

**DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS**

**Title 3. California Code of Regulations  
Chapter 1. Chemistry  
Subchapter 1. Fertilizing Materials**

**ADDENDUM - STATEMENT OF REASONS**

**DESCRIPTION OF THE PUBLIC PROBLEM, ADMINISTRATION REQUIREMENT, OR OTHER  
CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS**

In 2006, the California Department of Food and Agriculture (Department) conducted an annual audit of an Organic Input Material (OIM) manufacturer, per its authority outlined in Food and Agricultural Code (FAC) 14601(f) requiring OIM manufacturers to be inspected at least once per year to validate nutrient guarantees, claims, and compliance with the National Organic Program standards as specified in Part 205 of Subchapter M of Chapter I of Subtitle B of Title 7 of the Code of Federal Regulations. The Department further investigated this particular manufacturer, the product of which, claimed for organic production, was found adulterated with an unapproved ingredient. The product was approved, however, and listed by a third-party United States Department of Agriculture Accredited Certifying Agent (ACA). The Department, in consultation with the Fertilizer Inspection Advisory Board (FIAB) reviewed the incident and the California Senate Subcommittee on Food and Agriculture conducted an oversight hearing. Through this process, the Department's authority to regulate organic input materials was found to be lacking.

Assembly member Anna Caballero introduced Assembly Bill (AB) 856 in response to the lack of the Departments authority in 2009, as a means to fill the gaps. The bill became law on October 11, 2009 (Chapter 257, Statutes of 2009).

This regulatory action is intended to implement the provisions of the AB 856 pertaining to OIMs. AB 856 requires the Department to establish civil penalty procedures, perform scientific review, and registration of each OIM product label to ensure the product meets the NOP standards for production of organic food and crops. AB 856 also required the Department to inspect organic input material manufacturers at least once a year to verify their product label claims.

The Department has determined that these regulatory changes are consistent and required as a result of the enactment of AB 856 and are vital to support and bolster the NOP standards that protect both consumers and manufacturers of organic products in California. A viable OIM registration program that creates greater credibility to organic production will have a positive impact on the economy. The registration fee associated with the program is necessary to carry out the requirements of the AB 856 to bolster the organic crop industry so that it has a long sustainable future in California.

## **SPECIFIC PURPOSE AND FACTUAL BASIS**

**Existing Section 2300(g) of the California Code of Regulations (CCR) is amended.** The specific purpose for amending Section 2300(g) is to describe the general provisions of labeling as well as to explain that organic input material registered in accordance to Title 3, Section 2320.2 may be marketed or offered for sale with Registered Organic Input Material logo from the Department and to display the logo itself in the regulation as well.

The proposed amendment specify the statement “State of California Approve” or any other indication of official approval by the Department is absolutely prohibited in labeling or advertising unless allowed for organic input material.

This is necessary to assist with the credibility of the OIM manufacturer to the consumer and to implement the provisions of AB 856. The logo signifies the product’s manufacturer(s) is registered with the Department and is upholding NOP standards.

**Section 2300(g)(1) of the CCR is added.** The specific purpose for adding Section 2300(g)(1) is to physically display the Registered Organic Input Material logo in the regulation.

The proposed addition will allow manufacturers and consumers to reference the physical attributes of the logo for use in marketing and sales.

This is necessary to ensure there is no confusion over the physical appearance of the logo. The Department provided a color version of the logo displayed in brown, green, yellow and blue as well as a black and white version of the logo. Both are appropriate for marketing and sales purposes.

**Section 2300(g)(2) of the CCR is added.** The specific purpose for adding Section 2300(g)(2) is to ensure all appropriately registered product manufacturers replicate the form and design of the logo referenced in Section 2300(g)(1).

The proposed addition ensures that manufacturers who desire to use the Registered Organic Input Material logo can properly utilize the logo so it is legibly printed and displayed conspicuously.

This is necessary to ensure that purchasers of Registered Organic Input Materials can easily identify such products. It is important that the Department emphasize the proper use of the logo.

