

2012 Report to the Legislature: Organic Input Materials



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Executive Summary

Assembly Bill 856 (AB 856) and Food and Agricultural Code (FAC) 14583.5(a)(b) require the Secretary of the California Department of Food and Agriculture (CDFA) to present a report to the California State Legislature regarding the review of the definition of Organic Input Material (OIM). This code requires the Secretary, in consultation with the Fertilizer Inspection Advisory Board (FIAB), to review the definition of OIM in FAC Section 14550.5 and identify oversight and implementation issues that may have arisen on account of that definition. The review includes the examination of materials that are currently not regulated under the OIM definition that may warrant oversight by the Department. CDFA's objective is to protect the state's agricultural industry, including the organic industry, and make recommendations for any necessary statutory changes.

This report provides background as to why legislation was needed and why the OIM program was created. The legislative action stems from an investigation conducted by CDFA in June 2004. A manufacturer claiming to be selling organic fertilizer, to organic growers, was selling products that were adulterated with a synthetic ingredient. The fertilizer had been approved for organic crop and food production by a third party reviewer.

Ultimately, CDFA, in consultation with the FIAB, determined there was a gap in CDFA's authority to regulate fertilizing materials used for organic food and crop production.

This report outlines the implementation process and explains the steps the Department and the FIAB took to ensure legislation was properly executed to ensure the integrity of OIMs.



The following issues were identified by the FIAB and sufficiently addressed by the Department:

1. Compost nutrient guarantees (lab reports and nutrient variability)
2. OIM label review and registration (including custom blends)
3. Site/facility/ingredient inspections (procedures, requirements, uniform protocol)
4. Out-of-state inspections
5. Clarify the scope of the definition of OIM when no claims are made by the supplier for organic production
6. Civil penalty matrix (matrix-regulations)
7. Review of the label registration fee (single ingredient products)

The Department transitioned the implementation of the OIM program to minimize the impact of the OIM registration process on the supply of OIMs to organic growers. To ensure a smooth implementation of the OIM program, the Department conducted outreach and training workshops for OIM manufacturers and distributors, and other stakeholders throughout the State. The OIM label review and registration, and inspection program was fully implemented as of January 1, 2012.

Overview of the Fertilizing Materials Inspection Program

The Fertilizing Materials Inspection Program (FMIP) is an industry funded program that ensures consumers receive fertilizing materials that are safe, effective, essential for the production of food and fiber, and meet the quality and quantity claims guaranteed on the product label by the manufacturer. Investigators located throughout the state, conduct routine sampling and inspections, respond to consumer complaints, and enforce the laws and regulations that govern the manufacturing and distribution of fertilizing materials. Environmental scientists review product labels for misleading claims and compliance with existing labeling requirements.

The Fertilizer Inspection Advisory Board, a statutory body that consists of nine individuals, was formed to advise or make recommendations to the Secretary of CDFA on fertilizer matters related to inspection and enforcement, research and education, annual budget, necessary fees, and regulations required to accomplish the purpose of the law.

The Fertilizer Research and Education Program (FREP) is a program within the FMIP. The FREP facilitates research to advance the environmentally safe and agronomically sound use and handling of fertilizing materials; it is funded through the collection mill assessments fees.

Fertilizer products are sold and distributed with a label informing consumers of product details, including contents. The FMIP reviews conventional fertilizer and OIM labels used for organic production. The program is mandated by the Legislature and supported by the industry to sample and verify label nutrient guarantees are met. Products claiming to be appropriate for use in organic production are checked for truth of labeling claims; products are sampled and tested for compliance of the guaranteed analysis.

- License manufacturers and distributors of fertilizing materials
- Review and register product labels for fertilizing materials and collect fees
- Ensure fertilizing materials are safe and effective while meeting nutrient guarantees by the manufacturer
- Inspect and enforce Fertilizing Material Laws and Regulations

Need for Legislation

The FMIP is charged with licensing companies to sell and distribute fertilizing materials, reviewing and registering product labels for fertilizing materials and collecting fees, ensuring fertilizing materials are safe and effective while meeting the nutrient guarantees by the manufacturer, and inspecting and enforcing fertilizing materials laws and regulations.

