

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (Department)
FERTILIZER INSPECTION ADVISORY BOARD (FIAB)
HAMPTON INN AND SUITES, 327 E. FIR AVE, FRESNO / HYBRID**

**February 8, 2024
9:00 AM – 12:00 PM**

MINUTES

BOARD MEMBERS

Christopher Gallo
Gary Silveria (Vice-Chair)
Greg Cunningham
Gus Olson
Jake Evans
Melissa McQueen (Chair)

MEMBERS ABSENT

David McEuen
William Oglesby

CDFA STAFF

Amadou Ba
Angelia Johnson
Barzin Moradi
Brittnie Williams
Elizabeth Moseby
Emad Jahanzad
Evelyne Ndiaye
Justin Petty
Karen Adler
Maria Tenorio Alfred
Mark Cady
Martin Burger
Minal Patel
Nick Young
Nicole Smith
Zach Edmonds

INTERESTED PARTIES

Adam Cole
Andrew Larson
Chris Bradway
J. Harrison
Renee Pinel
Steve Aichele

INTRODUCTIONS AND ANNOUNCEMENTS

Melissa McQueen, Chair, called the meeting to order at 9:04 AM and self-introductions were made.

Chair McQueen recognized Tim Howard, former board member, who retired from Helena Agri-Enterprises, LLC on December 31, 2023.

ROLL CALL – ESTABLISH QUORUM

Roll was taken and a quorum was established.

APPROVE SEPTEMBER 27, 2023, MEETING MINUTES

Chair McQueen requested the board review the minutes from the September 27, 2023, FIAB meeting.

MOTION: Greg Cunningham moved to approve the minutes as presented; Gary Silveria seconded. The motion passed unanimously by all board members present with a vote of 5 to 0.

Chris Gallo arrived at 9:08 a.m.

DEPARTMENT / DIVISION / BRANCH UPDATES

Dr. Amadou Ba provided Department, Division, and Branch updates. Dr. Ba updated the group on a legislative proposal submitted by the Fertilizing Materials Inspection Program (FMIP) to define “bio-stimulant,” provide the Secretary with the authority to adjust the mill assessment, to change the registration cycle from two years to four years, to provide the Department the authority to refuse to issue a license or registration to firms who are delinquent in administrative penalty payments, and technical amendments. This proposal was supported by the Fertilizer Inspection Advisory Board (FIAB) and the fertilizer industry. The proposal was submitted to the legislative counsel and approved by the Governor’s Office (GO) as an unbacked bill. This bill will be based on a majority vote; the legislative office is currently identifying an author for this bill.

Dr. Ba informed the FIAB there is a current state budget shortfall of \$37.89 billion, but there is \$18.4 billion remaining in the reserve. The reserve will partly rectify the shortfall, along with new revenue and borrowing (Budget Resilience). An additional \$11.9 billion will be addressed through belt tightening throughout state departments and stretching of dollars. For example, \$98 million of funds allocated from the Farm Bill will be shifted to climate smart agriculture programs. There will be other fund shifts and reductions, such as the delay in purchasing new vehicles, cell phones, office spaces, office equipment, freezing contracts, exploring federal funding opportunities to supplement the state budget, not filling 762 statewide vacant positions, and the potential for terminating the telework stipend provided to state employees; negotiations with bargaining units will be required. Furthermore, there will be \$7.2 billion in delays and deferrals, including transit capital and the Facilities Grants Program, University of California (UC) and Clinic grants. Clarification will be provided in the May 2024 revised budget.

A High Path Avian Influenza outbreak occurred; there were 6.6 million dead birds and 26 commercial facilities impacted. A public meeting was held in San Bernardino County regarding 2,100 properties affected.

The FIAB previously approved the hiring of FMIP’s two Environmental Scientist Limited Term (ES LT) positions. The Department of Finance granted approval of LT positions greater than two years to be made permanent. The program obtained a vacant position from another program to convert one of the ES LT positions to permanent. The second ES LT position was vacated and is currently advertised with the potential to become permanent in the future.

PROGRAM UPDATES

Nick Young, FMIP’s Environmental Program Manager, reviewed program fund conditions and mill assessments.

