

# **CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE**

## **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 3. LICENSING, ARTICLE 4. REGISTRATION, AND  
ARTICLE 5. TONNAGE REPORTING**

### **INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture's (CDFA) 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 Fertilizing Materials Inspection Program is responsible for reviewing and registering product labels, promoting agronomically sound and environmentally safe use of fertilizing materials through FREP, and ensuring fertilizing materials are safe, effective, and meet the nutrients guaranteed by the manufacturer. Producers of agricultural minerals, auxiliary soil and plant substances, packaged soil amendments, specialty fertilizers and organic input materials (OIM) are statutorily mandated to register with the FMIP. Commercial fertilizers do not require registration, but must follow labeling requirements.

### **SECTIONS AFFECTED**

California Code of Regulations (CCR), Title 3, Division 4, Subchapter 1, Sections 2300, 2300.1, 2303, 2304, 2307, 2308, 2312, 2315, 2319, 2320.1, 2320.2, 2320.5, 2322, 2323, 2324

### **PROBLEM STATEMENT**

The broad objective of the proposed regulations is to clarify the statutes in the Food and Agricultural Code (FAC) related to labeling, sampling, registration, inspection protocols, and reporting of fertilizing materials. The proposed changes provide improved clarity and uniformity, and correct outdated, ambiguous, or vague language using more applicable and precise terminology. Furthermore, many of the proposed changes provide improved transparency with fertilizer labeling and offer fuller disclosures for the end user. These changes would help the fertilizer industry and consumers to better understand the law, as well as the ingredients, directions for use, and safety of the products.

## **FORMS INCORPORATED BY REFERENCE**

CDFA, Form 513-130 (Rev. 10/15), Experimental Fertilizing Material Research Notification

CDFA, Form 513-135 (Rev. 10/15), Experimental Fertilizing Material Field Trial Report

CDFA, Form 513-026 (Rev. 7/13), Organic Input Material Fertilizing Materials Registration Application

## **BENEFITS**

The proposed changes to the regulations will provide improved clarity and uniformity to the fertilizer industry. These changes will be beneficial to consumers to assist them to better understand the context of the original regulations. Similarly, many of these regulations provide greater transparency with fertilizer labeling and offer improved disclosures for the consumer.

The changes to the regulations will also clarify references in statute and provide guidance for label evaluation. The fertilizer industry will receive additional guidance through tangible labeling examples that can be applied when crafting their own labeling, thereby assisting to expedite the registration process and permitting lawful sales of fertilizing products in California.

## **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 CCR's related to fertilizing materials.

### **ARTICLE 1. STANDARDS AND LABELING**

**Section 2300 (h)** is being amended to add agricultural minerals for clarity purposes. Agricultural minerals are a class of fertilizing materials often produced from the same materials that create high boron levels in commercial fertilizers, and they are utilized in the same settings. This amendment is needed to ensure consumers are provided the same warning statement regarding high levels of boron on the labeling for agricultural minerals as is on the labeling for commercial fertilizers.

**Section 2300 (i)** is being amended to add agricultural minerals for clarity purposes. Agricultural minerals are a class of fertilizing materials often produced from the same materials that create high molybdenum levels in commercial fertilizers, and they are utilized in the same settings. This amendment is needed to ensure consumers are provided the same warning statement regarding high levels of molybdenum on the

labeling for agricultural minerals as is on the labeling for commercial fertilizers.

**Section 2300 (j)** is being amended to add the word “ingredient” to clarify where the fertilizing material ingredients would be represented, and eliminate unnecessary language. Currently, some labels mention a fertilizing material ingredient within its marketing claims, but do not include that ingredient in the product’s derivation statement or ingredient list; the Department believes consumers are potentially relying on a product for a benefit that is not provided. The proposed amendment is needed to ensure that label claims for a fertilizer ingredient are supported by the formulation of the product, and for clarity and consistency with subsequent parts of the regulation.

**Section 2300 (m)** is being adopted to ensure the Department has the authority to re-evaluate product labels for regulatory compliance, and to establish when a firm may be required to submit the revisions to its label after it receives notification of noncompliance. This is needed to ensure all labels in use in the California channels of trade are in compliance with current labeling guidelines and the most recent scientific efficacy data that helps set those standards.

