

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Division 4. Plant Industry

Chapter 1. Chemistry

Subchapter 1. Fertilizing Materials

Article 1. Standards and Labeling

NOTICE OF A 15-DAY COMMENT PERIOD

NOTICE IS HEREBY GIVEN that Pursuant to the requirements of Government Code Section 11436.8 (c), and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Food and Agriculture (Department) is providing notice of changes made to the action described in the Informative Digest published in the California Regulatory Notice Register on May 13, 2016 [Notice File No. Z2016–0428–01, Register 2016, No. 20-Z] relating to fertilizing material standards and labeling; and inspection protocol.

The Department is proposing to modify the originally proposed text for Sections 2300, 2300.1, 2303, 2304, 2307, 2308, 2312, 2315, 2319, 2320.1, 2320.2, 2320.5, 2322, 2323, and 2324 of Title 3, Division 4, Chapter 1, Subchapter 1, Article 1 of the CCR. The Department will continue the regulation process with the previously proposed regulation text, unless noted within the newly modified text.

The 45-day public comment period on the originally proposed text for this proposal began May 13, 2016 and ended at 5:00 p.m. on June 27, 2016. Additionally, a public hearing was held on July 5, 2016. The Department is now publishing a notice of a 15-day comment period on the revised proposed text. The purpose is to allow interested persons time to review the modifications to the proposed text and submit written comments. The 15-day public comment period begins **October 11, 2016 and ends at 5:00 p.m., October 25, 2016.**

***Please note:** Any written comments are to be restricted to the recent modifications as indicated in the enclosed language. The California Department of Food and Agriculture is not required to respond to comments received in response to this notice on other aspects of the proposed regulation.*

AUTHORITY AND REFERENCE

Notice is hereby given that the California Department of Food and Agriculture, pursuant to the authority vested by sections 407, 14502, 14591, 14601, 14631, 14641, 14642, 14645, 14646, and 14651.5 of the Food and Agricultural Code (FAC), and to implement, interpret, or make specific Sections 14501, 14502, 14531, 14550.5, 14591, 14594, 14601, 14631, 14641, 14642, 14643, 14645, 14651.5, 14653, 14655, 14681, 14682, Food and Agricultural Code.

AFFECTED SECTIONS OF CALIFORNIA CODE OF REGULATIONS SUBCHAPTER 1, CHAPTER 1, DIVISION 4, OF TITLE 3, DEPARTMENT OF FOOD AND AGRICULTURE:

Sections 2300, 2300.1, 2303, 2304, 2307, 2308, 2312, 2315, 2319, 2320.1, 2320.2, 2320.5, 2322, 2323, and 2324.

WRITTEN COMMENT PERIOD

The Department will accept written comments regarding the newly proposed changes between **October 11, 2016** and **October 25, 2016**. Comments may also be submitted via facsimile (FAX) at (916) 900-5349 or by e-mail to Nick.Young@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on **October 25, 2016**. Submit comments to:

Nick Young, Supervising Special Investigator II
Feed, Fertilizer, and Livestock Drug Services Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814

All written comments received by **October 25, 2016**, which pertain to the newly indicated changes, will be reviewed and responded to by the Department in the Final Statement of Reasons as part of the compilation of the rulemaking file. Please limit your comments to the newly proposed modifications to the text.

DEPARTMENT OF FOOD AND AGRICULTURE

MODIFIED TEXT

Original proposed text is displayed in underline type.

Changes are illustrated by double underline for proposed additions.

Original proposed text to be deleted is displayed in ~~striketrough~~ type.

Newly proposed text for deletion is displayed in ~~double striketrough~~ type.

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 1. STANDARDS AND LABELING

§ 2300. Fertilizing Materials - General Provisions

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(h) A warning or caution statement shall appear on the label of any commercial fertilizer or agricultural mineral product which contains 0.1 percent or more by weight of boron in water soluble form. This statement shall carry the word "WARNING," ~~or~~ "CAUTION," "ATTENTION," or "NOTICE," conspicuously displayed, shall state the crop(s) for which the fertilizing material is to be used or state that the use of the fertilizing material on any crops other than those recommended may result in serious injury to the crop(s).

(i) Except for products labeled only for indoor or hydroponic use, ~~a~~A warning or caution statement shall appear on the label of any commercial fertilizer or agricultural mineral product which contains 0.001 percent or more by weight of molybdenum (Mo). This statement shall carry the word "WARNING," ~~or~~ "CAUTION," "ATTENTION," or "NOTICE," conspicuously displayed and the statement that the application of fertilizing materials containing molybdenum (Mo) may result in forage crops containing levels of molybdenum (Mo) which are toxic to ruminant animals.

