

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

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 agricultural minerals, auxiliary soil and plant substances, commercial fertilizers, soil amendments, specialty fertilizers and organic input materials (OIM) are statutorily mandated to register with the FMIP.

SECTIONS AFFECTED

California Code of Regulations (CCR), Title 3, Division 4, Chapter 1, Subchapter 1, Article 1, Sections 2300.1, 2304, 2306, 2308, and 2322.

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. The proposed changes and additions are necessary to provide sufficient clarity to the fertilizer industry regarding labeling and documentation submission requirements for label registration.

DOCUMENTS RELIED UPON

- 2019 Association of American Plant Food Control Officials (AAPFCO) official publication, No. 72, Official Terms, T-102, page 79.
- M. Fernanda Aller (2016) Biochar properties: Transport, fate, and impact, Critical Reviews in Environmental Science and Technology, 46:14-15, 1183-1296, DOI: 10.1080/10643389.2016.1212368

BENEFITS

The proposed additions and amendments to the regulations are necessary to enable the fertilizer industry to create fertilizer labels compliant with law and regulations and provide clarity for the consumer. The repeal of CCR Section 2306 will remove an unnecessary regulation for fish emulsion already addressed in FAC Section 14534.

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

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

ARTICLE 1. STANDARDS AND LABELING

Section 2300.1. Definitions

Section 2300.1(l) adds the new term “**tackifier**” to avoid industry confusion and clarify the difference between “spreader stickers” and tackifiers.

Section 2304 is being amended to make clear the existing requirements for registering fertilizing material labels that include biotic guarantees. The requirements, as currently stated in Section 2304, were often not understood, and routinely not adhered to by registrants without additional clarifications and instructions provided by phone or correspondence. The new regulation is necessary to clearly spell out what must be shown on the label and what documents must be submitted in support of a label application for biotics.

In the proposed regulation, the **label requirements** will be listed under Section 2304(a). The term “biologically active” needed to be struck out because the meaning of the term is unclear, and issues involving this term are not known to have ever been encountered. Section 2304(a) in the current regulation is being replaced by Section 2304(a)(1).

Section 2304(b)(1,2) in the current regulation is being replaced by Section 2304(a)(2)(A, B, C).

Section 2304(c) in the current regulation is being replaced by Section 2304(a)(3).

Section 2304(d) in the current regulation is being replaced by Section 2304(a)(4).

The not-enumerated paragraph following Section 2304(d) in the current regulation is being replaced with Section 2304(b)(1,2) in the proposed regulation. Section 2304(b)(1,2) lists the requirements for **additional documentation**, with 2304(b)(1) listing the requirement for a written laboratory method and 2304(b)(2) listing the requirement for submission of certificate(s) of analysis. It is necessary to limit the validity of certificates of analysis for laboratory analysis results to five years to keep biotics guarantees accurate as analytical methods are rapidly evolving in the field.

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Section 2306 is being repealed to remove an unnecessary regulation for fish emulsion that is already addressed in FAC §14534. In its place, a necessary regulation for biochar is being adopted.

Section 2306(a) requires registrants to state the feedstock the biochar is made from on the label in a specific format. This is necessary to provide the consumer with important information, because physical and chemical properties of biochar differ depending on the feedstock used to produce the biochar. Additionally, requiring this information on the label in a specific label format is necessary to ensure labeling consistency with other state departments of agriculture and the American Association of Plant Food Control Officials (AAPFCO), which benefits the fertilizing industry by allowing for efficiency in interstate commerce.

Section 2306(b) requires registrants to submit a laboratory analysis for total carbon for ingredients listed as biochar on fertilizing material labels. This is necessary to verify that the ingredient meets the definition of biochar as stated in FAC §14513.5.

Section 2308(e) is being amended to include tackifiers as ingredients of soil amendments. It is necessary to call out tackifiers as ingredients of packaged soil amendments to prevent registrants from including tackifiers in other product categories, which could be confusing to end users as to the intended purpose of tackifiers.

Section 2322 the violations Matrix for Section 2304 is being amended to match the wording of the proposed Section 2304; the violations Matrix is amended to add FAC 14534 in place of Section 2306 of the current regulation; the violations Matrix is amended to add the proposed Section 2306 Biochar.

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

The proposed regulatory changes are based upon feedback from the fertilizer industry and Department staff. The Department relied upon the 2019 AAPFCO official publication, No. 72, in establishing this proposed rulemaking action.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

The Department concludes that these regulations will not:

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- (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

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

Section 2300.1 Definitions (l). – The definition of the term tackifier is added for necessary clarification and will not have an adverse economic impact.

Section 2304. Biotics – There is no economic impact to these proposed regulations as they are merely to clarify necessary label and supporting documentation requirements.

Section 2306. Fish Emulsion – There is no economic impact to repeal this unnecessary regulation.

Section 2306. Biochar (a) and (b) – There is no economic impact to these proposed regulations as they are merely to clarify necessary label and supporting documentation requirements.

Section 2308(e). – The proposed amendment would not have an adverse economic impact. This regulation will increase options for firms but does not put limitations on firms.

Section 2322. Administrative Penalty Guidelines –

The proposed regulation will have no economic impact on firms that are compliant with the FAC and CCR. FAC § 14534 (Fish Emulsion) and CCR § 2304 (Biotics) were already present within the administrative penalty guidelines. CCR § 2306 (Biochar) would only have an economic impact for firms in violation of the regulation that do not correct the issue. FMIP has not issued any violations for a related biochar definition (FAC § 14513.5) since the statute was published, so FMIP does not anticipate an impact to the fertilizing materials industry.

Firms with a first violation will receive a Notice of Warning / Notice of Violation with 30 days to comply. For each additional violation of CCR § 2306 (Biochar), the misbranding penalties for FAC § 14681(a) and/or (c) would apply at \$1,000 for the second violation, \$2,500 for the third violation, and \$5,000 for each subsequent violation. Penalties and related economic impact would only affect those firms who receive two or more violations.

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

Section 2300.1. Definitions (l) – The alternative would omit the definition altogether. Omitting the definition of tackifier could lead to confusing labeling, with tackifiers being confused with so called “spreader stickers,” which are used for foliar application of pesticides.

Section 2304. Biotics – The alternative is to leave the regulation as is and continue with time-consuming correspondence back and forth to clarify the requirements. The resulting delays in getting products approved for sale would continue to be disadvantageous for firms and inhibit the Department’s efficiency of product label review.

Section 2306. Fish Emulsion – The alternative is to leave the unnecessary regulation as is maintaining redundant regulations.

Section 2306. Biochar (a) and (b) – The alternative is to omit the regulation and continue with time-consuming correspondence back and forth between registrants and the Department to clarify the requirements.

Section 2308. Packaged Soil Amendments (e) – The alternative is to leave the regulation as is and decide case-by-case which product type to assign tackifiers to, which would result in increased correspondence with firms, reduced efficiency in registering new products, and inconsistent labeling across approved product labels.

Section 2322. Administrative Penalty Guidelines – An alternative is not appropriate as the wording must match the proposed wording in Sections 2304 and 2306, as well as FAC 14534.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

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