

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS  
Title 3. California Code of Regulations  
Division 4. Plant Industry  
Chapter 1. Chemistry  
Subchapter 1. Fertilizing Materials

**INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture's (CDFA's) 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 Fertilizing Materials Inspection Program is responsible for reviewing and registering product labels, promoting agronomically sound and environmentally safe use of fertilizing materials through FREP, 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.

Assembly Bill (AB) 856 (Ch. 257, Stats. of 2009) mandated that the CDFA Secretary require registration of each label for organic input material and collect registration fees to be deposited into the Organic Input Materials Account, and that registration shall not be issued without a current license. Additionally, AB 856 required the inspection of organic input material manufacturers at least once annually, and made it a misdemeanor to knowingly adulterate an organic material with ingredients that do not comply with federal standards and requirements.

In June 2010, the Department formed the Organic Input Material Subcommittee composed of individuals from the Fertilizer Inspection Advisory Board, the fertilizer industry, and various stakeholders to identify oversight and implementation issues and to make recommendations to the Department regarding the regulatory framework for implementing the provisions of AB 856.

The Department, the Organic Input Material Subcommittee, and the Fertilizer Inspection Advisory Board determined that it is necessary to promulgate regulations which established the procedures and regulatory authority concerning compost nutrient guarantees (i.e., lab reports and nutrient variability); organic input material label review and registration (including blends); site, facility, and ingredient inspection procedures, requirements, and uniformed protocol; out-of-state inspections; clarification in regard to the scope of organic input materials when no claims are made by the supplier for organic production; a civil penalty matrix to enhance uniformity and cohesion; and, label registration fees. These regulations were adopted on March 29, 2012.

The purpose of these proposed regulations is to adopt and clarify language in the California Code of Regulations (CCR) related to organic input material. The following paragraphs provide the specific purpose, rationale, and summaries of these proposed changes to the CCR.

Amend Section 2302 – The specific purpose for amending Section 2302 is to update the

regulation to align with the current standards for calculating the limits for arsenic, cadmium, and lead.

The proposed amendment provides updated examples for calculating non-nutrient metals arsenic, cadmium, and lead for maximum standards with inorganic commercial fertilizer and agricultural mineral products.

This is necessary to provide clear, accurate, and scientifically sound examples to the fertilizer industry.

Amend Section 2304 – The specific purpose for amending Section 2304 is to clarify that when fertilizing material are only making claims related to organisms, enzymes or organisms by-products then the materials are auxiliary soil and plant substances and are subject to the registration requirement of Section 14601 of the Food and Agricultural Code. The statement “whether or not the material would otherwise be exempt from registration as a commercial fertilizer” was deleted because it was not accurate. The statement insinuates that a product could be a commercial fertilizer and an auxiliary soil and plant substances.

Amend Section 2304(b)(1) – The specific purpose for amending Section 2304(b)(1) is to allow the use of weight unit (gram) in addition to the volume unit (cubic centimeters) in the number of viable units of microorganisms. The amendment will allow the regulated industry to use their preferred units of measurement for meeting labeling requirements.

Amend Section 2304(d) – The specific purpose for amending Section 2304(d) is to mandate that a copy of the analysis must be submitted with the generally accepted laboratory method for assaying the viable and attenuated units and by-products claimed, and to correct the spelling of “Gigaspora.”

This is necessary to reconcile incorrect spelling and assist the Department in verifying the number of microorganisms claimed in products has been validated by generally accepted laboratory methods.

Adopt Section 2320.3 – The specific purpose for adopting Section 2320.3 is to establish the scope of organic input material for registration. The proposed adoption would clarify the scope of the definition of organic input material.

This is necessary to provide a clear definition to assist the regulated industry and limit confusion over the term organic input material. Accordingly, this proposed regulation would specify circumstances when a fertilizing material is considered an organic input material requiring labeling and registration.

Adopt Section 2320.4(a) – The specific purpose for adopting Section 2320.4 is to establish that fertilizing material labels and/or labeling that display the term “organic” in the licensee’s name on the label, logos, slogans, or brand names, shall be registered as an organic input material.

The proposed adoption would establish when a fertilizing material shall be considered an organic input material requiring registration with the Fertilizing Materials Inspection Program.

This is necessary to clarify that labels and/or labeling with the term “organic” require registration as an organic input material.

Adopt Section 2320.4(b) – The specific purpose for adopting 2320.4(b) is to establish label and labeling claims implying that a product is suitable for organic crop and food production shall be registered as an organic input material.

The proposed adoption would establish that if a product is implying it is suitable for organic crop and food production, it must be established as an organic input material.

This is necessary to ensure the regulated industry is purchasing products that are suitable for organic food and crop production.