**Existing Section 2302 (2)(A) of the CCR is amended.** The purpose of amending CCR Section 2302 (2)(A) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2002 through December 31, 2002 as well as the concentrations of non-nutrient metals associated with the past dates: arsenic, 4 parts per million; cadmium, 6 parts per million; lead, 20 parts per million; in which the law became effective because they are no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (2)(B) of the CCR is amended.** The specific purpose of amending CCR Section 2302 (2)(B) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2003 through December 31, 2003 as well as the concentrations of non-nutrient metals associated with the past dates: arsenic, 3 parts per million; cadmium, 5 parts per million; lead, 20 parts per million; in which the law became effective because they are no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (2)(C) of the CCR is amended.** The purpose of amending CCR Section 2302 (2)(C) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2004 through December 31, 2004 in which the law became effective but keeps the concentrations of non-nutrient metals for fertilizing materials associated with the past dates: arsenic, 2 parts per million; cadmium, 4 parts per million; lead, 20 parts per million because that is the current concentration levels allowed by law.

The date is no longer necessary to the application of the law. The Department found this

section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (3)(B) of the CCR is amended.** The specific purpose of amending CCR Section 2302 (3)(B) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2002 through December 31, 2002 because that date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (4)(A) of the CCR is amended.** The specific purpose of amending CCR Section 2302 (4)(A) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2002 through December 31, 2002 in which the law became effective as well as the concentrations of non-nutrient metals for specialty fertilizers associated with the past dates: arsenic, 2 parts per million; cadmium, 4 parts per million; lead, 20 parts per million because that is the current concentration levels allowed by law. The date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (4)(B) of the CCR is amended.** The specific purpose of amending CCR Section 2302 (4)(B) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2003 through December 31, 2003 which the law became effective as well as the maximum allowable concentrations of non-

nutrient metals for specialty fertilizers guaranteed less than 6% available phosphate but make no micronutrient claim associated with the past dates: arsenic, 20 parts per million; cadmium, 30 parts per million; lead, 100 parts per million because that is the current concentration levels allowed by law.

The date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (4)(C) of the CCR is amended.** The specific purpose of amending CCR Section 2302 (4)(C) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2004 which the law became effective but leaves the maximum allowable concentrations of non-nutrient metals of specialty fertilizers that guarantee less than 6% available phosphate but make no micronutrient claim because the current concentration levels allowed by law are listed appropriately here.

The date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (5)(A) of the CCR is amended.** The specific purpose of amending CCR Section 2302 (5)(A) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2002 through December 31, 2002 which the law became effective as well as the concentrations of non-nutrient metals for specialty fertilizers that guarantee less than 6% available phosphate and make a micronutrient claim associated with the past dates: arsenic, 20 parts per million; cadmium, 30 parts per million; lead, 100 parts per million.

The date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (5)(B) of the CCR is amended.** The purpose of amending CCR Section 2302 (5)(B) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2003 through December 31, 2003 which the law became effective as well as the concentrations of non-nutrient metals for specialty fertilizers that guarantee less than 6% available phosphate and make a micronutrient claim associated with the past dates: arsenic, 15 parts per million; cadmium, 25 parts per million; lead, 100 parts per million.

The date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (5)(C) of the CCR is amended.** The specific purpose of amending CCR Section 2302 (5)(C) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2004 which the law became effective but keeps the concentrations of non-nutrient metals for specialty fertilizers that guarantee less than 6% available phosphate and make a micronutrient claim associated with the past date: arsenic, 10 parts per million; cadmium, 20 parts per million; lead, 100 parts per million

The date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Existing Section 2302 (6)(A) of the CCR is amended.** The purpose of amending CCR Section 2302 (6)(A) is to be more specific and align the regulations with the statutory changes provided by AB 856.

The proposed amendment removes the dates January 1, 2002 through December 31, 2002 which the law became effective as well as the concentrations of non-nutrient metals for specialty fertilizers that guarantee less than 6% available phosphate and make a micronutrient claim associated with the example given for concentration limits to be applied.

The date is no longer necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the

**Existing Section 2302 (g) of the CCR is deleted.** The purpose of deleting CCR Section 2302(g) because the Department has already published the report this part of law is referring to. It was published by December 31, 2004.

The removal of this section is necessary to the application of the law. The Department found this section arbitrary and would like to note deleting this outdated portion does not impact the industry in any way.

The necessity for this amendment is to make a technical change necessary to keep the CCR up to date. The date, which is deleted, does not add value to the regulation. This is a minor technical change.