On July 1, 2023, the beginning balance for Commercial Fertilizer was \$8,568,083 and the beginning balance for Organic Input Material (OIM) was \$3,454,277, for a combined total of \$12,022,360. Combined revenue for Commercial Fertilizer and OIM was

\$3,262,778. The combined expenditures totaled \$4,517,171 and encumbrances totaled \$268,244. The ending adjusted fund balance on December 31, 2023, for Commercial Fertilizer was \$7,241,157 and for OIM was \$3,258,566. The combined balance totaled \$10,499,723. Young commented that the mill reduction shows a \$2.5 million-dollar reduction for Fiscal Year (FY) 2022/23 which is projected to be the same during FY 2023/24. Funds will continue to decrease gradually as intended.

The Fertilizer Research and Education Program (FREP) had a beginning balance of \$8,341,898. Revenue was \$1,483,771; expenditures were \$1,361,452; and encumbrances for grants through June 30, 2024, totaled \$3,880,271. As of December 31, 2023, FREP's ending adjusted balance was \$4,583,945.

Mill assessment trends for FY 2023/24 at 2.5 mill totaled \$5,194,827. This trend aligns with prior years' mill assessment trends of roughly \$8 million.

Dr. Ba asked for FIAB forecast on revenue for the remaining FY 2023/24. Dr. Ba wondered if there is a true assessment to the observation of international firms having difficulties with firm revenue while North America firms are not. This observation was made by industry members.

Chair McQueen commented, stating fertilizer prices are softer compared to historic years of basic supply and demand. In general, crop values are not excellent, leading growers to be mindful of fertilizer application. From an international perspective a portion of the product is imported to California where there is a struggle through Panama Canal that might be a little disruptive but no prediction of an outage.

Gallo stated the fertilizer industry is on a better footing from a supply standpoint in comparison to last year from the prior year, which could factor in the numbers seen in the funds/mill assessment trends presented by the FMIP. Crop dynamics are suppressed but it's not as bad as it has been.

Young announced the success of the 2023 FMIP Industry Workshop held in November of 2023 with 100 in attendance. The workshop included an appointment-based open registration clinic to allow industry members an opportunity to discuss questions with registration staff and/or resolve issues with licensing or product registration label(s). The workshop agenda included presentations for Conventional Licensing and Registration, Inspection and Sampling, OIM Registration and Inspection, CDFA Database, Mill Assessments and Tonnage Report, and Efficacy Data Submission.

Young gave an update to the OIM adulteration investigation on an OIM product called Agro Gold WS. The investigation led to a civil hearing with the Department's FMIP and State Organic Program versus Agro Research International. The product was found to have 378 violations of adulteration and misbranding. A four-day hearing was held on December 11-14, 2023. The Department of Justice submitted closing briefs last month. A decision is expected in March of 2024. The Department is seeking \$1.89 million, plus \$92 thousand in investigative costs plus attorney fees.

Jake Evans asked for a program solution on an expedited process of such cases to protect consumers by fraud prevention of such marketed products. Young explained that the fertilizer program starts investigating immediately any time a complaint is filed or the program is made aware of potential issues in the marketplace.

Vice Chair Gary Silveria commented, a stop sale discontinues the use of a product. Young stated, FMIP was notified in August of 2020 which prompted a statewide quarantine, as well as a statewide stop-use notice from the State Organic Program that occurred in December 2020. FMIP tested sixteen lots for lab analysis within the four-month timeframe. The additional three-to-four-year period is program time spent working with attorneys on the case. The material still under quarantine is the biggest challenge. Firms can dispose the product at their own cost; however, the product will remain under quarantine unless disposal is requested. In other penalty cases, manufacturers may aid in disposal to mitigate penalty amounts, but in this case it has not happened. The program was in contact with the National Organic Program during the four-month period. The OIM product was also analyzed by four other states, all of which revealed similar results to California and confirmed the adulterated presence of diquat and glyphosate.

Discussion ensued regarding FMIP's initiation of the complaint process from start to end of investigation into such cases.

Young informed the FIAB that the Association of American Plant Food Control Officials (AAPFCO) conference is February 19-20, 2024, in Mobile, Alabama. Biostimulants and beneficial substances are ready for official vote. Kris Gulliver, FMIP's Senior Environmental Scientist (SES) (Specialist), is the new Chairperson for the Terms and Definitions Committee.