Adopt Section 2320.4(c) – The specific purpose for adopting 2320.4(c) is to establish that the use of the term “organic” on fertilizing material labels and/or labeling not meeting the National Organic Program standards shall include a declaration that the product is not for use in organic food and crop production.

The proposed adoption would clarify and make specific when the term organic can be used on a fertilizing material label and labeling. In addition, the proposed regulation would establish a clear regulatory framework for use of the term organic on fertilizing material labels and products.

This is necessary to limit confusion regarding the use of the term organic and to implement effective regulation of organic input material.

Amend Section 2322 – The specific purpose for amending Section 2322 is to provide a compliance timeframe for individuals that are not adhering to the label derivation statement(s).

The proposed amendment would establish a timeframe for adhering to the label derivation statement.

This is necessary to provide an adequate timeframe for individuals to comply with the label derivation statement.

Amend Section 2322.3 – The specific purpose for amending Section 2322.3 is to change the timeframe in which a decision must be made after an oral hearing, allowing a hearing officer to render a decision in a reasonable timeframe.

The proposed amendment would change the hearing decision timeframe from 24 hours to 15 days after the oral hearing has concluded.

This is necessary because 24 hours is not a reasonable amount of time for a hearing officer to make a decision after an oral hearing.

Adopt Section 2324 – The specific purpose for adopting Section 2324 is to implement and make specific the statutory authority contained in the Food and Agricultural Code, which authorizes staff to access and sample any lot of fertilizing material which is in the possession

of any producer, manufacturer, importer, agent, dealer, or user.

The proposed amendment would authorize staff to take a sample for analysis from any lot of fertilizing material which is in the possession of any producer, manufacturer, importer, agent, dealer, or user.

This is necessary to enable staff to take a sample for an analysis to ensure compliance.

Adopt Section 2325 – The specific purpose for adopting Section 2325 is to establish procedures for records maintenance and audits; specifying that each licensee shall maintain in this state, or with the CDFA Secretary's permission at another location, an accurate record of all transactions subject to assessment.

The proposed amendment would ensure each licensee in the state, or with the secretary's permission at another location, shall maintain specific records for a set period of time.

This is necessary to align statute with regulation and allow the Department to request records of transactions subject to assessment.

#### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

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

- Fertilizer Inspection Advisory Board Meeting Minutes, January 27, 2012
- Fertilizer Inspection Advisory Board Meeting Minutes, June 28, 2012
- 2012 Report to the Legislature: Organic Input Materials

#### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The majority of the proposed regulatory changes is technical in nature and is already stipulated in statute. By incorporating these clarifying changes into the regulations, it will benefit and provide clarity to the regulated industry and end users. These clarifying changes will not have an economic impact. However, for the proposed regulatory changes pertaining to when a biotic claim on a label/labeling is made, the entity is already performing a lab analysis in order to guarantee the number of microorganisms or enzymes concentration in their product label. Currently, the statutes stipulate that a generally accepted laboratory method for assaying the viable and attenuated units, and the by-products claimed, must be submitted with the registration application. For clarity and consistency, the Department would now require that the analysis be submitted for biotic claims. The Department has initially determined there will be inconsequential administrative costs to the regulated industry because analyses can be submitted via our online web-based database or through the mail.

For the proposed regulatory changes pertaining to the term "organic" being used on labels, licensees will be required to begin making label changes during registration renewal in January 2014 and all label changes must be completed by December 31, 2015. The Department has determined that these changes can be incorporated in normal business practices of reprinting labels and believes that with the two-year grace period entities will be able to accomplish this with minimal additional costs. There

are approximately 2,300 firms registered with the Department; 136 firms may be required to make label changes.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS.**

Based upon the reasons stated in the economic impact assessment/analysis, the Department has determined that the cost for amending and incorporating these proposed regulations would be insignificant. Accordingly, these proposed regulations will likely provide clarity to users of fertilizing materials, especially certified organic production systems. Therefore, the proposed regulations will not have a significant statewide adverse economic impact directly on the fertilizer industry.

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

The Department has not identified any reasonable alternatives to the proposed action and no adverse impacts to small businesses are expected as a result of this proposed action. The anticipated compliance requirements are as follows:

- Currently, there are existing costs for fertilizing materials license, assessment fees and product label registration and renewal that are specified in statute.
- The paperwork requirements include a copy of the laboratory analysis that must be submitted to the Department as specified in this proposal.
- The proposed recordkeeping requirements for auditing purposes include standard business records for persons who manufacture or distribute fertilizing material in or into California. This requirement is specified in statute.
- Proposed regulatory changes pertaining to “organic” claims will benefit the public and industry in ensuring that fertilizing materials are properly labeled. Licensee’s that are required to make labeling changes will begin making the changes during registration renewal in January 2014. All label changes must be completed by December 31, 2015.