

DEPARTMENT OF FOOD AND AGRICULTURE

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  
(Notice published April 26, 2019)

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to adopt or make changes to the 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.

**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 noon, on June 11, 2019. The Department will only consider comments received by that time.

Submit comments to:

Brittnie Sabalbro, Associate Governmental Program Analyst (AGPA)  
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](mailto:brittnie.sabalbro@cdfa.ca.gov)

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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, 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.

**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.

The proposed actions within CCR Section 2303, paragraphs (s), (t), and (w) ensure that claims on product labels are correctly and completely documented. This would allow the public and growers access to accurate and current knowledge of products that they purchase. The revised regulation provides clarity to industry about accurate disclosure to the public of potential heavy metal contamination in fertilizing material products and clarifies that firms produce only one label per product rather than a state specific label. Current and complete analyses are required to accurately reflect the label claims which promise the consumer that this information is available.

The adoption of Section 2317.5 ensures transparency to fertilizer manufacturers for their fertilizer guarantees of primary nutrients, secondary nutrients, micronutrients, or other guaranteed claims, when their products are analyzed by the Department.

The proposed action within CCR Section 2326.1 is intended to set the mill assessment rate for the Department's FMIP. FAC, Article 6. Inspection Fees, Section 14611(a) mandates that a licensee whose name appears on the label of packaged fertilizing materials, as defined in Sections 14533 and 14551, shall pay to the secretary an assessment not to exceed two mills (\$0.002) per dollar of sales.

*Anticipated Benefits of the Proposed Regulations:*

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The Department anticipates the proposed heavy metals and investigational allowances regulations would provide greater transparency with fertilizer labeling and consistency with nutrient guarantees.

The Department anticipates the proposed regulations to reduce the mill assessment rate would lower 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; thus, ensuring the protection of public health and safety in the agricultural community.

*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 existing 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.

**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 reasonable compliance with the proposed action.

Significant effect on housing costs: None.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

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The Department has initially determined that the proposed regulatory actions will not have an economic or fiscal impact to the fertilizer industry.

These proposed regulations will 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

The proposed regulatory adoptions will benefit the regulated industry by providing greater transparency with fertilizer labeling and nutrient guarantees and by decreasing the mill assessment while still adequately funding the FMIP for enforcement of the state's fertilizing materials laws and regulations. For additional information on benefits, please see Anticipated Benefits under the Informative Digest/Policy Statement Overview.

### **SMALL BUSINESS DETERMINATION**

The Department has initially determined that the proposed regulations will not have an effect on small businesses. These regulations do not require any additional costs or outputs for small businesses. These regulations do not establish any new limitations on small businesses.

### **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 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:

Dale Woods, Environmental Program Manager I  
California Department of Food and Agriculture

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Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch  
1220 N Street  
Sacramento, CA 95814  
[Dale.Woods@cdfa.ca.gov](mailto:Dale.Woods@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, AGPA  
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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**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**

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 Brittne Sabalbro at the information provided in the “Contact Persons” section.