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

**Section 2300.1 (f)** is being adopted to establish a definition for the term “lot”. FAC Sections 14631, 14645, 14648, 14653-55, 14657-59, and the CCR’s Section 2317 all use the term “lot.” The proposed definition would allow flexibility for firms that do not use lot numbers and allow firms to identify a specific production batch based on label coding of its own convention. This definition clarifies which products are to be evaluated as part of the same group on a functionally equivalent basis.

**Section 2300.1 (g)** is being adopted to establish a definition for the term “display panel” to clarify which part of a fertilizing label is the display panel as identified in Section 2320.4(c)(1). The definition is necessary because Section 2320.4(c) requires specific language to be included within a label’s “display panel,” yet the term is currently vague and not defined in regulations. Without the definition, the mandate of Section 2320.4(c) is confusing to apply and problematic to enforce.

**Section 2300.1 (h)** is being adopted to establish a definition for the term “public warehouse.” FAC Sections 14518 and 14555 identify that “public warehouses” would be exempt from consideration as a “plant” or “business location” which requires a license, and Section 14591 provides the criteria for “each plant and business location” that requires a fertilizing materials license. “Public warehouse” is currently vague and not defined in regulations. An established definition will eliminate confusion by clearly identifying what constitutes a “public warehouse.”

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

**Section 2303 (b)(1)** is being amended to clearly identify products affected by the measurement requirements. This amendment will align regulations to be consistent with CDFA's Division of Measurement Standards who enforces the provisions of the Fair Packaging and Labeling Act, which require both US and metric units for weight and volume measurements on labeling (CCR, Title 4, Division 9, Chapter 10, Article 2, Section 4516). This amendment is necessary to provide uniformity to the fertilizer industry, and will be consistent with other branches in the Department.

**Section 2303 (b)(2)** is being amended to clearly identify products affected by the measurement requirements. This amendment will align regulations to be consistent with CDFA's Division of Measurement Standards who enforces the provisions of the Fair Packaging and Labeling Act, which require both US and metric units for weight and volume measurements on labeling (CCR, Title 4, Division 9, Chapter 10, Article 2, Section 4516). This amendment is necessary to provide uniformity to the fertilizer industry, and will be consistent with other branches in the Department.

**Section 2303 (e)** is being amended to include auxiliary soil and plant substances, and packaged agricultural minerals as requiring a purpose statement on labeling. This amendment is in alignment with existing regulations for other product classifications, including packaged soil amendments and specialty fertilizers. It is necessary to offer labeling transparency for consumers about the purpose of these products.

**Section 2303 (f)** is being amended to include auxiliary soil and plant substances and packaged agricultural minerals as requiring directions for use on labeling. This amendment is in alignment with the existing regulation for other product classifications, including packaged soil amendments and specialty fertilizers. It is necessary to offer labeling transparency for consumers about the directions for use of these products.

**Section 2303 (h)** is being amended to add the labeling format by referencing the percent of each active ingredient for auxiliary soil and plant substances. It will mirror the language and format in Section 2303 (l). It is necessary to provide a clear visual example for the fertilizer industry to create a compliant label.

**Section 2303 (i)** is being amended to include the title "Guaranteed Analysis" as the correct heading. It is necessary to provide a clear visual example for the fertilizer industry to create a compliant label.

**Section 2303 (i)(3)** is being amended to correct the word "liming" (previously incorrectly shown as "limiting") and to format the Sieve Analysis table in an easily readable manner. These corrections are technical in nature and are necessary to provide a clear visual example for the fertilizer industry to create a compliant label.

**Section 2303 (i)(4)** is being adopted to provide a template for gypsum guarantees. It is necessary to provide a clear visual example for the fertilizer industry to create a compliant label.

**Section 2303 (i)(5)** is being adopted to provide a template for gypsum equivalent guarantees. It is necessary to provide a clear visual example for the fertilizer industry to create a compliant label.

**Section 2303 (i)(6)** was previously Section (i)(4). It is being amended to renumber due to adding Section (i)(4) and Section (i)(5). Additionally, the word “director” is being changed to “secretary” since the head of the Department’s official title is secretary. This change is technical in nature, and required due to adding additional sections for consistency purposes.

