

PROPOSED CHANGES IN THE REGULATIONS

CALIFORNIA CODE OF REGULATIONS TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Division 4. Plant Industry
Chapter 1. Chemistry
Subchapter 1. Fertilizing Materials

FINAL STATEMENT OF REASONS

UPDATE OF INITIAL STATEMENT OF REASONS/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

The Initial Statement of Reasons/Plain English Policy Statement Overview is still valid; however, the Department published a 15-day notice because a Supplement to the Initial Statement of Reasons was added to the rulemaking file. It was added to the rulemaking file to provide additional information on the Economic Impact Analysis, Reasonable Alternatives to the Regulations and the Department's Reasons for Rejecting Those Alternatives, to provide additional documents the Department relied upon, and to allow interested persons time to review the modifications to the Initial Statement of Reasons and submit written comments. No public hearing was requested or held.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ENDING APRIL 7, 2014.

COMMENT 1.1: Submitter contests the mill assessment rate increase to organic input materials (OIM).

RESPONSE: The mill assessment rates, which are inspection fees, are the same for conventional fertilizers and OIMs. The fee is based on dollar sales, and is directly correlated with the value of sales made in California. The Department therefore proposes to increase the inspection fee (mill assessment rate) to address the management, research, oversight, regulation, and enforcement of the state's laws and regulations related to fertilizing materials, including OIMs.

COMMENT 1.2: Submitter states that the fee increase should only be applied to conventional fertilizers, or fertilizers not registered as OIMs because OIM manufacturers already pay higher [registration] fees than conventional fertilizer manufacturers.

RESPONSE: This proposed regulation does not pertain to registration fees; it is solely about mill assessment fees. The FAC does not differentiate between conventional and organic fertilizer regarding mill assessments.

COMMENT 1.3: Submitter contests the assertion in the Notice of Proposed Rulemaking which states: “There is no existing comparable federal regulation or statute regulating fertilizing materials.”

RESPONSE: Title 7, Code of Federal Regulations (CFR), Part 205 provides broad guidance on organic systems. Currently, no regulation or statute exists for regulating fertilizing material manufacturers.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD ENDING AUGUST 16, 2014.

COMMENT 2.1: Submitter contests the mill assessment rate increase to OIM.

RESPONSE: This comment is not related to the modifications made to the rulemaking file in the 15-day notice. Please refer to the response from Comment 1.1 above.

COMMENT 2.2: Submitter states that the fee increase should only be applied to conventional fertilizers, or fertilizers not registered as OIMs because OIM manufacturers already pay higher [registration] fees than conventional fertilizer manufacturers.

RESPONSE: This comment is not related to the modifications made to the rulemaking file in the 15-day notice. Please refer to the response from Comment 1.2 above.

COMMENT 2.3: Submitter contests the assertion in the Notice of Proposed Rulemaking which states: “There is no existing comparable federal regulation or statute regulating fertilizing materials.”

RESPONSE: This comment is not related to the modifications made to the rulemaking file in the 15-day notice. Please refer to the response from Comment 1.3 above.

AUTHORITY

Authority cited: Sections 407, 14501, 14502, 14611, and 14613, Food and Agricultural Code.

Reference: Section 14501, 14517, 14533, 14551, 14611, and 14613, Food and Agricultural Code.

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

The Department has determined that no savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the

Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the state will result from these proposed regulations. The Department has also determined that these proposed regulations do not impose a mandate on local agencies or school districts.

SMALL BUSINESS IMPACT STATEMENT

The Department has determined that the proposed changes in the regulations would result in approximately 647 small businesses being impacted. The impact, on average would cost a small business \$194 yearly.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulatory action would cost each licensee who pays a mill assessment approximately an additional \$1,144 annually. There are 2,312 fertilizer licensees who would be affected; the impact to the entire fertilizer industry is estimated to be \$2,644,196, as the fertilizer industry as a whole reports \$2,600,000,000 in sales annually. An average registrant has approximately \$1,144,000 in annual sales; therefore the average company would pay an additional \$1,144 per licensee.