(j) When the name of a fertilizing material ingredient appears on the label, ~~outside of the guaranteed analysis statement,~~ the percentage of that plant nutrient that ingredient is required shall be represented in the guaranteed analysis statement and derivation statement, or statement of composition or list of ingredients.

...

(m) Product labels may be re-evaluated to ensure compliance with current labeling laws and regulations. Revisions to approved product labels may be required at registration renewal.

Note: Authority cited: Sections 407, 14502 and 14631, Food and Agricultural Code.
Reference: Sections 14501(b), 14502, 14601, 14631, 14641, 14642 and 14643, Food and Agricultural Code.

§ 2300.1. Definitions.

...

(f) The term “lot” means an identifiable quantity of fertilizing material up to and including the amount represented by a weight certificate; or that bears an identical production code and/or date or, in the absence of either a production code or date, any group of containers of the same size, product name, and manufacturer stored at the same location.

(g) The term “display panel” means the primary part of a label that is designed to be displayed, presented, or shown under normal and customary conditions of display and purchase.

(h) The term “public warehouse” means any place designated for the storage of goods, where its services are offered to any business or person, and where ownership does not engage in the sales of any fertilizing materials being stored at the warehouse.

Note: Authority cited: Sections 407 and 14502, Food and Agricultural Code.
Reference: Sections 14601 and 14631, Food and Agricultural Code; and Section 6254.7, Government Code.

§ 2303. Labeling Requirements.

...

(b) Measurement.

(1) Net weight, of dry materials (not required for soil amendments) (for commercial fertilizer, agricultural mineral and auxiliary soil and plant substance labels). US and metric units are required on dry materials, except those distributed with a weight certificate.

(2) Volume of organic input material bulk soil amendments, packaged soil amendments, and liquid materials (for packaged soil amendments and liquid specialty fertilizers). US and metric units are required on organic input material bulk soil

amendments, packaged soil amendments, and liquid materials, except those distributed with a weight certificate.

...

(e) Purpose of the product (for auxiliary soil and plant substances, packaged agricultural minerals, packaged soil amendments, and specialty fertilizers-only).

(f) Directions for use (for auxiliary soil and plant substances, packaged agricultural minerals, packaged soil amendments, and specialty fertilizers-only).

...

(h) A statement of composition showing the percent of each active ingredient, which is the agent in a product primarily responsible for the intended effects (for auxiliary soil and plant substances); using the following format:

NONPLANT FOOD INGREDIENT(S):

X% Humic Acids (state the source of the humic acids)

X% Polymers (state the name of the specific polymer)

X% Wetting Agents (state the name of the specific wetting agent)

(i) A guaranteed analysis using the following format, terminology, and order presented:

GUARANTEED ANALYSIS:

(1) Total Nitrogen (N)..... _____ %
_____ % Ammoniacal Nitrogen

_____ % Nitrate Nitrogen

_____ % Water Soluble Organic Nitrogen or Other recognized and determinable forms of nitrogen

_____ % Water Insoluble Organic Nitrogen or Water Insoluble Nitrogen

Available Phosphoric Acid (P₂O₅) _____ %

Soluble Potash (K₂O)..... _____ %

(2) Secondary and micronutrient guarantee minimums. (if claimed)

Calcium (Ca) 1.0000%

Magnesium (Mg) 0.5000%

Sulfur (S)..... 1.0000%

Boron (B) 0.0200%

Chlorine (Cl)..... 0.1000%

Cobalt (Co) 0.0005%

Copper (Cu) 0.0500%

_____ % Chelated Copper

Iron (Fe)..... 0.1000%

_____ % Chelated Iron

Manganese (Mn)..... 0.0500%

_____ % Chelated Manganese

Molybdenum (Mo)..... 0.0005%

Sodium (Na)..... 0.1000%

Zinc (Zn) 0.0500%

_____ % Chelated Zinc

(3) Limiting material guarantees: (if claimed)

Compound(s) composing material %

(state specific compounds)

Calcium carbonate equivalent..... %

Sieve Analysis: _____ 10 mesh %

(BULK ONLY) _____ 20 mesh %

_____ 40 mesh %

_____ 60 mesh %

Sieve Analysis (BULK ONLY):

_____ 10 mesh %

_____ 20 mesh %

_____ 40 mesh %

_____ 60 mesh %

Moisture, maximum (BULK ONLY) %

(4) Gypsum guarantees: (if claimed)

Calcium Sulfate Dihydrate (CaSO₄·2H₂O).....X%

Calcium (Ca).....X%

Sulfur (S).....X%

(5) Gypsum equivalent guarantees: (if claimed)

Gypsum Equivalent.....X%

Calcium (Ca).....X%

Sulfur (S).....X%

(4-6) Other guarantees: (if claimed, and approved by the director/secretary)

(j) A derivation statement directly following the last nutrient guarantee (for commercial fertilizers and agricultural mineral labels ~~only~~).