**Section 2303 (j)(1)** is being amended to make an exception for abbreviating chelating agents in derivation statements. Excluding chelating agents is necessary because of the length of the agents, and the universal industry acceptance of the typically abbreviated terms. This change is technical in nature, and will assist the fertilizer industry by eliminating the inclusion of unnecessarily long technical terminology of the chelating agent names.

**Section 2303 (j)(2)** is being adopted to identify the correct placement of a product’s derivation statement. The placement of a derivation statement may be incorrect and adds to unnecessary delays with product registration. It is necessary to provide an example for the fertilizer industry to create a compliant label.

**Section 2303 (k)** is being amended per FAC Section 14601 to include OIM soil amendments in the classification of fertilizing materials that require a list of ingredients on labeling. This amendment is needed to ensure that labeling for both packaged and bulk soil amendments would possess identical labeling requirements for ingredient disclosure, thereby ensuring uniformity and transparency for consumers.

**Section 2303 (l)** is being amended to align the format for “Wetting Agents” in this section with others within the existing regulation. The amendment will provide an example percentage of a wetting agent that is in-line with the other examples. The amendment is needed to provide a clear visual example for the fertilizer industry to create a compliant product label.

**Section 2303 (u)** is being repealed as it is outdated and no longer applicable. This section required specified labeling provisions to go into effect by July 1, 2002; those provisions went into effect 13 years ago with Sections 2303(r) and (s). This change is cleaning up language that is outdated.

**Section 2303 (v)** is being amended to renumber Section 2303 (u) due to removing Section 2303 (u). This change is technical in nature, and required due to removing additional sections for consistency purposes.

**Section 2303 (w)** is being amended to renumber Section 2303 (v) due to removing Section 2303 (u), and removes a reference to an outdated publication. Since the publication is produced annually, specifically referencing the volume and year would result in this regulation always being outdated. The proposed amendment generically refers to the Association of American Plant Food Control Officials (AAPFCO) as a whole. This amendment is necessary to ensure the Department and the fertilizer industry are always referring to the most current official terms and accepted definitions of AAPFCO.

The “Note” section for Section 2303, under authority cited, is being amended to include FAC Section 14601. This is needed to ensure the authority from FAC Section 14601 is referenced in this section of the CCR.

#### **Section 2304. Biotics.**

**Section 2304 (d)** is being amended to delete the use of general biotic examples and clarify that biotics would be acceptable based on efficacy data, which aligns with existing regulation. The amendment is critical as not all species of the listed biotics are beneficial to plants and consequently are not acceptable for registration. This is essential as current language may allow a biotic with no beneficial effect and possibly a potentially harmful effect on plants and soils to be included within a product.

#### **Section 2307. Hydroponics, Continuous Liquid Feed Products and Ready-To-Use Foliar Products.**

**Section 2307** is being amended to recognize and acknowledge that the naturally low values for secondary and micronutrients within planting mixes and potting mediums for container gardening should not have to meet the required minimums for traditional fertilizers.

The proposed amendment would allow producers of planting mixes and potting mediums labeled for container gardening more flexibility by allowing them to list micronutrients and secondary nutrient claims below minimums for other products. This amendment is needed so producers can be more transparent with consumers on labeling.

The “Note” section for Section 2307, under authority cited, is being amended to remove “of the”. This is a technical change needed for consistency.

#### **Section 2308. Packaged Soil Amendments.**

**Section 2308 (g)** is being amended to reduce the confusion that the labeled pH is for a packaged soil amendment itself, and not for the pH affect it may have on the surrounding soil it is applied to. The amendment is needed to remove confusion by

clearly stating it is the pH of the product that must be guaranteed.

### **Section 2312. Gypsum Equivalent**

**Section 2312** is being amended to remove the chemical compound abbreviations “(CaSO<sub>4</sub>2H<sub>2</sub>O)” and “(CaSO<sub>4</sub>)” because the compounds may have other varying forms and formulas. The amendment is needed to remove unclear examples of fertilizing materials, therefore alleviating possible confusion.

