

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 3. LICENSING
ARTICLE 4. REGISTRATION
ARTICLE 5. TONNAGE REPORTING
ARTICLE 6. ADMINISTRATIVE PENALTIES
ARTICLE 7. MILL ASSESSMENTS
(Notice published July 6, 2018)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to make changes to the California Code of Regulations (CCR), Title 3, Division 4, Chapter 1, Subchapter 1, Articles 3-7, Sections 2300.1, 2303, 2304, 2308, 2315, 2318, 2320.2, 2322, 2322.1, 2322.2, and 2322.3.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department by mail, fax, or email. The written comment period closes at 5:00 p.m. on August 20, 2018. The Department will only consider comments received by that time.

Submit comments to:

Brittnie Sabalbro, Associate Governmental Program Analyst
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
1220 N Street
Sacramento, CA 95814
(916) 900-5022
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Following the written comment period or public hearing, if one is requested, the Department, at its own motion or at the request of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

Notice is hereby given that the California Department of Food and Agriculture, pursuant to the authority vested by sections 407, 14501, 14502, 14601, 14611, 14613, 14623, 14631, 14651, 14651.5, and 14655 of the Food and Agricultural Code (FAC), proposes to make changes to Title 3, Division 4, Chapter 1 of the CCR to implement, interpret, or make specific FAC Sections 14601, 14631, 14641, 14651.5, 14681, and 14682.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

These rulemaking actions provide clarification and uniformity for fertilizing materials labeling and administrative penalties, critical information that has been previously omitted from regulation, and improved labeling guidelines. Thirty-five statutes and regulations that are missing from the administrative penalty violations matrix are addressed in the proposed matrix. Many of the proposed changes provide improved transparency with fertilizer labeling, better protection for consumers, and improved disclosure for the end user.

The proposed additions within Section 2300.1 (i), (j), and (k) are to provide clarity for the terms "fraud," "willful misconduct," and "gross negligence," by providing definitions from Black's Law Dictionary. These terms may be used to categorize misbranding violation penalties, so it is important these terms are characterized by accepted, existing legal definitions.

The proposed actions within Section 2303 (k) ensure that soil amendments are correctly labeled with regards to the varying ingredients present in soil amendments. The revised regulation provides industry with guidance to follow the correct labeling format. FAC Section 14601 mandates that the Department regulate bulk organic input material soil amendments and is not limited to "packaged" soil amendments as originally prescribed in this subsection.

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The minor revision in Section 2303 (v) will provide an updated version of the Association of American Plant Food Control Officials (AAPFCO) official publication.

The amendment proposed for Section 2304 recognizes that many fertilizing materials contain biotics (microorganisms), not just auxiliary soil and plant substances. This revision affords the same labeling requirements for all fertilizing materials containing biotics.

The proposed revisions to Section 2308 provide consistency in acknowledging that the Department regulates packaged soil amendments and bulk soil amendments making organic claims, and give specifics for listing wetting agents on soil amendment labels.

The proposed revision to Section 2315 provides standardization to the sampling of packaged dry fertilizing materials according to the guidelines of the AAPFCO.

The changes proposed for Section 2318 provide guidance for resubmittal of a license application returned as incomplete, and provide uniformity with the regulations for registration applications.

The revision in Section 2320.2 will remove reference by form number to the label registration application. This revision will eliminate the need for rulemaking each time the form is revised, and establish uniformity with regulations for other licensing and registration applications within this Chapter.

The proposed changes to the administrative penalty violations matrix within Section 2322 include 35 sections of the fertilizer laws and regulations that are not in the current matrix. The revisions will ensure that the penalties are legally defensible by statute and provide a reference for the industry to easily review.

The proposed changes to Article 6 is to change the subject matter from mill assessments to administrative penalties and accurately reflect the sections that will be in the revision of this article. The proposed addition of Article 7 will cover the subject matter of mill assessment currently in Article 6.

Anticipated Benefits of the Proposed Regulations:

The Department anticipates the proposed regulatory changes will provide improved clarity and uniformity to the fertilizer industry. They will also provide improved reference, justification, and context for administrative penalties. The proposed addition of thirty-five previously missing sections of the fertilizer laws and regulations to the violations matrix will allow the program to enforce compliance of all provisions. Further, these changes will provide benefits to consumers though greater transparency with fertilizer labeling, improved disclosures for the end user, enhanced consumer protections, and fundamental fairness in enforcement.

Determination of Inconsistency/Incompatibility with Existing Regulations:

The Department evaluated the proposed regulations and made several determinations required by Government Code Section 11346.5(a)(3)(A) to 11346.5(a)(3)(D). The Department determined that there are no state laws or regulations related directly to the proposed action and the effect of the proposed action; the proposed regulations are not inconsistent or incompatible with existing state regulations; no existing federal regulation or statute regulates fertilizing materials labeling and administrative penalties (the laws of each state are the final standard for labeling, licensing, and registration requirements). The Department is the only state agency with the authority to regulate fertilizing materials labeling and administrative penalties.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate of local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

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

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

Significant effect on housing costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has initially determined that the proposed regulatory action would not have a broad economic or fiscal impact to the fertilizer industry.

The proposed regulations would have no economic impact to compliant fertilizer firms. Most of the revisions within 3CCR § 2322 “Table ‘A’: Violations Matrix” are to clarify and standardize, not increase liability to firms. Based on 2017 figures, only eight noncompliant firms out of 3,055 fertilizer licensees would be affected. In 2017, 25

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product registration violations (FAC § 14601) were assessed penalties of \$250 each (all 25 violations were from these eight noncompliant firms). Based upon the proposed increase to a \$500 penalty, this would equal \$6,250 in additional penalties.

The other penalty revisions within 3CCR § 2322 “Table ‘A’: Violations Matrix” were either penalties that have not been assessed in recent years or are consistent with existing protocol.

Furthermore, is expected that the fertilizer industry will comply with the law and regulations, so any increase in penalties will not have an economic impact on the industry as a whole. Firms assessed a Notice of Proposed Action will still have the right to due process through a hearing.

It is critical to address this proposed regulatory action would not financially impact any compliant firm.

These proposed regulations would not:

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

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will affect small business, but will not have an economic impact on those businesses. The proposed actions do not involve any area that would increase fees or result in any increased costs to these businesses. The only small businesses potentially affected by the proposed regulations would be non-compliant firms that receive violations for violating laws and/or regulations, thereby receiving penalties.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected

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private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

CONTACT PERSONS

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

Nick Young, Senior Environmental Scientist (Supervisory)
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
1220 N Street
Sacramento, CA 95814
nick.young@cdfa.ca.gov

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

Brittnie Sabalbro, Associate Governmental Program Analyst
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
1220 N Street
Sacramento, CA 95814
(916) 900-5022
FAX: (916) 900-5349
brittnie.sabalbro@cdfa.ca.gov

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process. A copy of this Notice, the Proposed Regulation Text, and the Initial Statement of Reasons may be obtained by contacting Brittnie Sabalbro at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

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Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the proposed regulation text in underline and strikethrough can be accessed through the Department's website at <http://www.cdfa.ca.gov/is/regulations.html>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received during the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which differ, but are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days prior to amendment. Please send requests for copies of any modified regulations to the attention of Brittnie Sabalbro at the address, email, or phone number provided in the "Contact Persons" section. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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