Prior to the enactment of AB 856 (Chapter 257, Statutes of 2009), CDFA did not have the authority to register and review claims of OIMs. CDFA only had the authority to register specialty fertilizers, packaged agricultural minerals, auxiliary soil and plant substances, and packaged soil amendments.

Effective January 2012, OIMs are now required to register with FMIP. The mandates for adding OIMs to the products required to register stemmed from CDFA's investigation in June 2004 of a manufacturer claiming to be selling organic fertilizer that was found adulterated with a synthetic ingredient. This fertilizer had been approved for organic crop and food production by a third party reviewer. The incident demonstrated that CDFA lacked oversight authority over OIMs. AB 856 was intended to provide CDFA with authority to regulate OIMs, and to further protect the integrity of organic food and crop production.

- CDFA lacked authority to review and register OIMs
- Legislation was intended to provide oversight authority
- AB 856 authorized the Department to charge a fee for OIM label review and registration

Following this incident, consumers and the organic industry strived for better regulatory oversight on behalf of the Department. The industry was concerned with the integrity of organic products in California and felt a need to ensure that organic producers are, in fact, producing products using nutrient inputs that comply with the Organic Product Act.

CDFA, in consultation with the FIAB, developed a strategic plan for its FMIP that was completed in 2008. CDFA made a set of recommendations and sponsored AB 856. Assembly member Anna Caballero introduced AB 856 to the legislature on February 26, 2009. After going through various assembly and senate committees, the bill was signed by the Governor on October 11, 2009, and became law on January 1, 2010.

AB 856 provided for jurisdiction over organic input manufacturers, producers, and distributors. AB 856 requires registration of each differing label for OIMs; the registration fee is not to

exceed \$500 per product label; and the funds generated from the registration of OIMs is to be deposited into an account designated for the OIM program, and be available only upon appropriation by the Legislature. This bill provided that registrations may not be issued without a current license and required OIM manufacturers to be inspected at least once yearly to ensure compliance with the United States Department of Agriculture (USDA)- National Organic Program (NOP) standards. Additionally, AB 856 provides for onsite inspections of out-of-state facilities by NOP recognized third parties and provided the authority for civil penalties. Any person found in violation of adulterating, misbranding, or altering fertilizing material, including OIMs, may be prohibited, by the Secretary, from obtaining a license to sell OIM for three years.

The Department, in consultation with the FIAB, created an OIM Subcommittee to ensure a smooth and transparent implementation of the OIM program. The Subcommittee's goal was to identify potential OIM program implementation issues and recommend solutions.

Organic Input Materials Program Implementation

The Department was charged with implementing AB 856 and creating a set of regulations to implement the new law. To ensure viability and transparency, the Department consulted with the FIAB and stakeholders from the organic industry. The FIAB is tasked with assisting the Secretary in reviewing the definition of OIMs in FAC Section 14550.5 and identifying oversight and implementation issues that may arise or have arisen because of that definition. To properly conduct an analysis, the Department consulted with the FIAB and created the OIM Subcommittee. The Subcommittee is composed of stakeholders including; industry members, OIM manufacturers, organic growers, trade associations, USDA-NOP Accredited Certifying Agents, the Department of CalRecycle, composting industry consultants, and producers.

On June 9, 2010, the OIM Subcommittee held their first meeting; Mr. John Salmonson was appointed as Chairperson. Ms. Katherine Borchard, Mr. Michael Brautovich, Mr. Matthew Cotton, Mr. Neil Edgar, Mr. Jake Evans, Mr. Doug Graham, Mr. Robert Horowitz, Ms. Rachel Oster, Mr. John Peterson, Ms. Claudia Reid, Mr. Sanford Simon, and Mr. Bill Wolf were appointed as members of the Subcommittee.

Dr. Amadou Ba and Dr. Asif Maan represented CDFA and presented the OIM Subcommittee with an overview of the FMIP and the provisions of AB 856, the new law. The Subcommittee was provided with an implementation plan and a list of potential issues.