## **ARTICLE 2. SAMPLES**

### **Section 2315. Sampling Procedure.**

**Section 2315** is being amended to clarify sampling procedures by making the sampling procedure clear and easy to interpret. Current language has been viewed as unclear to industry. This amendment is needed so both CDFA and the fertilizer industry have clear and unified understanding of official sample sizes of fertilizing materials.

**Section 2315 (a)(2)** is being amended to clarify the minimum sample size of dry fertilizing material as consisting of not less than one pound, which is in agreement with the language used for liquid fertilizing material in Section 2315(d)(1). The amendment is needed to ensure uniformity and clarity for the minimum sample size for dry fertilizing material.

**Section 2315 (b)** is being amended to clarify the minimum sample size of dry fertilizing material as consisting of not less than one pound, which is in agreement with the language used for liquid fertilizing material in Section 2315(d)(1). The amendment is needed to ensure uniformity and clarity for the minimum sample size for dry fertilizing material.

**Section 2315 (b)(1)** is being amended to add parentheses for consistency with subsequent parts of the regulation. This correction is technical in nature and is needed for consistency.

**Section 2315 (c)(2)** is being amended to eliminate redundant and confusing language for sampling gypsum. This amendment is needed for uniformity and clarity for sampling gypsum.

## **ARTICLE 3. LICENSING**

### **Section 2319. Experimental Use of a Fertilizing Material.**

**Section 2319** is being amended to include Section 2319(a), (b), (c), (d), and (d)(1), which provides improved guidance and consumer protections for fertilizing materials

intended for experimental use.

The proposed adoption would close many potential loopholes that exist for manufacturers to claim a fertilizing material is for “experimental use,” yet sell the material commercially without any required reporting or oversight by CDFA. This clarifies and clearly defines the reporting requirements, labeling requirements, and recordkeeping for the “experimental use” exception. The revisions are needed to ensure that all experimental use of fertilizing materials are documented to reduce illicit sales of fertilizing materials.

**Section 2319(d)(1)** is being adopted to require experimental use of fertilizing materials to be reported to the Department on Form 513-135 (Est. 10/15), which is incorporated by reference. This is needed so the Department can monitor the experimental use of fertilizing materials.

#### **ARTICLE 4. REGISTRATION**

##### **Section 2320.1. Fee for Each Organic Input Material Product Label Submitted for Registration.**

**Section 2320.1** is being amended to remove “Fee for Each Organic Input Material” from the title, and to insert “Fertilizing Material”. This amendment is needed for uniform authority for Section 2320.1 for all fertilizing material classes and not limited to OIMs. This is necessary to ensure that all fertilizing material classifications that require registration (OIMs, specialty fertilizers, packaged agricultural minerals, auxiliary soil and plant substances, and packaged soil amendments) share the same time frame for resubmitting registration applications. This amendment is needed to reduce unresponsive registration applications consequently reducing the time of the label review process.

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

**Section 2320.2 (b)** is being amended to change the revision date of the Department’s OIM Registration Application from “Rev. 12/10” to “Rev. 07/13”. This amendment is needed to update the Form 513-026, which is incorporated by reference. This amendment will ensure industry is using the current version of the application form.

**Section 2320.2 (b)(8)** is being amended to require proof of inspection before registration can be issued for manufacturers that produce liquid OIMs with a nitrogen guarantee labeled greater than 3%. The Department will be conducting mandatory annual inspections and the United States Department of Agriculture’s National Organic Program’s (USDA-NOP) guidance on OIM inspections requires proof of inspection before a registration can be issued.



**Section 2320.2 (b)(9)** is being adopted due to renumbering Section 2320.2 (b)(8). This change is technical in nature, and required due to adding an additional section.

**Section 2320.5. Registered Product List**

**Section 2320.5** is being adopted to establish a list of registered fertilizing materials that is available to the public. The development of this section was proposed by the Department's legal counsel. The list of registered fertilizing materials would be posted on the Department's website and would be the basis of allowable sales of fertilizing materials in California. This is necessary for the industry to be cognizant and responsible for the products they sell and distribute.

The "Note" section, under Section 2320, authority cited, is being adopted to include FAC Sections 407, 1402, 14601, and 14651.5. The reference is FAC Section 14601 and CCR Section 2320. This is needed to ensure the FAC authority is referenced in this section of the CCR.

