

## TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

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 6. MILL ASSESSMENTS  
August 16, 2019

### NOTICE OF A 15-DAY COMMENT PERIOD

**Modifications to the Text of Proposed Regulations to Rulemaking File [Notice File No. Z2019-0416-06, Register 2019, No. 17-Z] relating to the fertilizing materials mill assessment**

**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 April 26, 2019 [Notice File No. Z2019-0416-06, Register 2019, No. 17-Z] relating to the labeling and sampling of fertilizing materials I, and setting the mill assessment rate for the Department's Fertilizing Materials Inspection Program.

The Department is proposing to modify the originally proposed text for Sections 2303, 2317.5, and 2326.1 of Title 3, Division 4, Chapter 1, Subchapter 1, Articles 1, 2, and 7 of the CCR. Only those portions of the originally proposed text that are indicated by a double underline or ~~double strikethrough~~ have been modified. The remainder of the text remains the same as the originally proposed text.

The 45-day public comment period on the originally proposed text for this proposal began April 26, 2019 and ended at noon on June 11, 2019. The Department is now publishing a notice of a 15-day comment period on the modified 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 **August 16, 2019 and ends at 5:00 p.m. on August 31, 2019.**

***Please note:*** Any written public comments are to be restricted to the recent modifications as indicated in double underline or ~~double strikethrough~~ within 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, 14501, 14502, 14601, 14611, 14631, and 14645 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 14501, 14517, 14533, 14551, 14611, 14631, 14641, 14645, 14646, 14651.5, 14681, and 14682.

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

Sections 2303, 2317.5, and 2326.1

## **WRITTEN COMMENT PERIOD**

The Department will accept written comments regarding the newly proposed changes between **August 16, 2019** and **August 31, 2019**. Comments may also be submitted via facsimile (FAC) at (916) 900-5349 or by e-mail to [Brittnie.Sabalbro@cdfa.ca.gov](mailto:Brittnie.Sabalbro@cdfa.ca.gov). The written comment period closes at **5:00 p.m.** on **August 31, 2019**. 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

All written comments received by 5:00 p.m. on August 31, 2019, which pertain to the modified proposed text, 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 modifications of the originally proposed text.

# DEPARTMENT OF FOOD AND AGRICULTURE

## MODIFIED TEXT

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Original proposed text is displayed in underline type.

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

Proposed additions after the 45-day comment period are illustrated by double underline.

Proposed text after the 45-day comment period to be deleted is displayed in ~~double striketrough~~ type.

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### ARTICLE 1. STANDARDS AND LABELING

#### § 2303. Labeling Requirements.

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(s) Packaged product labels for commercial fertilizer and agricultural mineral products, ~~with the exception of gypsum, liming materials, manure, wood or coal fly ash, sewage sludge, composted products, potting soils, potting mix, blood meal, bone meal, feather meal, kelp meal or seaweed, cottonseed meal, fish meal, sphagnum peat moss and seed mix~~ with guarantees of available phosphoric acid, iron, manganese, or zinc, which are derived from inorganic sources, shall include either an informational statement of laboratory test results or provide an informational statement providing the maximum levels in parts per million of arsenic, cadmium, cobalt, copper, lead, mercury, molybdenum, nickel and selenium.

(1) In lieu of a statement on the label, the information may be provided by either of the following statements:

“Information regarding the contents and levels of metals in this product is available by calling 1-800-XXX-XXXX.”

Or

“Information regarding the contents and levels of metals in this product is available on the Internet at <http://www.regulatory-info-xx.com>.” Each registrant shall substitute a unique alphanumeric identifier for “xx”. This statement may be used only if the licensee establishes and maintains the Internet site; there is a clearly visible, direct hyperlink to a government web site and, the Internet site contains no advertising or company-specific information. A government web site internet address on the label, or an address for a web site (such as the Association of American Plant Food Control Officials non-nutritive metals web site) that contains links to other state government non-nutritive metals information, is an acceptable alternative to a web site established and maintained by the licensee. All linked web sites shall contain no advertising or company-specific information.

(t) Testing methodology for the informational statement of laboratory test results shall conform to either sample preparation method 3050B or 3051 and conform to analysis methods as described in US EPA Publication SW-846 (Revision 3, December 1996), which is hereby incorporated by reference.

(1) The heavy metal testing results shall be no more than five (5) years old at the time of registration renewal approval.

...

(w) A copy of the heavy metals analysis for the nine metals described in Section 2303 (s) shall be submitted to the secretary for any label that contains a link to the California website for heavy metals.

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

Reference: Section 14631, Food and Agricultural Code.