- Fertilizer Inspection Advisory Board (FIAB) statutorily tasked to advise Secretary on all matters pertaining to the Fertilizing Materials Inspection Program
- Formed an OIM Subcommittee
- Identified potential OIM program implementation issues

The Subcommittee discussed the merit of each potential issue and ranked them in priority order:

1. Compost nutrient guarantees (laboratory reports and nutrient variability)
2. OIM label review and registration (including custom blends)
3. Site/facility/ingredient inspection (procedures, requirements, uniform protocol)
4. Out-of-state inspections
5. Clarifying the scope of OIM definition when no claims are made by the supplier for organic production
6. Civil penalty (matrix-regulations)

7. Review label registration fee (single ingredient products)

Following the first meeting, the OIM Subcommittee met on July 13, 2010, August 3, 2010, September 15, 2010, October 21, 2010, November 12, 2010, March 2, 2011, June 30, 2011, September 15, 2011, and January 27, 2012. The Subcommittee will continue to meet periodically as needed.

A description of the issues that were resolved is summarized below.

Issue number 1: Compost nutrient guarantees

A technical working group was created to study this issue. They recommended that composting operations for organic production be licensed and labels be registered, label minimum guarantees must be met for nutrient claims, registered labels may be published on the composter's website, composters provide registered labels to the customer instead of a lab analysis, CDFA should adopt the Association of American Plant Food Control Officials (AAPFCO) investigational allowances for compost nutrient guarantee compliance, CDFA needed to develop a process for complaints/violations that include AAPFCO investigational allowances, and CDFA should provide outreach to the composting and farming communities. The FIAB and the Department accepted these recommendations.

Issue number 2: OIM label review and registration

With input from the OIM Subcommittee and on the recommendation from the FIAB, the Department developed label review and registration procedures through the state rule making process.

Issue number 3: Site/facility/ingredient inspection procedures

The OIM Subcommittee assisted the Department in developing an on-site inspection checklist for the required annual inspection of OIM manufacturing facilities. The FIAB accepted the checklist as a working document that will be reviewed at the end of the first year of inspections, and revised if needed.

Issue number 4: Out-of-state inspections

AB 856 allows CDFA to accept NOP recognized third party inspections at out-of-state manufacturing facilities, as long as they follow CDFA's guidelines and inspection checklist. Third party entities will be trained by CDFA to conduct inspections, and will be required to submit all inspection documents to CDFA. They may also be trained by AAPFCO, and possibly NOP. The cost of out-of-state inspections will be determined between the OIM manufacturing firm and the third party.

Issue Number 5: Scope of OIMs

The intent of AB 856 is to regulate manufacturers and distributors of OIM who are making claims of compliance with USDA-NOP standards. Through CDFA working with the FIAB and the OIM Subcommittee, it was determined that if a manufacturer or distributor meet any of the below conditions, they are required to register their label with CDFA.

- Fertilizing materials making claims of compliance to NOP, 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 production system

The Department has determined that the definition of OIM, as stipulated in FAC Section 14550.5 is broad, and does encompass “Natural Organic Fertilizer,” especially as they are not included in the exemption. FAC Section 14601 presumes that all OIMs require a review of label and labeling claims and yearly inspection of manufacturing processes to ensure that nutrient guarantees and claims are scientifically feasible and meet NOP standards. This is the justification for the \$500 registration fee per product label. The legislative purpose of the registration fee for OIMs is to compensate the program for the cost of label review and on-site inspections of OIM manufacturing processes.

CDFA regulates fertilizing material through the content of the label, which is absent in this instance. Accordingly, CDFA will proceed with a regulation to the effect that “Natural Organic Fertilizer” that does not have a label, does not make claims of compliance to NOP or claims for use in organic crop and food production are not required to register with CDFA.

The Department does not believe new legislation is necessary at this time and has started developing language for the regulations that will help clarify the scope of the definition of OIM.

Issue number 6: Civil penalty matrix

A civil penalty matrix was composed and formalized through the state rulemaking process, with violations being identified as minor, moderate, or serious; enforcement actions and penalties are associated with each level of violation.

Issue number 7: Review label registration fee

AB 856 requires registration of each differing label for OIMs; the registration fee is not to exceed \$500 per product label. The FIAB reviewed the potential number of OIM labels that may require registration, and evaluated funding needs for implementation of the label review

and registration program. The FIAB recommended a \$500 fee for each differing label, as the review and registration of OIM labels require additional departmental resources to ensure the label claims and guarantees are scientifically feasible and meet NOP standards. The label registration fee was established through the state rule making process.

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