

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 6. MILL ASSESSMENTS

INITIAL STATEMENT OF REASONS

The California Department of Food and Agriculture's (Department) Fertilizing Materials Inspection Program (FMIP) is statutorily tasked with licensing and label registration, tonnage reports, field inspections, and administration of the Fertilizer Research and Education Program (FREP). The FMIP is responsible for the review and registration of product labels, promoting agronomically sound and environmentally safe use of fertilizing materials through FREP, and ensuring fertilizing materials are safe and effective, and meet the nutrients guaranteed by the manufacturer. Producers of agricultural minerals, auxiliary soil and plant substances, commercial fertilizers, soil amendments, specialty fertilizers and organic input materials (OIM) are statutorily mandated to register with the FMIP.

SECTIONS AFFECTED

California Code of Regulations (CCR), Title 3, Division 4, Chapter 1, Subchapter 1, Articles 1, 2, and 7, Sections 2303, 2317.5, and 2326.1.

PROBLEM STATEMENT

The objective of the proposed regulations is to clarify the statutes in the Food and Agricultural Code (FAC) related to fertilizer labeling, sampling, and set the mill assessment rate for the Department's FMIP.

DOCUMENTS RELIED UPON

- Draft Fertilizer Inspection Advisory Board (FIAB) meeting minutes dated February 6, 2019
- 2019 Association of American Plant Food Control Officials (AAPFCO) official publication, No. 72

BENEFITS

The proposed changes to the regulations will provide greater transparency with fertilizer labeling and nutrient guarantees and decrease the mill assessment fee while adequately funding the FMIP for enforcement of the state's fertilizing materials laws and regulations.

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 2303. Labeling Requirements

Section 2303(s) is being amended to provide a template for guarantees derived from inorganic sources. The amendment eliminates confusing language and simplifies the regulation consistent with CCR Section 2302. The revisions are needed to ensure that all commercial fertilizer and agricultural mineral products are accurately documented to the public as to content of heavy metals.

Section 2303(t) is being amended to include subsection 2303(t)(1), which provides clarity on testing results for heavy metals. This is necessary to provide accurate laboratory test results representative of the currently available products. Results older than 5 years are usually not representative of the products in the channels of trade, thus not an accurate portrayal to consumers.

Section 2303(w) is being added to clarify how a firm can continue to include a heavy metals statement on a label without being misleading. The AAPFCO statement is widely used on fertilizing products as it is required by many states. By submitting current, complete analysis of the heavy metal content to the department, a firm can continue to claim the specific heavy metals statement on product labels. Without submission, it would be misleading as the statement would not point to any results. This will allow the Department's secretary the authority to set a protocol for labels containing heavy metals.

ARTICLE 2. SAMPLES

Section 2317.5 is being adopted to provide fertilizer manufacturers with published values of investigational allowances. Investigational allowances account for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer. Fertilizer manufacturers/guarantors are currently required to provide a guaranteed analysis on

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labeling for percentages of primary nutrients, secondary nutrients, micronutrients, or other claims. This section communicates thresholds for which any analyzed deficiency would be considered in violation versus values that are within an acceptable investigational allowance due to laboratory variations.

These investigational allowances for primary, secondary, and micronutrients are officially recognized by AAPFCO [Official Publication AAPFCO, No.72, 2019, pages 48-50] and have been universally accepted by all U.S. states, Canada, and Puerto Rico.

ARTICLE 7. MILL ASSESSMENTS

Section 2326.1 Mill Assessment Rates.

Section 2626.1(a) is being amended to set a new mill assessment rate in regulation for the FMIP. The proposed amendment would lower the mill from two mills (\$0.002) to one and a half mills (\$0.0015) per dollar of sales for all fertilizing materials. The mill assessment fee reduction would lower the assessments paid by firms, in turn lowering the FMIP's reserve and allowing the Department to continue its focus on consumers receiving safe, effective fertilizing materials, and meeting the quality and quantity guaranteed by the manufacturer.

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

The Department relied upon the following documents in establishing this proposed rulemaking action:

- Draft FIAB meeting minutes, dated February 6, 2019
- 2019 AAPFCO official publication, No. 72

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

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

The proposed regulatory action regarding the mill assessment fee reduction will not have an economic or fiscal impact on the fertilizer industry. The proposed action will be beneficial to the fertilizer industry resulting in an annual savings of \$1.54 million of mill assessment fees to the fertilizer industry.

The Department 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 2303(s), (t), and (w) – There is no economic impact to these proposed regulations as they are merely to help explain and clarify label and sampling requirements. Firms are already providing these results to other states as required.

Section 2317.5 – The proposed amendment only provides guidance and consistency in regulations; it would not have an adverse economic impact.

Section 2326.1 – There is no economic impact to these proposed regulations as the proposed change is a fee reduction. The Department has determined there will be an annual savings of \$1.54 million to the fertilizer industry.

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

Section 2303(s), (t), and (w) – The alternative is to insist that firms remove the heavy metals statement from labels so as to not be misleading for the public. Firms would then have to produce versions of labels unique to California, as the statement is required by many states. Firms would face additional costs of maintain two or more labels for each product and face logistic issues of marketing and distribution specific to each state.

Section 2317.5 – The alternative is for California to consider all fertilizer guaranteed analysis deficiencies to be in violation without any regard for typical analytical variations that occur in a laboratory environment. Fertilizer manufactures would therefore be accountable for deficiency violations that may not be completely accurate due to known deviations in sample taking, sample preparation, laboratory equipment and methods.

Section 2326.1 – The alternatives are to reduce the mill assessment to one mill (\$0.001) per dollar of sales or to retain the current mill assessment at two mills (\$0.002) per dollar of sales. The FMIP's fund reserve would decrease to below the 50 percent reserve requirement if reduced to one mill and the excess fund reserve would continue to increase if retained at two mills.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

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