**ARTICLE 5. TONNAGE REPORTING**

**Section 2322. Civil Penalty Guidelines.**

**Section 2322** is being amended to change the term "civil penalty" to "administrative penalty". FAC Section 14651.5 was recently amended (Assembly Bill 1039) because the meaning of the term "administrative penalty" more accurately reflects the nature of the guidelines described in Section 2322, and the hearing procedures described in Section 2322.3. Accordingly, CDFA proposed to amend its regulations to agree with statute.

**Section (a)(1)** is being amended to change the term "civil penalty" to "administrative penalty". FAC Section 14651.5 was recently amended (Assembly Bill 1039) because the meaning of the term "administrative penalty" more accurately reflects the nature of the guidelines described in section 2322, and the hearing procedures described in Section 2322.3. Accordingly, CDFA proposed to amend its regulations to agree with statute.

**Section (a)(2)** is being amended to change the term "civil penalty" to "administrative penalty". FAC Section 14651.5 was recently amended (Assembly Bill 1039) because the meaning of the term "administrative penalty" in superior court more accurately reflects the nature of the guidelines described in section 2322, and the hearing procedures described in Section 2322.3. Accordingly, CDFA proposed to amend its regulations to agree with statute.

**Section (a)(3)** is being amended to change the term "civil penalty" to "administrative penalty". FAC Section 14651.5 was recently amended (Assembly Bill 1039) because the meaning of the term "administrative penalty" more accurately reflects the nature of

the guidelines described in section 2322, and the hearing procedures described in Section 2322.3. Accordingly, CDFA proposed to amend its regulations to agree with statute.

**Section 2323. On Site Inspection of Organic Input Material Manufacturers.**

**Section 2323 (b)** is being amended to change “shall” to “may”. This amendment is necessary to provide CDFA flexibility related to inspections, and will allow the program to use the current inspection authority as specified in FAC Sections 14641 and 14642 to shift from annual inspections to risk-based inspections focusing on manufacturers with an increased risk of adulteration. Inspections on reduced-risk production can be continued at the discretion of the Secretary, in order to maintain organic integrity, while maximizing resources. Reduced-risk products in the channel of trade will continue to be sampled and analyzed, at the Secretary’s discretion, to further ensure the integrity of OIM products.

**Section 2323 (c)** is being amended to allow the Department’s secretary the authority to set a protocol for which OIM firms require an annual inspection. This is necessary to ensure firms that produce liquid fertilizing materials with higher Nitrogen label guarantees (> 3% N) will be inspected annually and will allow flexibility for CDFA. Additionally, USDA-NOP’s guidance on OIM inspections requires annual inspections of manufacturers producing liquid Nitrogen fertilizing materials > 3%.

**Section 2324. Access for Sampling**

**Section 2324** is being amended to list “distributor” and “retailer” as locations where authorized Department staff may sample fertilizing materials for laboratory analysis. The amendment would clarify that distributors and retailers of fertilizing materials may have fertilizing materials sampled at their locations. Existing regulation provides authority for sampling access at “agents” and “dealers”. Distributors and retailers fall under the established category of “agents” and “dealers,” however, adding “distributor” and “retailer” would remove any uncertainty. This amendment is necessary for regulatory purposes as distributors and retailers represent two primary California channels of trade.

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

The proposed regulatory changes are based upon feedback from the fertilizing materials industry, the Attorney General’s office, and Department staff. The Department relied upon the meeting minutes from the September 17, 2015 meeting of the Fertilizer Inspection Advisory Board (FIAB). They are included in this proposed rulemaking action, as well as forms incorporated by reference (513-130, 513-135, and 513-026). No other documentation is included for the proposed changes to regulations.

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The majority of the proposed regulatory actions are technical in nature, and will provide clarity to the regulated industry and end users of fertilizing materials regulations already 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.

For proposed regulations that will require label changes, licensees will be required to begin revising their labels during the next registration renewal cycle, and must complete their revisions by the end of the two-year renewal period. This will allow the changes to be integrated into the normal business practices of reprinting labels with no additional costs. Under 20 percent of the approximately 2,500 firms registered with the Department may be required to make label changes. Firms may utilize their current labels until updated versions are created during their two-year renewal cycle, as a regular course of business.

