

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

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
ARTICLE 2. SAMPLES
ARTICLE 6. MILL ASSESSMENTS

FINAL STATEMENT OF REASONS

SECTIONS AFFECTED

California Code of Regulations (CCR), Title 3, Division 4, Chapter 1, Subchapter 1, Articles 1, 2, and 6, Sections 2303, 2317.5, and 2326.1.

LOCAL MANDATE DETERMINATION

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

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

The Initial Statement of Reasons/Plain English Policy Statement Overview is still valid. A 15-day notice was published from August 16, 2019 to August 31, 2019. Modifications to the originally proposed regulatory text include:

Section 2303(s) - This proposed change allows for firms to accurately document commercial fertilizer and agricultural mineral products to the public as to content of the heavy metals. This section is being amended to eliminate confusing language and simplify the regulation consistent with CCR Section 2302. Section 2302(a) provides the standards for non-nutritive metals in fertilizers. One of the original intents of the heavy metals regulations was to recognize that certain types of fertilizers may contribute substantially to human heavy metals exposure. The standards in 2302(a) apply only for inorganic commercial fertilizers and agricultural mineral products. The labeling requirement in Section 2303(s) provide exemptions for 16 products. These 16 products are generally considered organic and thus were already exempt from 2302. Fertilizing firms have indicated confusion as to whether the 16 products listed in 2303(s) refer to either, products comprised of 100% of one of these ingredients, or perhaps blended

products with at least one of these ingredients. One specific example is a feather meal product that has been blended with substantial rock phosphate. As a feather meal it would seemingly be exempt, but the rock phosphate portion would throw it into 2303(a). The amended text clarifies that the fertilizing product (the blend) would be subject to 2302(a) due to the inorganic source of phosphate. The revisions are needed to ensure that all commercial fertilizer and agricultural mineral products containing inorganic sources of non-nutritive metals (heavy metals) are accurately documented to the public as to their content of heavy metals.

Section 2303(s)(1) –The specific purpose for modifying Section 2303 (s)(1) following the 45-day comment period was to include the AAPFCO web-site link as a recognized link to government web-sites. This is the most common procedure in current use by fertilizer firms and is consistent with nationwide practice when addressing, on the label, the heavy metal content of fertilizers.

Section 2303(t)(1) - This proposed change clarifies the requirements for firms to provide lab test results for heavy metals in fertilizing material products. The specific purpose for modifying Section 2303(t)(1) was to include the provision that the five-year limit is calculated from the time of registration renewal. This created a definable date for the required laboratory results to be considered as current and reflective of the fertilizing product.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ENDING JUNE 11, 2019

COMMENT 1.1: Submitter states that Section 2303(s)(1) “A government website internet address on the label is an acceptable alternative to a web site established and maintained by the licensee” as written does not allow the use of the AAPFCO web site internet address for accessing heavy metals. The AAPFCO web site is technically not a government web site, although the site has links to four state web sites. The submitter suggests that CDFA clarify the issue by adding the following text, “...on the label, or an address for a web site (such as AAPFCO’s metals site) that contains links to one or more government heavy metals web sites,...”.

RESPONSE: CDFA has considered this comment and has incorporated the proposed clarifying text.

COMMENT 1.2: Regarding the proposed section in Section 2303(t)(1), the submitter states that the proposed changes would result in the updating of heavy metals data for a significant amount of historically registered products. The submitter expresses the importance of CDFA providing an implementation period, so firms are not immediately out of compliance at the time the proposed regulation changes are official and suggests CDFA add the language “at the time of registration renewal. This requirement shall take effect beginning with companies that renew registrations in January of 2021.”

RESPONSE: CDFA has considered this comment and has partially incorporated the proposed clarifying text by adding the “at the time of registration renewal.” Additional language delaying implementation is not necessary as the earliest possible adoption of the proposed regulation will be the 2021 registration cycle.

COMMENT 1.3: Regarding Section 2303(w), the submitter states that the AAPFCO website contains links to the California website indirectly, therefore, even for products which are not sold in California or otherwise do not require registration could be deemed that the firm would still be required to submit heavy metals data to the secretary. The submitter suggests adding the language “to be registered and distributed in California..”.

RESPONSE: CDFA has considered this comment and did not incorporate it into the regulations because CDFA’s authority is already limited only to products registered and distributed in California.

SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD ENDING AUGUST 31, 2019

COMMENT 1.1: The submitter states that the adoption of Section 2317.5(c) regarding ‘Humic Acid’ should be amended to ‘Humic Acids’. The submitter states that the Oregon Department of Agriculture (ODA) no longer allows labels claims for ‘Humic Acid’ and requires the term ‘Humic Acids’ to be used. The submitter states that it is confusing and inappropriate for the state to use the term ‘Humic Acid’ when it is no longer allowed by the state of Oregon.

RESPONSE: CDFA respectfully rejects this comment because it does not fall within the scope of this regulation package. Section 2317.5 is being adopted to provide transparency for fertilizer manufacturers for primary, secondary, micronutrients, or other guaranteed claims. The investigational allowances for primary, secondary and micronutrients are officially recognized by AAPFCO Official Publication, No. 72, 2019, pages 48-50 and universally accepted by all U.S. states, Canada, and Puerto Rico. The singular term, “humic acid”, is consistent in several locations in the FAC and CCR. The plural form is beyond the current proposal.

COMMENT 1.2 & 1.3: The submitter states that the adoption of Section 2317.5(c) regarding the wording for the investigational allowance for pH is technically incorrect. The submitter suggests CDFA specify ‘synthetically stabilized liquid fish products’ because a non-synthetically stabilized liquid fish product with a pH of less than 3.5 would be allowed under the NO Rule.

RESPONSE: CDFA respectfully rejects this comment because it does not fall within the scope of this regulation package. The text addressed in the comment is not part of the 15-day comment period. Section 2317.5 is being adopted to provide transparency for fertilizer manufacturers for primary, secondary, micronutrients, or other guaranteed claims. The investigational allowances for primary, secondary and micronutrients are

officially recognized by AAPFCO Official Publication, No. 72, 2019, pages 48-50 and universally accepted by all U.S. states, Canada, and Puerto Rico.

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

The proposed regulatory changes are based upon feedback from the Fertilizer Inspection Advisory Board (FIAB) and Department staff. The Department relied upon the FIAB meeting minutes dated February 6, 2019 and the Association of American Plant Food Control Officials official publication, No. 72. These documents are included as part of the rulemaking record; no other documentation is included for the proposed amendments to the regulations.

DETERMINATION OF CONSIDERED ALTERNATIVES TO THE REGULATION

Alternatives that would be more effective in carrying out the purpose for the regulation:

Section 2303(s), (t), and (w) – The alternative is to insist that firms remove the heavy metals statement from labels so as to not be misleading for the public. This alternative would be as effective but not more effective as the proposed regulation. Firms would then have to produce versions of labels unique to California, as the statement is required by many states. Firms would face additional costs of maintaining two or more labels for each product and face logistic issues of marketing and distribution specific to each state.

Section 2317.5 – The alternatives are for the Department to directly provide the information in response to direct requests or the publish the information elsewhere. Direct responses would not be as effective because direct responses to all interested parties would be slow and inconsistent. The Department intends to publish the proposed regulations on our website increasing the effective distribution.

Section 2326.1 – The alternative of decreasing mill assessment by a full mill would be effective for the short term but would rapidly decrease programs stability and require a rapid re-increase in mill assessment.

Alternatives that would be as effective and less burdensome to affected private persons:

Section 2303(s), (t), and (w) – The alternative is to insist that firms remove the heavy metals statement from labels so as to not be misleading for the public. This alternative would be as effective as the proposed regulation; however, it would be substantially more burdensome. Firms would then have to produce versions of labels unique to California, as the statement is required by many states. Firms would face additional costs of maintain two or more labels for each product and face logistic issues of marketing and distribution

specific to each state.

Section 2317.5 – Publishing the investigational allowance is not burdensome to affected parties as they need the information in order to produce products.

Section 2326.1 – There is no cost to the industry. The assessment reduction will gradually decrease the excess reserve funds.

Alternatives that would be more cost effective to affected private persons and equally effective in implementing the statutory policy:

Section 2303(s), (t), and (w) – The alternative is to insist that firms remove the heavy metals statement from labels so as to not be misleading for the public. No alternative was found that would be more cost effective than the proposed regulation. Firms would then have to produce versions of labels unique to California, as the statement is required by many states. Firms would face additional costs of maintain two or more labels for each product and face logistic issues of marketing and distribution specific to each state.

Section 2317.5 – There is no cost to affected parties so there is no more cost-effective alternative.

Section 2326.1 – There is no cost to the industry. The assessment reduction will gradually decrease the excess reserve funds.