

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

**PROPOSED REGULATIONS FOR MANUFACTURERS AND
DISTRIBUTORS OF COMMERCIAL FERTILIZER**

Title 3. CALIFORNIA CODE OF REGULATIONS

SECTION 2300: General Provisions

SECTION 2300.1, 2300.2, 2300.3 (Protection of Trade Secrets)

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Feed, Fertilizer, Livestock Drugs and Egg Regulatory Services

1220 N Street

Sacramento, CA 95814

916-445-0444

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

NOTICE OF PROPOSED RULE MAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend Section 2300 and adopt Section 2300.1, 2300.2 and 2300.3 of the regulations in Title 3 of the California Code of Regulations.

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 comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on September 29, 2008. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Kent Kitade, Program Supervisor
Feed, Fertilizer, Livestock Drug and Egg Regulatory Services Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture proposes to amend regulations in Title 3 of the California Code of Regulations, pursuant to the authority vested by Sections 407, 14501, 14502, 14601 and 14631 of the California Food and Agricultural Code, (FAC), and to implement, interpret, or make specific Sections 14601 and 14631 of the FAC and California Government Code Sections 6250, 6251 and 6254.7.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 407 of the FAC states that the Secretary of California Department of Food and Agriculture (Secretary) may adopt such regulations as are reasonably necessary to carry out the provisions to the FAC which he is directed or authorized to administer or enforce.

FAC Section 14501 states that the intention is to promote the distribution of effective and safe fertilizing materials essential for the production of food and fiber and to provide assurance to the consumers of fertilizing materials that the product purchased is properly identified and is properly represented by the manufacturer of these products.

FAC Section 14502 states that the Secretary shall enforce the statutes and shall adopt and enforce such regulations relating to fertilizing materials as the Secretary determines necessary to carry out the statutes.

FAC Sections 14601 and 14631 state that the director may require proof of labeling statements and claims made for any fertilizing material.

California Government Code Section 6250 states “while mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” Regulations adopted pursuant to these sections should reflect the intention of the Legislature to make the records accessible to the public.

California Government Code Section 6254.7(d) defines “trade secrets.”

To comply with these sections of the FAC and the California Government Code, the Department is proposing to add the following sections to the California Code of Regulations (CCR):

- Section 2300, subsections (k) and (l) which describe the circumstances when specific information on product composition is required and specify the required information on product composition.
- Section 2300.1 which defines the terms “trade secret,” “active ingredient” and inactive ingredient.”
- Section 2300.2 describes how manufacturers can designate information to be considered as trade secrets.
- Section 2300.3 describes the conditions of confidentiality for which the Secretary will or will not disclose trade secret information.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on 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 non-discretionary cost or saving 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:

Adoption of these regulations will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing businesses within California; or
3. Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

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.

CONSIDERATION OF 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 the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Kent Kitade, Program Supervisor
Feed, Fertilizer, Livestock Drug and Egg Regulatory Services Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
916-445-2140

The backup contact person for these inquiries is:

Dale Rice, Program Supervisor
Feed, Fertilizer, Livestock Drug and Egg Regulatory Services Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
916-445-0444

Please direct requests for copies of the proposed text of the regulation, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based, to Mr. Kitade at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 220, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice; the proposed text of the regulations; the initial statement of reasons; the Fertilizer Inspection Advisory Board meeting minutes; the letter of support from western Plant Health Association; Sections 14501, 14502, 14601 and 14631 of the Food and Agricultural Code; Sections 6250, and 6254.7 (d) of the California Government Code and Section 2300 of the California Code of Regulations. Copies may be obtained by contacting Mr. Kitade at the contact address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that 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 before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Kitade at the contact address listed previously. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Kitade at the previously listed address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: www.cdfa.ca.gov/is/regulation.htm

DEPARTMENT OF FOOD AND AGRICULTURE

Date

George Deese, Deputy Secretary