(1) Abbreviations shall not appear in the derivation statement, with the exception of chelating agents.

(2) For liming materials, the derivation statement shall follow the last guarantee.

(k) A list of ingredients in decreasing amounts present. (~~F~~for packaged soil amendments and organic input material bulk soil amendments~~only~~).

(l) The following format and guarantees, as applicable for the following products or ingredients, shall appear ~~following~~ after the derivation statement of agricultural mineral and commercial fertilizer labels:

"ALSO CONTAINS NONPLANT FOOD INGREDIENT(S):"

X% Humic Acids (~~Derived from~~ state the source of the humic acids)

X% Polymers (state the name of the specific polymer. (Required for auxiliary soil and plant substances only)-

X% Wetting Agents (state the name of the specific wetting agent on company letterhead

and note if confidential - not required on the label)

...

~~(u) Labeling provisions in Section 2303 (r) shall be met no later than January 1, 2002. Labeling provisions in Section 2303 (s) shall be met no later than July 1, 2002, for all products entering into channels of trade.~~

~~(v)~~ The publication of inaccurate information regarding the contents and levels of metals is a misbranding violation pursuant to Section 14681 of the Food and Agriculture Code.

~~(w)~~ ~~In adopting the labeling requirements, The secretary may~~ accepted definitions and official fertilizer terms listed adopted by the 2010 Association of American Association of Plant Food Control Officials Publication volume 63, may be considered.

Note: Authority cited: Sections 407, 14502, 14601 and 14631, Food and Agricultural Code. Reference: Section 14631, Food and Agricultural Code.

§ 2304. Biotics.

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(d) Storage conditions.

A generally accepted laboratory method for assaying the viable and attenuated units, and the by-products claimed, and a copy of the analysis or alternate methods supporting proof of label claim, must be submitted with the registration application.

When used for the purpose intended, the product must not be pathogenic to plants or pathogenic to animals which may consume the treated plant. Biotic products ~~such as Rhizobium spp., Gigaspora spp., Glomus spp., and Pisolithus spp.,~~ are acceptable for registration. ~~Other biotic products~~ are acceptable based on efficacy data.

Note: Authority cited: Sections 407, 14502, 14601 and 14631, Food and Agricultural Code. Reference: Sections 14594, 14601 and 14631, Food and Agricultural Code.

§ 2307. Hydroponics, Continuous Liquid Feed Products and, Ready-to-Use Foliar Products, and Planting Mixes or Potting Mediums Labeled for Container Gardening.

The minimum percentages acceptable for secondary nutrients and micronutrients stated in Section 2303, do not apply to guarantees for those water soluble nutrients, secondary nutrients, or micronutrients on products labeled only for hydroponic, continuous liquid feed programs, or ready-to-use foliar products, and planting mixes or potting mediums labeled for container gardening.

Note: Authority cited: Sections 407, 14502 and 14631, of the Food and Agricultural Code. Reference: Section 14631, of the Food and Agricultural Code.

§ 2308. Packaged Soil Amendments.

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(g) If reference is made to the acidity or alkalinity of the product, or its influence on the soil, a the range or specific pH of the product must be guaranteed.

Note: Authority cited: Sections 407, 14502, 14601 and 14631, Food and Agricultural Code. Reference: Sections 14601 and 14631, Food and Agricultural Code.

§ 2312. Gypsum Equivalent.

Any of the following four compounds, singly or in combination, shall be expressed as a percent gypsum equivalent on the label:

Hydrated Calcium Sulfate ~~(CaSO₄·2H₂O)~~

Anhydride Calcium Sulfate ~~(CaSO₄)~~

Hydrated Calcium Sulfite

Anhydride Calcium Sulfite

Note: Authority cited: Sections 407, 14502 and 14631, Food and Agricultural Code. Reference: Section 14631, Food and Agricultural Code.

