

## PROPOSED CHANGES IN THE REGULATIONS

### 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

#### FINAL STATEMENT OF REASONS

##### SECTIONS AFFECTED

California Code of Regulations (CCR), Title 3, Division 4, Chapter 1, Subchapter 1, Article 1, Sections 2300.1, 2304, 2306, 2308, and 2322.

##### UPDATE OF INITIAL STATEMENT OF REASONS

In response to comments received during the 45-day comment period (June 25, 2021 - August 9, 2021), the California Department of Food and Agriculture (CDFA) made substantive modifications to this rulemaking. To ensure consistency with the Administrative Procedures Act, CDFA provided notice of the modifications to all interested persons and provided a 15-day public comment period from October 8, 2021 - October 23, 2021. The specific purpose and necessity of the modifications to the original proposed text are detailed below.

**Section 2300.1(I)** is amended to clarify that tackifiers can be applied to all fertilizing materials, not just mulches; as well as to soils, and/or seeds to promote adhesion. This change was made based on comments received during the 45-day comment period and will ensure the industry is aware of the application of tackifiers to fertilizing materials.

**Section 2304(a)(1)** is being amended to clarify the intent of the regulation is correctly interpreted. This change was made based on comments received during the 45-day comment period in an effort to not confuse a required enzyme claim when also claiming microorganisms.

**Section 2306(a)** is being amended to further clarify that the originally proposed text which used the term “a guarantee of biochar” means when biochar appears on the label in the statement of composition or in an ingredient list. This change was made based on comments received during the 45-day comment period.

**Section 2322, Section Code 3 CCR 2304, Biotics** is being amended to align with the change made to the proposed text of Section 2304, which was based on comments received during the 45-day comment period.

**Section 2322, Section Code 3 CCR 2306, Biochar** is being amended to align with the change made to the proposed text of Section 2306, which was based on comments received during the 45-day comment period.

### **LOCAL MANDATE DETERMINATION**

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

### **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

The proposed regulations do not duplicate or conflict with federal regulations.

### **SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ENDING AUGUST 9, 2021**

**Comment 1.1:** Commenter suggests adding the word “fertilizer” to the term “tackifier” in Section 2300.1(l) because this technology has already been developed.

**CDFA Response:** CDFA replaced “mulches” with the general term “fertilizing material,” which includes “fertilizer.”

**Comment 1.2:** Commenter suggests deleting the word “and” after microorganisms, so as not to confuse a required enzyme claim when also claiming microorganisms. Commenter also suggests adding the phrase “if claimed” after each item in the list of species in Section 2304(a)(1).

**CDFA Response:** CDFA removed “and” after the word “microorganism” and inserted a comma after the word “enzyme.” However, we did not include “if claimed” after each of the three terms (microorganism, enzyme, organism by-product), as this is not needed for clarity.

**Comment 1.3:** Commenter suggests revising Section 2306(a) to better align with AAPFCO requirements. CDFA’s proposed amendment requires listing the feedstock with biochar when “a guarantee of biochar appears on the label,” versus AAPFCO’s wording is “when listing biochar in an ingredient statement.” Commenter states as proposed, it is unclear what a “guarantee of biochar” means.

**CDFA Response:** CDFA replaced the word “guarantee” with the specific location a guarantee of biochar would appear on the label as either an Auxiliary Soil and Plant Substance or as a Soil Amending Ingredient. As an Auxiliary Soil and Plant Substance, biochar would appear in the “statement of composition” and as a Soil Amendment, biochar would be listed following the term “Ingredient(s)” or “Soil Amending Ingredients.” Biochar does not appear in a “derived from” statement as a source of nutrients (Food and Agricultural Code, Section 14513).

**SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 15-DAY NOTICE OF MODIFICATIONS TO THE TEXT OF PROPOSED REGULATIONS, ENDING OCTOBER 23, 2021.**

No comments were received.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

The proposed regulatory changes are based upon feedback from the fertilizer industry and CDFA staff.

CDFA also relied upon:

- 2019 American Association of Plant and Food Control Officials (AAPFCO) official publication, No. 72, Official Terms, T-102
- M. Fernanda Aller (2016) Biochar properties: Transport, fate, and impact, Critical Reviews in Environmental Science and Technology, 46:14-15, 1183-1296, DOI: 10.1080/10643389.2016.1212368

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

**Section 2300.1(l) Definitions** – The alternative would omit the definition altogether. Omitting the definition of tackifier could lead to confusing labeling, with tackifiers being confused with so called “spreader stickers,” which are used for foliar application of pesticides.

**Section 2304 Biotics** – The alternative is to leave the regulation as is and continue with time-consuming correspondence back and forth to clarify the requirements. The resulting delays in getting products approved for sale would continue to be disadvantageous for firms and inhibit CDFA’s efficiency of product label review.

**Section 2306 Fish Emulsion** – The alternative is to leave the unnecessary regulation as is maintaining redundant regulations.

**Section 2306(a) and (b) Biochar** – The alternative is to omit the regulation and continue with time-consuming correspondence back and forth between registrants and CDFA to clarify the requirements.

**Section 2308(e) Packaged Soil Amendments** – The alternative is to leave the regulation as is and decide case-by-case which product type to assign tackifiers to, which would result in increased correspondence with firms, reduced efficiency in registering new products, and inconsistent labeling across approved product labels.

**Section 2322. Administrative Penalty Guidelines** – An alternative is not appropriate as the wording must match the proposed wording in Sections 2304 and 2306, as well as Food and Agricultural Code Section 14534.

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.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Maria Tenorio Alfred.