## ARTICLE 2. SAMPLES

### § 2317.5. Investigational Allowances.

(a) A fertilizing material shall be deemed deficient if the analysis of any nutrient is below the guarantee by an amount exceeding the values in the following schedule:

#### Primary Nutrients

<u>Guarantee Percent</u>	<u>Total Nitrogen (N) Percent</u>	<u>Available Phosphoric Acid (P<sub>2</sub>O<sub>5</sub>) Percent</u>	<u>Soluble Potash (K<sub>2</sub>O) Percent</u>
<u>4 or less</u>	<u>0.49</u>	<u>0.67</u>	<u>0.41</u>
<u>5</u>	<u>0.51</u>	<u>0.67</u>	<u>0.43</u>
<u>6</u>	<u>0.52</u>	<u>0.67</u>	<u>0.47</u>
<u>7</u>	<u>0.54</u>	<u>0.68</u>	<u>0.53</u>

<u>Guarantee Percent</u>	<u>Total Nitrogen (N) Percent</u>	<u>Available Phosphoric Acid (P<sub>2</sub>O<sub>5</sub>) Percent</u>	<u>Soluble Potash (K<sub>2</sub>O) Percent</u>
<u>8</u>	<u>0.55</u>	<u>0.68</u>	<u>0.60</u>
<u>9</u>	<u>0.57</u>	<u>0.68</u>	<u>0.65</u>
<u>10</u>	<u>0.58</u>	<u>0.68</u>	<u>0.70</u>
<u>12</u>	<u>0.61</u>	<u>0.69</u>	<u>0.79</u>
<u>14</u>	<u>0.63</u>	<u>0.70</u>	<u>0.87</u>
<u>16</u>	<u>0.67</u>	<u>0.70</u>	<u>0.94</u>
<u>18</u>	<u>0.70</u>	<u>0.71</u>	<u>1.01</u>
<u>20</u>	<u>0.73</u>	<u>0.72</u>	<u>1.08</u>
<u>22</u>	<u>0.75</u>	<u>0.72</u>	<u>1.15</u>
<u>24</u>	<u>0.78</u>	<u>0.73</u>	<u>1.21</u>
<u>26</u>	<u>0.81</u>	<u>0.73</u>	<u>1.27</u>
<u>28</u>	<u>0.83</u>	<u>0.74</u>	<u>1.33</u>
<u>30</u>	<u>0.86</u>	<u>0.75</u>	<u>1.39</u>
<u>32</u>	<u>0.88</u>	<u>0.76</u>	<u>1.44</u>
<u>34</u>	<u>0.88</u>	<u>0.79</u>	<u>1.46</u>
<u>36</u>	<u>0.88</u>	<u>0.83</u>	<u>1.49</u>
<u>38</u>	<u>0.88</u>	<u>0.86</u>	<u>1.51</u>
<u>40</u>	<u>0.88</u>	<u>0.90</u>	<u>1.54</u>
<u>42</u>	<u>0.88</u>	<u>0.93</u>	<u>1.56</u>
<u>44</u>	<u>0.88</u>	<u>0.96</u>	<u>1.58</u>
<u>46</u>	<u>0.88</u>	<u>1.00</u>	<u>1.61</u>
<u>48</u>	<u>0.88</u>	<u>1.03</u>	<u>1.63</u>
<u>50</u>	<u>0.88</u>	<u>1.07</u>	<u>1.66</u>
<u>52</u>	<u>0.88</u>	<u>1.10</u>	<u>1.68</u>
<u>54</u>	<u>0.88</u>	<u>1.10</u>	<u>1.70</u>
<u>56</u>	<u>0.88</u>	<u>1.10</u>	<u>1.73</u>
<u>58</u>	<u>0.88</u>	<u>1.10</u>	<u>1.75</u>
<u>60</u>	<u>0.88</u>	<u>1.10</u>	<u>1.78</u>
<u>62</u>	<u>0.88</u>	<u>1.10</u>	<u>1.80</u>

- (1) If the guaranteed percent is between listed values, the higher investigational allowance shall be applied. For example, a 21% N guarantee would have a 0.75% investigational allowance.
- (2) In no case may the investigational allowance exceed 50 percent of the amount guaranteed.
- (3) For Triple Super Phosphate (TSP), the investigational allowance for available phosphoric acid (P<sub>2</sub>O<sub>5</sub>) shall be 1.53%.