Young gave an update on his attendance at the World Biostimulant Congress in Milan, Italy on November 28 – December 1, 2023. Young spoke on "Regulating Biostimulants in the USA" and served on a regulatory panel. The regulatory panel discussion included perspectives from the Department, Biostimulant Council, the Fertilizer Institute Certification Program and European Biostimulant Industry Council.

Young shared updates on proposed legislation for defining beneficial substances and biostimulant details that were presented at the AAPFCO Summer Annual Conference. The Beneficial Substance Uniform Bill was recommended by AAPFCO Board of Directors to "Official" in October of 2023. The official vote for the Beneficial Substances Uniform Bill will occur at the AAPFCO Winter Annual Conference on February 19, 2024. Following the official vote will be the development of novel lab methods through AAPFCO's lab services committee and the annual methods forum. States will formally adopt pertinent sections from the Beneficial Substance Uniform Bill for beneficial substances and plant biostimulants. The Department is currently proceeding with proposed legislation within a "Fertilizer Ominous Bill".

Young stated that the 2024 proposed rulemaking removes the current labeling format statement for nonplant food ingredients to “contains beneficial substances” which will provide uniformity throughout the states. This revision would allow the firm to go through the current, plus one more registration cycle. After a firm’s product expires and enters a renewal cycle, the firm will then be required to make revisions on product registration and FMIP enforcement would not occur until one more registration cycle. This plan would allow every firm a two-to-four-year span to reprint labels with the new format.

Greg Cunningham expressed concern with states not honoring AAPFCO with no variance in their regulations or that it could take longer than two to four years. Cunningham suggested potential language that could allow firms to use until 2030 to allow states to get on board.

Young responded, stating the goal is universal labeling. Young recognizes that some states will act quicker than others, but ultimately FMIP can only be responsible for California, and it is other states responsibility to decide on uniformity.

The 2024 proposed rulemaking also includes clarification on heavy metals testing results requirement must be within five years old at time of initial registration and at renew approval. Proposed changes to Section 2309 Phosphorus are if a firm that makes a phosphoric acid claim is required to have disclaimer statements into one full statement with an asterisk versus three statements. Changes to Section 2317.5. Investigation Allowances corrects an error that included a one percentage maximum allowance that is no longer in existence. A 45-day comment period will allow the fertilizer industry to comment on these proposed changes mentioned in this meeting.

Young mentioned the 2023 proposed rulemaking was reviewed by the Office of Administrative Law (OAL). Upon OAL review, a few areas of the proposed text did not meet Administrative Procedure Act (APA) standards prompting FMIP to release a 15-day notice with the modified text.

Young requested FIAB guidance on an emergence with mushroom kit products. Mushroom kits typically fall under FMIP jurisdiction and require a registration as “Packaged Soil Amendments.” California Certified Organic Farmers (CCOF) informally requested the Department to consider exemption of these products from regulation. A regulation change may be necessary, if the board deems an exemption to be appropriate. As an example, one of the kits utilizes a wood log as mushroom spore substrate which would be under FMIP purview as a packaged soil amendment, according to Food and Agricultural Code Section 14552, pertaining to promoting plant growth. Kits such as these with varying soil amendment substrates led to competing companies filing complaints with the Department for unregistered products. CCOF involvement was due to a firm that attempted to register a product with the fertilizer program as a conventional packaged soil amendment, but the label possessed CCOF-approved organic claims. The fertilizer program required the product to either be

registered as an organic input material or have all organic claims removed from the label. CCOF contended that it should be exempt from fertilizing materials regulation.

Renee Pinel, Western Plan Health Association (WPHA), questioned how these mushroom kits would be validated for everyone else and what kind of certification program CCOF has. Pinel wondered if it is for their marketing purposes and if CCOF has a process that verifies that the logs are not being treated with something such as nitrogen fertilizer. FIAB advised FMIP to maintain the status quo, prevent loopholes, and continue to require these products to register as packaged soil amendments if they were labeled accordingly.