**Section 2303 (w) of the CCR is added.** The specific purpose for adopting CCR Section 2303(w) is to allow the Department to consider as guidelines the accepted definitions and official fertilizer terms listed in the 2010 American Association of Plant Food Control Officials Publication, volume 63.

The proposed amendments specify that the intent is to provide labeling requirements and specific acceptable definitions and official fertilizer terms to allow for industry cohesion throughout California. Using the terms listed in the 2010 American Association of Plant Food Control Officials Publication, volume 63 ensures continuity and consistency for the industry.

The Department found this addition necessary to allow industry a defined set of guidelines to assist them in labeling requirements. It is necessary for the Department and industry to communicate as clearly as possible on what definitions apply in law.

**Existing Section 2320 of the CCR is amended.** The specific purpose for amending Section 2320 is to include organic input materials as a product label requiring label review and registration.

The proposed amendment is vital to the implementation of AB 856 provisions. The inclusion of organic input materials begins the process for implementation of the inspection and review program to protect consumers in California from mislabeling on organic food products so as to avoid a similar incident as what occurred in 2006.

This is necessary to implement the provisions of AB 856.

**Section 2320.1 of the CCR is adopted.** The specific purpose for the adoption of Section 2320.1 of the CCR is to set the fee for each organic input material product label submitted for registration at five hundred dollars (\$500) and Section 2320.2 provides guidance of the registration application process for OIM product label.

The proposed newly adopted section is the product of The Department being mandated to provide a service to the citizens of California. The manufacturers of organic products, through this adopted section will be able to show credibility to their customers. The fee is vital to the sustainability of this program and the Department has rigorously studied the lowest price point to maintain the mandated program well into the future. The renewal of each product label coincides with AB 856 provisions that the Department monitors and ensures that NOP standards are not overlooked and are supported here in California. The incomplete applications have a 180 day turn around, which give industry ample time to make additions or corrections to their applications without penalty. The Department, through extensive research and industry input, has provided the organic industry a viable registration program that both protects consumers from mislabeling and allows manufacturers to show industry credibility.

The necessity for adopting this section is to provide a sustainable and equitable program that implements the requirements of AB 856 provisions. The Department worked with and accepted the recommendations of industry and the Fertilizer Inspection Advisory Board (FIAB) for over a year on the proper implementation of the new law. The product of that process being the registration and labeling program found in this section of code.

**Section 2320.2(b)(8) of the CCR is amended.** The specific purpose of amending CCR Section 2320(b)(8) is to clarify authority for the Secretary of CDFA.

The proposed amendment allows the Secretary flexibility to provide additional information if deemed necessary.

The Department believes the removal of the language streamlines regulation and allows the Secretary to provide any information he/she wants without any restrictions. The amendment removes the word “shall” and replaces it with the word “may.”

**Existing Section 2321 of the CCR is amended.** The specific purpose of amending CCR Section 2321 is to require Zero tonnage reports from the last licensee. It is statutorily mandated that any person selling or distributing fertilizing material (including those containing organic input materials as defined) must submit a tonnage report semi-annually.

The proposed amendment maintains the semi-annual tonnage report to the Department by July 31 and no later than January 31 of each year, but takes out the portion where Zero tonnage reports are not required, in turn, placing language stating Zero tonnage reports are required.

The Zero tonnage reports are necessary for enforcement and compliance of the law. If a person has Zero tonnage to report, this will be on record and they will avoid the two hundred dollar (\$200) penalty associated with non compliance.

**Section 2322 of the CCR is adopted.** Creating CCR Section 2322 clarifies the civil penalty language by providing a violation matrix, civil penalty guidelines, scope of coverage, filing and notification procedures, and hearing schedule. The specific purpose is to provide guidance to industry on the implications of violations and the many options they have for appeals.

The Department found a violation matrix as a fair and equitable way of dealing with multiple types of violations if they occur. First time violations, according to the Department, should not carry the same weight as a second or third. Defining the civil penalties in the terms “Serious,” “Moderate,” and “Minor,” allows the Department its due diligence in implementing the law fairly and according to violation impact. The scope of coverage allows a person or his or her authorized representative a means to contest a notice of adverse determination and request a formal hearing, while also defining how informal hearing proceedings may be initiated.