(b) Secondary and micronutrients shall be deemed deficient if the analysis of any element is below the guarantee by an amount exceeding the values calculated according to the following schedule:

**Secondary and Micronutrients**

<b><u>Element</u></b>	<b><u>Investigational Allowance</u></b>
<u>Calcium</u>	<u>0.2 unit + 5% of guaranteed analysis</u>
<u>Magnesium</u>	<u>0.2 unit + 5% of guaranteed analysis</u>
<u>Sulfur</u>	<u>0.2 unit + 5% of guaranteed analysis</u>
<u>Boron</u>	<u>0.003 unit + 15% of guaranteed analysis</u>
<u>Cobalt</u>	<u>0.0001 unit + 30% of guaranteed analysis</u>
<u>Molybdenum</u>	<u>0.0001 unit + 30% of guaranteed analysis</u>
<u>Chlorine</u>	<u>0.005 unit + 10% of guaranteed analysis</u>
<u>Copper</u>	<u>0.005 unit + 10% of guaranteed analysis</u>
<u>Iron</u>	<u>0.005 unit + 10% of guaranteed analysis</u>
<u>Manganese</u>	<u>0.005 unit + 10% of guaranteed analysis</u>
<u>Sodium</u>	<u>0.005 unit + 10% of guaranteed analysis</u>
<u>Zinc</u>	<u>0.005 unit + 10% of guaranteed analysis</u>
<u>The maximum allowance when calculated in accordance to the above shall be 1 unit (one percentage point).</u>	

(1) For low guarantees not represented by this table, an investigational allowance of 50 percent of the amount guaranteed will be applied.

(2) The investigational allowances are applied as follows:

(A) For zinc guaranteed at 0.75 percent Zn, the investigational allowance is calculated as  $0.005 + 0.1(0.75) = 0.08$  percent. An analyzed value for zinc of 0.66 percent ( $0.75 - 0.08 = 0.67$ ) or less would be declared deficient and in violation. An analyzed value for zinc of 0.67 percent or more is within the investigational allowance for a zinc guarantee of 0.75 percent Zn.

(B) For zinc guaranteed at 36.0 percent Zn, the investigational allowance is calculated as  $0.005 + 0.1(36.0) = 3.605$  percent. However, the maximum allowance is 1 unit (one percentage point). Therefore, the investigational allowance for a 36.0 percent Zn guarantee is 1.0 percentage point. An analyzed value of 34.99 percent Zn or less would be declared deficient and in violation. An analyzed value for zinc of 35.0 percent or more is within the investigational allowance for a 36.0 percent zinc guarantee.

(c) Other guarantees or claims shall be deemed deficient if any ingredient or claim is below the guaranteed by an amount exceeding the values in the following schedule:

**Other Ingredient Guarantees or Claims**

<u>Ingredient or Claim</u>	<u>Investigational Allowance</u>
<u>Humic Acid</u>	<u>10% of guaranteed analysis</u>
<u>Gypsum</u>	<u>5% of guaranteed analysis</u>
<u>Gypsum Equivalent</u>	<u>5% of guaranteed analysis</u>
<u>Calcium Carbonate Equivalent</u>	<u>5% of guaranteed analysis</u>
<u>Vitamin B-1 (<i>thiamine hydrochloride</i>)</u>	<u>30% of guaranteed analysis</u>
<u>pH</u>	<u>pH 3.14% of required National Organic Program value (3.5 pH) (<i>only required for organic input material liquid fish products</i>)</u>

(1) The investigational allowance for pH is applied as follows:

- (A) For organic input material liquid fish products, the National Organic Program states that the pH cannot be lowered below 3.5.  $3.5 \text{ pH} - 3.5(3.14\%) = 3.3901 \text{ pH}$ . Any value below 3.3901 pH would be in violation of the National Organic Program rule (7CFR 205.601(j)(7)). Any value between 3.3901 to 3.4999 is within investigational allowance.

Note: Authority cited: Sections 407, 14502 and 14645, 14647 Food and Agricultural Code.

Reference: Sections 14645 and 14646, Food and Agricultural Code.

## **ARTICLE 7. MILL ASSESSMENTS**

### **§ 2326.1. Mill Assessment Rates.**

(a) A licensee whose name appears on the label who sells or distributes bulk fertilizing materials, as defined in Food and Agricultural Code Sections 14517 and 14533, to unlicensed purchasers, shall pay to the secretary an assessment of one and a half ~~two~~ mills ( $\$0.00152$ ) per dollar of sales for all sales of fertilizing materials. A licensee whose name appears on the label of packaged fertilizing materials, as defined in Food and Agricultural Code Sections 14533 and 14551, shall pay to the secretary an assessment of one and a half ~~two~~ mills ( $\$0.00152$ ) per dollar of sales of all sales of fertilizing materials.

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Note: Authority cited: Sections 407, 14501, 14502 and 14611, Food and Agricultural Code.

Reference: Sections 14501, 14517, 14533, 14551 and 14611(b), Food and Agricultural Code.