enacted. Additionally, the last licensee does not possess the proprietary product formula and other necessary documentation for organic input material registration, which further merits that this proposed revision be made.

**Section 2303(x) and (y)** – The alternative is to not move forward with proposed text with criteria for amino acid or amino acid complex claims. By not having criteria; however, it reduces clarity for the fertilizing materials industry. At present time, the industry is unclear when amino acid or amino acid complex claims may be made. The adoption of these new

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regulations provides needed guidance as opposed to a firm not having any direction relating to these potential label claims.

**Section 2311(b)(1)** – An alternative is to remove all examples of water insoluble nitrogen products and leave the text, “open-ended”. The Department opted against this direction after receiving industry feedback that the current examples are helpful.

Another alternative is to provide a more exhaustive list of examples of water insoluble nitrogen. However, since technology and new products are consistently evolving, the Department did not want to fail to omit any possible source of water insoluble nitrogen.

**Section 2320.1(d)** – The alternative is to not provide any additional guidance for what label changes require re-review and what revisions require a new product label registration. The Department is not proceeding with this alternative because of current confusion among the industry, as well as from industry feedback received, which has emphasized the need for improved direction and communication in this regard.

**Section 2320.2(b)-(e)** – The alternative is to provide an updated Organic Input Material, Fertilizing Materials Registration Application, 513-026, with a new revision date. The Department determined that this would not be the best course of action because any future changes to the application form, even a minor revision, would require a regulation change. Additionally, with each revision to the form, the entire revised form would have to be incorporated by reference on each occasion. The physical application form is used by less than 0.5% of applicants, as most utilize the FMIP’s online database for all of their account needs, so dedicating significant and regular labor toward updating the physical form and subsequently revising the regulation would not be reasonable.

No other alternatives were considered for subsections 2320.2(b)(1)-(7) or 2320.2(c)-(e) as these subsections represent all required criteria required during the registration application process, many of which are mandated through the USDA National Organic Program. The Department considers these additions and amendments as comprehensively representing all required facets of OIM product registration.

**Section 2322.2(c)** – For section 2322.2(c) and (c)(4), the alternative would be to retain the existing text for in-person hearings, but the Covid-19 pandemic illustrated a need for the Department to offer informal hearing participation through a virtual format. Scheduling informal hearings will be based upon the needs and accommodation of the responding party and the Department, and a virtual format provides needed flexibility. For sections 2322.2(c)(2-3), no alternatives were considered. Facsimile machines are widely considered to be outdated, so that information is removed.



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**Section 2322.3(g)(1)** – An alternative is to offer a different deadline for penalty payments, such as 15 days, 90 days, or 120 days. The Department decided that a majority of business operate on a “net 30” payment schedule as a regular course of business, so the 30 days in the proposed amended text align with that common standard. Should a firm not be able to remit payment within that timeframe, a written stipulated settlement payment plan is a viable alternative and presently noted in the proposed text.

**DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

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