This proposed regulation is necessary so the Department can provide a clear and equitable source of information to industry if violations occur and how to avoid penalty. It is the intent of the Department that no one be penalized, however if noncompliance occurs, it is vital the person knows what to expect from the Department.

In Table A, there is an amendment that makes a minor technical change to the regulation to add language that aligns this section with the corresponding Section 2300(g). This allows products to display the CDFA Registered Organic Input Materials logo.

**Section 2323 of the CCR is adopted.** Adopting CCR Section 2323 for the on-site inspection of organic input materials manufacturers allows industry to comply with inspection requirements.

The specific purpose is to provide a concise procedure for On Site Inspections of Organic Input Material Manufacturers.

Parts (a) through (e) provide a procedural standard the Secretary may apply to the industry regarding site inspections performed in California and outside of California as well as records requirements for organic input material manufactures that wish to do business within California. There is a standard outlined for how the Secretary may determine compliance if necessary as well.

This proposed regulation is necessary so the Secretary has proper access to all records, premises, production processes, storage facilities, inventories or conveyances that are used in the manufacture, transportation, importation, distribution, storage, or application of any organic input material; to ensure health and safety standards for this industry.

**Section 2323(e) of California Code of Regulations (CCR) is amended.** Amending CCR Section 2323(e) regarding the ways in which the Secretary may determine compliance is to make a minor change in language: removing “the Secretary shall do all of the following” and replacing this sentence with “the Secretary may do all of the following,” allows the Secretary of CDFA flexibility in determining how to define compliance of the industry.

This slight change is necessary because the Secretary does not have to complete every step outlined for determining compliance in part (e), it is important the Secretary have flexibility when determining compliance and if he/she does not believe step (2) is necessary, then it should not be required to be performed. The steps for determining compliance have not been changed or impacted by this minor amendment to this section.

**FACTUAL BASIS FOR THE DEPARTMENT DETERMINING THE NEED FOR THE AMENDMENT OF THESE REGULATIONS:**

The Department has proposed these regulation changes based upon recommendation of the FIAB. The FIAB is advisory to the Secretary and may make recommendations on all matters including, but not limited to, the inspection and enforcement program, research and education, the annual budget, necessary fees to provide adequate inspection services, and regulations required to accomplish the purposes of the statutes in the FAC. The FIAB is composed of eight members who are commercial fertilizer licensees and one public member.

Pursuant to FAC Sections 14501 through 14682, the Legislature authorized CDFA Secretary to prescribe conditions under which OIMs may be manufactured, sold, and distributed in the State of California. These proposed additions to the CCR are intended to facilitate the sale and distribution of organic input materials within the State of California while maintaining sufficient regulatory control, by means of label review and registration, on site inspections of OIM manufacturers, and levying civil penalties to assure compliance with the state laws and regulations and the NOP standards pertaining to plant nutrients.

## **DOCUMENTS RELIED UPON**

The Department is relying upon the following documents pertaining to the proposed regulatory changes:

- FIAB meeting minutes dated May 14, 2009, July 16, 2009, March 4, 2010, April 20, 2010, August 19, 2010, and November 16, 2010.
- FIAB AB 856 Subcommittee meeting minutes dated June 9, 2010, July 13, 2010, August 3, 2010, September 15, 2010, October 21, 2010, and November 12, 2010.
- California Department of Food and Agriculture, Fertilizing Materials, Organic Input Material – Estimated Fiscal Year (FY) 2011-12 revenues and expenditures (with registration fee for organic input material at the statutory maximum authorized under Food and Agricultural Code Section 14601(b)).
- AB 856 (Caballero, Chapter 257, Statutes of 2009)

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

No other alternatives were presented to or considered by the Department in regard to the proposed rulemaking as written.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

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

The Department realizes industry will have a slight additional cost in the short term to start up the registration program; however the Department believes these small costs will not negatively impact small businesses in California. In the long run, the CDFA's Organic Input Materials registration program will provide additional credibility and help bolster the organic input materials industry by providing a baseline for registered OIMs with the State of California.

The staff analysis of the Economic Impact Study based on the findings of the University of California report "Statistical Review of California's Organic Agriculture 2005-2009," is available upon request. Please contact Christina Elliott for further details: [christina.elliott@cdfa.ca.gov](mailto:christina.elliott@cdfa.ca.gov).

