

## **TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**

Division 4. Plant Industry  
Chapter 1. Chemistry  
Subchapter 1. Fertilizing Materials  
(Notice published March 8, 2013)

### **NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend Title 3, sections 2302, 2304, 2322, and 2322.3 of the California Code of Regulations (CCR). The Department also proposes to adopt Title 3, sections 2320.3, 2320.4, 2324, and 2325 of the CCR.

#### **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 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. Comments may also be submitted via facsimile (FAX) at (916) 900-5349 or by e-mail to [Amadou.Ba@cdfa.ca.gov](mailto:Amadou.Ba@cdfa.ca.gov). The written comment period closes at **5:00 p.m. on April 22, 2013**. The Department will only consider comments received at the Department by that time. Submit comments to:

Amadou Ba, Environmental Program Manager I  
Feed, Fertilizer, and Livestock Drug Services Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5022; Fax: (916) 900-5349

#### **AUTHORITY AND REFERENCE**

Notice is hereby given that the California Department of Food and Agriculture, pursuant to the authority vested by sections 14, 401, 407, 14502, 14591, 14601, 14621, 14622, 14623, 14628, 14631, 14641, 14642, 14651.5, 14655, 14681, 14682 of the Food and Agricultural Code (FAC), and to implement, interpret, or make specific sections 14528, 14532, 14533, 14550.5, 14557, 14558, 14583.5, 14591, 14601, 14611, 14523, 14631, 14641, 14642, 14651, 14651.5, 14652, 14655, 14661, 14681, and 14682 of the FAC.

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

This rulemaking action clarifies and makes specific organic input material registration,

inspection, and labeling requirements.

Food and Agricultural Code section 14601 requires that each label for organic input material shall be registered by the Department. All registrations are required to be renewed in January of an even-numbered year, and shall be valid until December 31 of the following odd-number year, if issued in January of that same year. Food and Agricultural Code section 14501 authorizes the CDFA Secretary to adopt and enforce such regulations relating to the manufacture, guaranteeing, labeling, and distribution of fertilizing material.

The regulations proposed in this rulemaking action would establish conditions when a fertilizing material is considered an organic input material requiring labeling and registration, mandate a laboratory analysis to be included with a product label during registration under specified circumstances, and clarify sampling and recordkeeping requirements.

There is no existing, comparable federal regulation or statute regulating fertilizing materials. The Department is the only agency which can implement regulations pertaining to fertilizing materials. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

### **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 nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative person or business: None.

### **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Department has initially determined that the majority of the proposed regulatory changes are technical in nature and would not have an economic impact. For the proposed 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 enzyme concentration in their product label. Currently, entities

voluntarily submit these analyses to the Department. However, for clarity and consistency, the Department is proposing regulations mandating the analyses to be submitted. The Department has determined that the costs of submitting a copy of the analyses will be inconsequential since the analyses are already being performed.

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.

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.
- (4) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state’s environment.

Benefits of the Proposed Action: This proposed regulatory action will benefit the regulated industry by provided clarifying changes to the definition of Organic Input Material and the use of the term organic on fertilizing material labels. In reviewing the intent of the definition of the term “organic input material,” the Department, in collaboration with the Fertilizer Inspection Advisory Board and the Organic Input Material Subcommittee, determined that if a manufacturer or distributor meet any of the conditions below, they are required to register their label with CDFA.

- Fertilizing materials making claims of compliance with the National Organic Program, or claims for use in organic production, including, but not limited to submission by the supplier for listing by other third-party reviewers recognized by the NOP.
- Claims on labels, literature or extensions of labels, such as websites, social media outlets, or other electronic claims that the products are suitable for use in the organic crop and food productions systems.

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action *will* directly affect businesses statewide, including small businesses, the Department concludes that the adverse economic impact, including the ability of California businesses to compete with business in other states, *will not* be significant.

Significant effect on housing costs: None.

## **CONSIDERATIONS OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the actions is proposed. It 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 or, if requested, at a scheduled hearing.

## **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Amadou Ba, Environmental Program Manager I  
Feed, Fertilizer, and Livestock Drug Services Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5022; Fax: (916) 900-5349

The backup contact person for these inquiries is:

Maria Tenorio Hicks  
Feed, Fertilizer, and Livestock Drug Services Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5022; Fax: (916) 900-5349

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Maria Tenorio Hicks at the above address.

## **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. 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, Fertilizer Inspection Advisory Board Meeting Minutes dated January 27, 2012, Fertilizer Inspection Advisory Board Meeting Minutes dated June 28, 2012, and a 2012 Report to the Legislature: Organic Input Materials. Copies may be obtained by contacting Maria Tenorio Hicks at

2800 Gateway Oaks Drive, Sacramento, CA 95833 or at the phone number provided 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 which 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 Maria Tenorio Hicks at the address provided. 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 Maria Tenorio Hicks at the address provided.

### **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: <http://www.cdfa.ca.gov/is/regulations.html>.