In a typical registration renewal cycle, approximately 50 percent of firms submit updated labels. There will be no additional fees due to these regulatory changes, as registrants are required to pay a registration fee, whether they make label changes or not, during renewal.

CDFA 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 (h) and (i)** – Most of the fertilizing materials covered by this legislation already display the appropriate warning statements. The remaining manufacturers will be given until the next renewal cycle (up to two years). Firms may utilize their current labels until updated versions are printed as a regular course of business until the next renewal cycle.

**Sections 2300 (j) and 2303 (j) and (k)** – The provisions for these regulations are currently being followed by the Department. During the label registration process, firms are asked to modify labels so as to not mislead the consumer regarding product contents. Unregistered labels are not permitted in the California channels of trade, so

these provisions would not result in firms having to re-print labels.

**Section 2300 (m)** – The provisions for this regulation are currently being enforced. During each renewal period (two-year cycle), labels are reviewed. Any required revisions based on new data since the previous renewal period are communicated to firms. Firms may utilize their current labels until updated versions are printed as a regular course of business until the next renewal cycle.

**Section 2300.1 (f)** – This proposed regulation only defines the extent of regulatory terminology. It does not require that manufacturers include lot identifications. It does allow the process for firms to define how grouping of similar products are related.

**Section 2300.1 (g)** – This proposed regulation only defines the extent of regulatory terminology. It defines “display panel,” which is part of fertilizing material labels mandated in Section 2320.4(c). It does allow firms to clearly identify the term as no definition previously existed.

**Section 2300.1 (h)** – This proposed regulation only defines the extent of regulatory terminology. It defines “public warehouse,” which is a classification of business that is exempt from fertilizing materials licensing. The term is in statute (Sections 14518 and 14555), but no definition previously existed.

**Section 2303 (b)** – Most of the fertilizing materials covered by this legislation already display the appropriate measurement statement as this is a current regulation of the Division of Measurement Standards, within CDFA (FAC Section 12603(c)). Firms may utilize their current labels until updated versions are printed as a regular course of business until the next renewal cycle.

**Section 2303 (e) and (f)** – This is a practice already maintained by CDFA for transparency and uniformity. Most registered labels in these product classes already identify the purpose of the product and directions for use. Firms may utilize their current labels until updated versions are printed as a regular course of business until the next renewal cycle.

**Sections 2303 (h), (i) and (l) and 2312** – The proposed amendments provide tangible examples of label formatting to assist firms in creating their labels. The examples should assist firms to better expedite their labels for review.

**Section 2303 (j)** – There would be adverse no economic impact as firms would be able

to use either the full names or abbreviated names of chelating agents. The section advising placement of the derivation statement would potentially save money for firms as it would provide a tangible guideline before printing their labels. Without the guidance, a firm may incorrectly include the derivation statement in another area resulting in a violation that would require re-printing.

**Section 2303 (k)** – There would be no adverse economic impact as the Department already requires bulk OIM soil amendments to list ingredients in decreasing order. The amendment merely provides clarity.

**Section 2303 (u)** – No adverse economic impact as this subdivision is being repealed. Its provisions were instituted in 2002.

**Section 2303 (w)** – The proposed action merely seeks to allow CDFA to accept definitions and official terms adopted by the Association of American Plant Food Control Officials.

**Section 2304 (d)** – This regulatory change seeks to remove general *genus* examples of acceptable biotic material because not all species within those genera are beneficial for plants and soils. This will not affect any existing registered products because species that are not proven to be beneficial through reviewed efficacy data are presently not permitted.

**Section 2307** – This proposed amendment will allow planting mixes and potting mediums labeled for container gardening the ability to make secondary and micronutrient claims that are lower than established minimums for fertilizers. Claiming any secondary or micronutrient claims are entirely voluntary for firms to list on a label. This will benefit the industry by displaying guarantees of lower nutrients.

**Section 2308 (g)** – The revision to this regulation is intended to reduce the confusion that the labeled pH is for a packaged soil amendment itself and not for the pH affect it may have on the surrounding soil it is applied to. pH label claims are entirely voluntary for the fertilizing material industry.

