

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3. California Code of Regulations
Chapter 1. Chemistry
Subchapter 1. Fertilizing Materials
Article 1. Standards and Labeling

INITIAL STATEMENT OF REASONS

DESCRIPTION OF THE PUBLIC PROBLEM, ADMINISTRATION REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

The proposed regulation changes are intended to clarify the manufacturer's responsibility to provide the Secretary with information on the composition of fertilizing materials which is necessary to substantiate a product's intended use, efficacy, label claims, and safety, or to determine if the product is misbranded or adulterated or not. The proposed regulation changes will also assure that submitted information designated as "trade secrets" and deemed as such by the Secretary will be protected and will not be released to the public without due process.

SPECIFIC PURPOSE AND FACTUAL BASIS

Section 2300 of the California Code of Regulations (CCR) describes the general provisions of labeling. The specific purpose of amending CCR Section 2300 by adding subsections (k) and (l) is to describe the circumstances for which a specific type of product information is required to be submitted to the Secretary to facilitate the product label review process.

The purpose of adopting CCR Section 2300.1 (a), (b) and (c) of the CCR is to define the terms "active ingredient," "inert ingredient," and "trade secrets." These definitions would add clarity to the regulations regarding protection of confidential information.

The purpose of adopting CCR Section 2300.2 is to describe the procedures by which the manufacturer designates information he wishes to be considered by the Secretary as trade secrets.

Creating CCR Section 2300.3 will clarify the conditions of confidentiality under which the Secretary will or will not release information when requested.

FACTUAL BASIS FOR THE DEPARTMENT DETERMINING THE NEED FOR THE AMENDMENT OF THESE REGULATIONS:

The Secretary of the Department has proposed these regulation changes based upon the recommendation of the Fertilizer Inspection Advisory Board (FIAB). The FIAB is

advisory to the Secretary and may make recommendations on all matters including, but not limited to, the inspection and enforcement program, research and education, the annual budget, necessary fees to provide adequate inspection services, and regulations required to accomplish the purposes of the statutes in the Food and Agricultural Code (FAC). The FIAB is comprised of eight members who are commercial fertilizer licensees and one public member.

Current industry trends finds fertilizer manufacturers incorporating new technology and research making review of product claims increasingly more complicated. Full disclosure of product composition, including inert ingredients and their concentrations would provide additional information to facilitate CDFA evaluation of the product's safety and efficacy. Ingredient information may be considered "trade secrets," and adoption of the proposed regulations would help ensure that they would be held in confidence if they fall within the definition of trade secrets.

DOCUMENTS RELIED UPON

The Department is relying upon the following documents pertaining to the proposed regulation changes:

- Letter of support from the Western Plant Health Association who represents the California fertilizer retailers
- Minutes from the May 22, 2008 Fertilizer Inspection Advisory Board meeting showing support of the proposed regulations that requires disclosure of fertilizing materials ingredients and provides for the protection of trade secrets.

ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

ESTIMATED COSTS OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES

The Department of Food and Agriculture has initially determined that these proposed regulations do not impose a mandate on local agencies or school districts. The Department has also initially determined that no savings or increased costs to any State agency, no reimbursable costs or savings under "Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The Department has initially determined that the proposed changes to the regulations would result in no added costs to small businesses affected by these proposed changes. The proposed changes clarify the information required by the Secretary for product review and also clarify the conditions of confidentiality. There are no new or additional fees associated with the proposed changes.

ECONOMIC IMPACT ON AFFECTED BUSINESSES

The Department has initially determined that the proposed regulations would result in no costs to private businesses or individuals affected by these proposed regulations. This is based on the “SMALL BUSINESSES IMPACT STATEMENT.”