ARTICLE 2. SAMPLES

§ 2315. Sampling Procedure.

Each official sample shall consist of ~~at least one pound of dry materials or one pint of liquid material~~ taken a fertilizing material obtained in the following manner:

(a) Packaged Dry Materials.

(1) Use a sampler that removes a core diagonally from end-to-end of the container.

(2) The lot and the sample size consisting of not less than one pound will be established in the following manner:

Lot Size Containers

Sample Size Containers

Less than 5	All
6-15	5
16-30	6
31-60	7
61-100	8
101-200	9
201-300	10
301-500	11
501 or more	12

(3) Small packages of dry fertilizer material in packages of 80 pounds or less, when not practical to sample according to subsection (2), shall be represented by one unbroken package which will constitute the official sample.

(4) Place all cores into sample container and send to the laboratory.

(b) Sampling Dry Fertilizing Materials in Bulk Lots. Dry bulk material samples shall consist of not less than one pound and be sampled obtained by one of the following methods:

(1) Use a bulk cup-type sampler with an opening width at least three times the diameter of the largest particle being sampled and long enough to “cut” the complete stream. The delivery stream must be “cut” with the sampler at least ten times at equal intervals during the delivery.

The registrant mixing the material must supply a safe and convenient access to a stream of the material being loaded for the sampler.

(2) Use a "Missouri D" probe according to the following system:

(i) At least 12 cores must be drawn in different locations.

(ii) When a single lot of fertilizing material is in two separate compartments, take a minimum of six cores from each compartment.

(iii) When a single lot of fertilizing material is in three or more compartments, take a minimum of four cores from each compartment.

(c) When sampling gypsum, the following procedure is acceptable:

(1) Scrape outer surface aside before inserting sampler.

(2) Take approximately 20 ~~approximately~~-equal cores from ~~fairly~~-evenly distributed parts of the quantity.

(3) Portions may be taken with a trowel when the material contains large lumps or when for other reasons it is not possible to use a sampler.

(4) Place all portions into sample container and send to the laboratory for mixing and quartering.

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Note: Authority cited: Sections 407, 14502 and 14591, Food and Agricultural Code.
Reference: Section 14591, Food and Agricultural Code.

ARTICLE 3. LICENSING

§ 2319. Experimental Use of a Fertilizing Material.

Experimental use of a fertilizing material for noncommercial value is exempt from registration, ~~licensing, only~~ when all of the following conditions have been satisfied:

~~(a) Experimental fertilizing. The material shall not be sold application is limited to 10 acres or less.~~

~~(b) Records identifying recipients of the material shall ~~must~~ be retained and available to the secretary upon request for three years after the conclusion of the field trial.~~

~~(c) Experimental fertilizing. The material shall be conspicuously identified on the display panel as "EXPERIMENTAL USE ONLY".~~

~~(d) Firms shall notify the department of their intent to apply fertilizing material for experimental use on the CDFA form, number 513-130 (Est. 10/15), Experimental Fertilizing Material Research Notification.~~

~~(1) The conclusion of each trial shall be reported to the department on the CDFA form, number 513-135 (Est. 10/15), Experimental Fertilizing Material Field Trial Report.~~

Note: Authority cited: Sections 407, 14502 and 14591, Food and Agricultural Code.
Reference: Sections 14531 and 14591, Food and Agricultural Code.

ARTICLE 4. REGISTRATION

§ 2320.1. ~~Fee for Each Organic Input Material~~ Fertilizing Material Product Labels Submitted for Registration.

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Note: Authority cited: Sections 407, 14502, and 14601, Food and Agricultural Code.
Reference: Section 14601, Food and Agricultural Code.

§ 2320.2. Registration Application for Organic Input Material Product Label.

(b) Product label registration for Organic Input Material shall be made on an application designated by the department, Organic Input Material, Fertilizing Materials Registration Application, 513-026 (Rev. ~~12/10~~ 07/13), which is hereby incorporated by reference.