**Section 2315** – The Department already obtains samples not less than one pound of dry fertilizing material and not less than one pint of liquid fertilizing material for laboratory analysis. This regulation amendment is proposed because the current language is unclear and could be incorrectly construed that liquid fertilizing material

samples must consist of *exactly* one pint.

**Section 2319** – This proposed revision would require fertilizing material manufacturers to complete a form prior to and after the experimental use of any fertilizing material. Experimental trials would still remain free of charge, but the completion of these forms would assist CDFA in determining legitimate experimental trials versus illicit “gray market” sales of fertilizing materials avoiding regulation. It is estimated that these two forms would take less than fifteen minutes to complete.

**Section 2320.1** – The proposed amendment affords all product classes that require registration the same time frame for registration application resubmissions. All product classifications, not just OIMs, would have 180 days to re-submit registration applications for review.

**Section 2320.2 (b)** – The proposed amendment ensures industry is using the most current version of Form 513-026 (Rev. 07/13), OIM’s Fertilizing Materials Registration Application, which is incorporated by reference.

**Section 2320.2 (b)(8)** – The proposed amendment ensures the Department is following consistent protocols with the USDA-NOP. Requiring proof of an inspection before issuing a registration for manufacturers that produce liquid OIMs with a nitrogen guarantee labeled greater than 3% is required based on the USDA-NOP’s Guidance Document 5012.

**Section 2320.2 (b)(9)** – The proposed adoption is simply due to a renumbering because an additional section was added.

**Section 2320.5** – In an effort of transparency, the proposed adoption requires CDFA to maintain an online list of all registered fertilizing materials. This will act as a resource for manufacturers, distributors, and retailers to be able to determine appropriate products to sell in the California channels of trade.

**Section 2322 (a)(1) and (2)** – The proposed action simply revises “civil penalty” to “administrative penalty” to be consistent with proposed language in Assembly Bill 1039, which was chaptered on September 1, 2015. There are no structural changes to the penalty amounts or factors that may have an economic impact.

**Section 2323 (c)** – The proposed revision clarifies the nature of accepted third party

inspections.

**Section 2324** – The proposed amendment adds the verbiage “distributor” and “retailer” to the language because seemingly synonymous terms including “dealer” and “agent” may have differing meanings. For decades, CDFA has obtained samples for analysis from manufacturers, distributors, retailers, and agricultural producers. This regulation will not change existing processes.

Based upon the reasons stated above, the Department has determined that the cost for amending and incorporating these proposed regulations would be insignificant. These proposed regulations will add transparency and provide clarity to users of fertilizing materials. The proposed regulations will not have a significant statewide adverse economic impact directly on the fertilizer industry.

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

**Section 2300 (h) and (i)** – The alternative is to not add “or agricultural mineral.” As a result, consumers would not receive the appropriate warning about excessive levels of boron and molybdenum.

**Section 2300 (j)** – The alternative is to not amend this regulation. Without this regulation, consumers may be misled into believing that a product contains beneficial ingredients due to marketing claims that are not actually present within the product.

**Section 2300 (m)** – The alternative is to not adopt this regulation, which would result in product labels that do not align with current standards and the most recent scientific data.

**Section 2300.1 (f)** – The alternative is to not adopt this regulation. The proposed definition is aligned with similar definitions of “lot” across other California regulatory programs. The absence of such a definition will result in reduced enforcement action on noncompliant inventory due to vague and varying interpretations on what should constitute a “lot”.

**Section 2300.1 (g)** – The alternative is to not adopt a definition for “principal display panel”. However, the term display panel is referenced in Section 2320.4(c), and there is currently no definition.

**Section 2300.1 (h)** – The alternative is to not adopt a definition for “public warehouse”. The lack of a definition allows for varying interpretations of what a “public warehouse” actually is and places an unfair burden on inspectors having to interpret what may or may not constitute a “public warehouse”.

**Section 2303 (b)** – The alternative is to leave the existing verbiage in the regulation. This is problematic because the current verbiage is not consistent with the regulations of other branches within CDFA, specifically FAC Section 12603(c) for appropriate measurement labeling which requires that both US and metric unit formats be displayed.

**Section 2303 (e) and (f)** – The alternative is to not amend these regulations. Most registered labels in these product classes already identify the purpose of the product and directions for use. This is a practice already maintained by the Department for transparency and uniformity.

