

DEPARTMENT OF FOOD AND AGRICULTURE

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
ARTICLE 2. SAMPLES
ARTICLE 4. REGISTRATION
ARTICLE 6. ADMINISTRATIVE PENALTIES
(Notice published April 15, 2022)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to adopt or make changes to the California Code of Regulations (CCR), Title 3, Division 4, Chapter 1, Subchapter 1, Articles 1, 2, 4, and 6, Sections 2303, 2309, 2315, 2317.5, 2320.2, 2320.4, and 2322.

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 comment 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 by mail, fax, or email. The written comment period closes on May 31, 2022. The Department will only consider comments received by that time.

Submit comments to:

Brittnie Williams, Associate Governmental Program Analyst
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
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Sacramento, CA 94271-2872
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Following the written comment period or public hearing, if one is requested, the Department, at its own motion or at the request of any interested person, may adopt the proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

Notice is hereby given that the California Department of Food and Agriculture, pursuant to the authority vested by sections 407, 14502, 14550.5, 14601, 14631, 14645, 14646, 14647, 14651, 14651.5, and 14655 of the Food and Agricultural Code (FAC), proposes to make changes to Title 3, Division 4, Chapter 1 of the CCR to implement, interpret, or make specific FAC Sections 14550.5, 14591, 14601, 14613, 14623, 14631, 14641, 14645, 14646, 14651.5, 14653, 14655, 14681, and 14682.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department's Fertilizing Materials Inspection Program (FMIP) is statutorily tasked with licensing, label registration, and field inspection of fertilizing materials in the State of California. FMIP is responsible for reviewing and registering product labels, 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, packaged soil amendments, specialty fertilizers, and organic input materials are statutorily mandated to register with the FMIP.

These rulemaking actions provide greater transparency and clarity for fertilizing materials labeling, improve flexibility and efficiency for fertilizing material sampling, and add comprehensive and objective investigational allowances for fertilizer analysis.

The proposed Section 2303(d)(1) clarifies chain of custody responsibility for bulk commercial fertilizers and agricultural minerals distribution through label disclosure.

The proposed amendments in Sections 2303(i)(3) and (i)(3)(A) provide uniform standardization for liming materials labeling through a universal lime score that growers can reference to better determine a product's overall quality, based upon calcium carbonate equivalent analysis, fineness factor, and moisture.

The proposed revision to Section 2309 ensures that total phosphoric acid, which is not readily available to plants and crops, is not mistaken for available phosphoric acid. All or most of the firms that sell these products currently adheres to the labeling criteria in the proposed revision and this would memorialize the existing industry standard.

The proposed revision within Section 2315(b)(1) more accurately reflects who may be mixing fertilizing material and that the material may also be sampled while loading or unloading, not just mixing. The amendment to Section 2315(b)(2) clarifies that samples can be taken from piles or bulk bags (also known as "super sacks" or "bulk totes"), in addition to compartments. The addition of Section 2315(b)(3) allows flexibility to use sampling scoops as they are commonly used options to sample bulk piles of gypsum, compost, and soil amendments. Section 2315(c) amends the procedure for gypsum so the sampling description is more accurate, while Section 2315(c)(3) is being repealed because a trowel is no longer a viable sampling tool due to sanitation and contamination

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concerns. Section 2315(d) clarifies that the Department can use a restricted fill device on many container sizes, not just bulk tanks.

The proposed revision for Section 2317.5(b) recommends deleting the maximum investigational allowance of one percentage point for secondary and micronutrient guarantees as it could be an unfair business practice toward sections of the fertilizer industry. Proposed amendments to Section 2317.5(c) provide for investigational allowances for soluble silicon, total phosphoric acid, and lime score in order to ensure that investigational allowances are included and available for all assays that the Department analyzes. The proposal also revises “guaranteed analysis” for humic acid and vitamin b-1 to “guarantee” to accurately reflect that these guarantees are in a separate nonplant food ingredient section of the label and not within the guaranteed analysis for plant nutrients.

The proposed addition of Section 2320.2(b)(2)(A) ensures that the Department is notified of the final manufacturing location for organic input materials, which is a requirement for the Department to observe production at required inspections to verify a product’s organic integrity.

The proposed amendment to Section 2320.4(c) establishes that the required organic declaration will be more clearly identifiable on labels and labeling. The proposed addition to Section 2320.4(c)(1) would also ensure that the declaration is required anywhere that a fertilizer firm is promoting a product that fits these criteria, including websites and marketing material.

The proposed revisions and additions to Section 2322 includes the proposed text from this rulemaking package within the administrative penalty violations matrix to ensure that all applicable regulations are included for standardization and to be comprehensive.

Anticipated Benefits of the Proposed Regulations:

The Department anticipates the proposed regulatory changes will provide improved clarity and uniformity with fertilizing materials labeling requirements, sampling procedures, and investigational allowances. Further, these changes will provide benefits to growers and consumers though greater transparency with fertilizer labeling, improved disclosures for the end user, and enhanced consumer protections. This rulemaking will also provide for flexibility and improved efficiency for fertilizer sampling. The proposed actions will also provide for additional investigational allowances with fertilizer analysis and less restrictive parameters for the fertilizer industry striving to ensure that their products meet secondary and micronutrient fertilizer label guarantees in a fair, uniform manner.

Determination of Inconsistency/Incompatibility with Existing Regulations:

The Department evaluated the proposed regulations and made several determinations required by Government Code Section 11346.5(a)(3)(A) to 11346.5(a)(3)(D). The Department determined that there are no existing state laws or regulations related directly to the proposed action and the effect of the proposed action; the proposed regulations are not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate of 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.

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.

Significant effect on housing costs: None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department has initially determined that the proposed regulatory action will not have an economic or fiscal impact to the fertilizer industry. These proposed 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, and the state's environment

SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations may affect small business, but will not have an economic impact on those businesses. The proposed actions do not involve any area that would increase fees or result in any increased costs to these businesses. The only small businesses potentially affected by the proposed regulations would be noncompliant firms that receive violations for violating laws and/or regulations. thereby receiving a notice of warning or administrative penalty.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative is considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, 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.

CONTACT PERSONS

Written comments and inquiries concerning the substance of the proposed regulation should be directed to:

Nick Young, Environmental Program Manager I
California Department of Food and Agriculture
Fertilizing Materials Inspection Program
P.O. Box 942872
Sacramento, CA 94271-2872
nick.young@cdfa.ca.gov

Written comments and inquiries about the initial statement of reasons, proposed actions, or location of the rulemaking files; or a request for a public hearing should be directed to:

Brittnie Williams, Associate Governmental Program Analyst
California Department of Food and Agriculture
Feed, Fertilizer, and Livestock Drugs Regulatory Services Branch
P.O. Box 942872
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AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection throughout the rulemaking process. A copy of this Notice, the Proposed Regulation Text, and the Initial Statement of Reasons may be obtained by contacting Brittnie Williams at the information provided in the “Contact Persons” section.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, and Proposed Regulation Text in underline and strikethrough can be accessed through the Department’s website at <http://www.cdfa.ca.gov/is/regulations.html>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received during the written comment period, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which differ, but 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 prior to amendment. Please send requests for copies of any modified regulations to the attention of Brittnie Williams at the information provided in the “Contact Persons” section. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Brittnie Williams at the information provided in the “Contact Persons” section.