The FMIP will fund research on:

Demonstrating Agronomically Sound Uses of Fertilizing Materials at the Field Scale

- Demonstrate results from basic experimental research trials (prior FREP research, etc.) with organic or conventional fertilizers at the field scale.

Managing Agricultural Nitrogen

- Research the agronomically sound use of nitrogen fertilizing materials, including:
 - Minimizing nitrate movement below the root zone
 - Minimizing nitrous oxide emissions related to fertilizer use
 - Evaluating strategies to increase crop nitrogen use efficiency

Developing Best Management Practices (BMPs)

- Development of nutrient BMPs and educational materials for agriculture and urban landscapes.

Education and Outreach

- Development of educational materials to increase awareness of agronomically sound use of fertilizing materials. Extension efforts to implement best management practices.

These 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.
- (4) Affect the health and welfare of California residents, worker safety, or the environment.

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 there is a cost of \$2,644,196 to the fertilizer industry as a whole, considering the fertilizing industry reports \$2,600,000,000 in sales annually; approximately \$1,144 per licensee. An average registrant has approximately \$1,114,000 in annual sales; therefore the average company would pay an additional \$1,144 per licensee. The additional revenue will be used to fund: seven new positions; out-of-state and out-of-country inspections; demonstration projects and grower and Certified Crop Advisors (CCA) trainings; and to increase research and education projects.

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

The Department considered leaving the FMIP mill assessment rate at \$0.001, but the program would be unable to fund the seven new positions that are needed to increase the management, research, oversight, regulation, and enforcement of the state's laws and regulations related to fertilizer. In addition to the seven new positions, the revenue will assist the program in funding research projects related to managing nitrates in groundwater; training certified crop advisers and growers on best management practices; fund out-of-state and out-of-country inspections; and other agricultural related projects such as field demonstration projects. Historically, the mill assessment rate for the FMIP has fluctuated between the maximum rate of two mills (\$0.002) and one mill (\$0.001), based on the needs of the program. The Department is already collecting the maximum mill assessment rate of one mill (\$0.001) for the FREP, so there will not be an additional economic impact to the industry. The Department is formalizing the mill assessment rate for FREP in regulation for clarity, and to ensure the Administrative Procedure Act (APA) is adhered to.

The Department considered raising the mill assessment rate to \$0.0015, as the Fertilizer Inspection Advisory Board originally recommended. The Department would be able fill the seven new positions, but would be unable to meet the additional mandate of the Assembly Budget Committee; which is to increase the management, research, oversight, regulation, and enforcement of the state's laws and regulations related to fertilizer. In order to do this, additional revenue is needed to fund research projects related to nitrates in groundwater; train certified crop advisors and growers on best management practices; fund out-of-state and out-of-country inspections; and other agricultural related projects such as field demonstration projects.

The Department considered raising the license fees. The fertilizing material license fee can be raised from one hundred dollars (\$100) to the maximum rate of two hundred dollars (\$200) bi-annually. This increase would bring an additional \$125,000 to the Department annually. The additional revenue would not even be enough to fund the seven new positions, which alone requires ~\$1,200,000 annually. This type of increase would be prohibitive to new small businesses, and would not evenly distribute the fees to the industry based on dollar of sales, and would be burdensome on small businesses.

Additionally, the Department considered raising the registration fees. The OIM registration fee is already at its maximum rate of \$500 bi-annually; therefore cannot be raised. Currently registration fees for conventional products are set at one hundred dollars (\$100) bi-annually, and registration renewal is set at fifty dollars (\$50) bi-annually. The registration fees can be set at the maximum rate of one hundred dollars (\$100) for registration renewal. This would bring an additional ~\$150,000 annually to the Department. The additional revenue would not even be enough to fund the seven new positions, which alone requires ~\$1,200,000 annually. Additionally, this type of increase would be prohibitive, and would not evenly distribute the fees to the industry based on dollar of sales, and would be burdensome on small businesses.

The Department has determined 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 effective as and less burdensome to affected private persons than the proposed regulations.

Pursuant to Government Code section 11346.9(a)(4), the Department has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more

cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Pursuant to Government Code section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting forth the Department's reasons for rejecting any proposed alternatives.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.