**Sections 2303 (h), (i) and (l) and 2312** – The alternative is to not amend these regulations. The proposed amendments provide tangible examples of label formatting to assist firms in creating their labels. The additions will make it easier for the industry to visualize and execute the correct label format. Failing to amend these regulations will result in much of the industry “guessing” as to the correct label formats, which will lead to increased label review times and unnecessary additional labor for Department label review staff.

**Section 2303 (j)** – The alternative would be to not allow firms to not include abbreviations for chelating agents in the derivation statement, which would result in firms having to reprint labeling, adding such terms as “Zinc Ethylenediaminetetraacetic Acid” instead of merely “Zinc EDTA.” This would be in direct conflict with fertilizer registration in most other states.

**Section 2303 (k)** – The alternative would be to not amend this regulation. Since the adoption of the Assembly Bill 856, the Department already regulates OIM soil amendments, not merely packaged. The proposed amendment is merely to provide clarity to the regulated industry.

**Section 2303 (u)** – The alternative is to not repeal this regulation and retain the 13-year old outdated deadlines.

**Section 2303 (w)** – The alternative is to continue to refer to an outdated publication, not



used by any other state.

**Section 2304 (d)** – The alternative is to retain the general *genus* examples of acceptable biotic material. This will continue to confuse industry as the determination of acceptable biotics will solely be made based upon submitted efficacy data, which is the practice at present time.

**Section 2307** – The alternative is to retain the existing regulation and exclude planting mixes and potting mediums. The alternative would be potentially unfair to planting mix and potting medium manufacturers since their products have naturally low secondary and micronutrient claims, similar to the hydroponic and continuous liquid feed products mentioned in the existing regulation.

**Section 2308 (g)** – The alternative is to maintain the existing verbiage in the regulation. This may result in continued confusion as to whether the manufacturer should list the pH of the product or the effect it has on the soil the product is applied to. The revised text is currently in practice and pH, when claimed in packaged soil amendments, is noted for the actual product.

**Section 2315** – The alternative is to maintain the existing regulation; this could open up potential legal challenges from the misconception that incorrectly infer that liquid sampling must be *exactly* one pint, which would lead to confusion about correct sample size.

**Section 2319** – The alternative is for the Department to not require the two experimental use forms. This would allow the continued practice of firms selling unregistered fertilizing materials while erroneously disclosing them as for experimental use only.

**Section 2320.1** – The alternative is for the Department to promulgate an additional regulation that mimics 2320.1(c), specifically for conventional products. This regulation would be redundant and unnecessary since a simply amendment to an existing regulation title would suffice.

**Section 2320.2 (b)** – The alternative is to leave the outdated Form 513-026 (Rev. 12/10) which is incorporated by reference; this would not allow industry to complete the updated application to register their OIM products.

**Section 2320.2 (b)(8)** – The alternative is for the Department to not accept inspections provided by industry until the Department is able to conduct their inspection. This would

be burdensome to industry as their products would not be allowed in the channels of trade.

**Section 2320.2 (b)(9)** – The alternative is to not renumber this section. That would make two sections with the same numbers, which would cause confusion for Department staff and the regulated industry.

**Section 2320.5** – The alternative is to not adopt these regulations. However, if the regulation is not adopted, the Department would be less transparent about which products are registered and would not provide a mechanism for the industry to educate themselves on which products are acceptable for sale.

**Section 2322** – The alternative is to maintain the existing regulation text, which would lead to potential inconsistency between the statutes which states “administrative penalty” and this regulation which states “civil penalty”. In order to eliminate confusion, the proposed verbiage should be revised.

**Section 2323** – The alternative would be to maintain the existing regulation text, which does not identify the critical inspection components for compliance with USDA-NOP’s standards.

**Section 2324** – The alternative would be to maintain the existing regulation text, which causes confusion related to the Department’s inspection authority.

Pursuant to Government Code Section 11346.9(a)(4), for purpose which the regulation changes are proposed, the Department has determined that no alternative considered by the agency would be more effective, equally effective and less burdensome or costly to affected private persons.

Pursuant to Government Code section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting forth the Department’s reasons for rejecting any proposed alternatives.

### **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

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