Applications must be accompanied by the appropriate fee and shall include:

- (1) A copy of the label accompanying the material and a statement of all claims to be made for it, including the directions and precautions for use.
- (2) The complete formula of the material including the active, inert ingredients, the name, source, and function of every substance that is added in creation of the final product. This includes primary ingredients and feedstocks, growth media, substrates, extractants, solvents, emulsifiers, precursors, reactants and stabilizers, as well as any chelating, complexing, crystallizing, granulating, hydrolyzing, flowing, or floating agents, or any other additives.
- (3) A complete description of the manufacturing process for the Organic Input Materials (OIM), including ingredient amounts, sequence and duration of events, temperature changes, reactions, and all steps taken to assure that OIM are not contaminated with USDA-NOP prohibited substances as well as a description of any composting, digestion, fermentation, extraction, or other processes and any methods used for removing extractants or growth media from the final product.
- (4) The intended uses of the product.
- (5) The source or supplier of all ingredients.
- (6) Alternate formulation.
- (7) Third party formulated ingredients.
- (8) An organic input material inspection report for manufacturers that produce liquid OIMs with a nitrogen guarantee labeled greater than 3%. Any additional information deemed necessary by the Secretary.
- (9) Any additional information deemed necessary by the secretary.

Note: Authority cited: Sections 407, 14502 and 14601, Food and Agricultural Code.
Reference: Sections 14550.5, 14601 and 14631 Food and Agricultural Code.

§ 2320.5. Registered Product List

(a) The secretary shall maintain a list of registered fertilizing materials on the department's website.

~~(b) Anyone (including producer, manufacturer, distributor, importer, agent, dealer, or retailer) shall be responsible for checking the list to ensure the product is registered prior to selling or distributing any fertilizing material.~~

~~(c) Anyone who sells or distributes an unregistered fertilizing material shall be subject to administrative penalties.~~

Note: Authority cited: Sections 407, 14502, and 14601 ~~and 14651.5~~, Food and Agricultural Code. Reference: Section 14601, Food and Agricultural Code.

ARTICLE 5. TONNAGE REPORTING

§ 2322. Civil Administrative Penalty Guidelines.

(a) For the purposes of this section, violation classes are designated as “Serious,” “Moderate,” and “Minor” to establish maximum penalty amounts. Repeat violations may result in an escalation of violation class. Serious and moderate violations may be downgraded based upon the evidence, the factual circumstances, mitigating factors and the cooperation of the violator.

(1) "Serious." Violations that cause significant false, misleading or deceptive business practices that involve the misbranding, adulteration of fertilizing material products, movement of quarantined products without prior approval of the Secretary, refusal to submit records upon request; or repeated violations of sub-paragraph (2). Serious violations are punishable by an civil administrative penalty of up to five thousand dollars (\$5,000).

(2) "Moderate." Violations in which there is a potential for intermediate level of consumer or competitive harm or repeated violations of sub-paragraph (3). Moderate violations are punishable by an civil administrative penalty of up to one thousand dollars (\$1,000).

(3) "Minor." Violations that are unintentional and have minimal adverse effects on consumers or equitable competition in the market place. In lieu of civil an administrative penalty, the Secretary may issue a notice of warning for minor violations.

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Note: Authority cited: Sections 407, 14502, 14651.5 and 14655, Food and Agricultural Code. Reference: Sections 14651.5, 14653, 14655, 14681 and 14682, Food and Agricultural Code.

§ 2323. On Site Inspection of Organic Input Material Manufacturers.

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(b) The ~~§~~secretary ~~shall~~ may perform site inspections of organic input material manufacturers and manufacturing processes used to validate label nutrient guarantees, claims, and compliance with National Organic Program standards at least once per year.

(c) The ~~§~~secretary may accept inspections performed by a third-party organization ~~recognized by the National Organic Program~~ for out-of-state organic input material manufacturers. All inspection records ~~obtained~~ compiled by the third-party organization shall be made available to the ~~§~~secretary upon request. When a third-party organization is conducting a site inspection, the ~~organization's~~ inspection shall be consistent with the ~~§~~secretary's inspection protocol, which requires all locations manufacturing liquid organic input materials with a total nitrogen claim higher than 3% to have at least two inspections per year, one being unannounced. ~~and The third-party organization shall notify the department of when the date of the inspection is going to take place at least no less than 72 hours in advance of the inspection.~~ ~~D~~department representatives may be present at the inspection.

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Note: Authority cited: Sections 407, 14502, 14601, 14641 and 14642, Food and Agricultural Code. Reference: Section 14601, Food and Agricultural Code.

§ 2324. Access for Sampling.

Authorized staff may take a sample for analysis from any lot of fertilizing material which is in the possession of any producer, manufacturer, distributor, importer, agent, dealer, retailer, or user.

Note: Authority cited: Sections 407, 14502, 14601, 14641, 14642 and 14645, Food and Agricultural Code. Reference: Section 14645, Food and Agricultural Code.