The annual impartiality survey, specific in scope and only encompassing the OIM's programs impartiality, will be emailed to FIAB members after the board meeting for completion within 30 days. The survey is required for the Department's FMIP's International Organization for Standardization (ISO) audit. The end of the survey identifies risks to impartiality that the OIM program has identified.

A break was taken from 10:50AM to 11:00AM.

Dr. Martin Burger, SES (Supervisory), shared statistics on Commercial and OIM licensing and registration. As of December 31, 2023, out of 9,731 fertilizer registrations, 8,222 were approved; 0 were provisional; 347 were pending review; and 830 require data revisions. Out of 3,345 OIM registrations, 2,204 were approved; 0 were provisional; 190 were pending review; and 433 require data revisions. Dr. Burger commented that the data shown are for active conventional fertilizer and OIM registrations.

Dr. Burger presented the percentage of 30-60-90-120-day turnaround time of processing all OIM registration approvals, including new and renewal registrations in 2021, 2022 and 2023. Dr. Burger noted an increase in approvals from 2022 to 2023. Dr. Burger stated the longer queues impact the turnaround times for registration approvals.

Discussion ensued regarding registration review turnaround times and how to get a better understanding of the timeframes of label review.

Young added that the fertilizer program may collect the number of labels in data revisions required status and filter query on the number of days. This should allow the program to obtain a threshold of how many labels in data revisions required status are in excess turnaround times and show ranges of turnaround times of those past 90 to 120 days that are in firm's queue. This does not capture the back and forth between firm and program obtaining information needed but program can provide a possible snapshot of what is current.

Smith, SES (Supervisory), reported a total of 1,423 samples were taken with an estimated 10.68% violation rate: 704 conventional fertilizer and 719 OIM. Smith shared there were six OIM and 14 conventional fertilizer complaints for a total of 20 complaints. 15 of those have been resolved, and five are under investigation. There were 13 notices

of proposed actions; eight have been completed and five are pending. Those pending could be awaiting firm response of a potential request for a hearing or payment or pending hearing officer to issue decision of order.

Smith provided an update on the Pathogen Pilot Survey that the FMIP was conducting; as of January 16, 2024, a total of 291 samples were obtained: 222 package/off shelf and 69 taken at manufacturer/distributor locations. Out of the 291 samples, 18 detected *Salmonella spp.* 17 of the 18 detections were in packaged, off-the-shelf retail products. 16 of the 18 positive samples were from products that contain bone meal. 10 of the 18 samples were straight bone meal products without other ingredients. Field program staff are identifying suppliers to track potential sources of detection.

Mark Cady, SES (Supervisory), provided updates on FREP and the Technical Advisory Subcommittee (TASC). Cady stated the FREP-WPHA Conference on November 8-9, 2023, was highly successful with 130 participants in attendance. The conference included a pre-conference tour of Duarte Nursery, Fertigation and Salinity Management workshops, and interactive poster sessions. Other FREP outreach activities that have occurred include FREP's attendance in the Almond Conference, Latino Farmer Conference, California Association of Resource Conservation Districts and Crop Consultant Conference, and a presentation at the Almond Board 2024 Nutrient Summit.

FREP received 39 pre-proposals; eight of the 39 pre-proposals moved to full proposal phase.

Cady presented the Nitrogen and Irrigation Initiative (NII) Farm Advisory Meetings and Presentations held between September 2023 – February 2024, totaled to about 15 events varying from webinars, workshops, or field days that FREP has either participated in or hosted. FREP plans 12 events in the winter and spring, including a coalition event talk. FREP has also been working on its role in this project by matching UC Agricultural and Natural Resources (ANR) collaborators, cooperative extension farm advisors and coalitions who are responsible for water quality regulatory compliance for growers. FREP introduced the concept of having farm advisors provide a technical session during annual grower meetings. Coalitions host meetings focused on outliers of fertilizer use efficiency – growers most at risk of future regulatory action. FREP worked with coalitions to have collaborators give technical presentations promoting FREP and the opportunity to have cooperative extension staff provide individual consultation.

Cady reiterated the importance of marketing FREP in the grower community, a service that supports the grower community. There is an ongoing discussion between farm advisors and Water Boards on how to leverage programs to become more effective. The Water Boards recognizes this program and includes the program in their conversations with the regulated grower community. FREP meets with coalition consultants.

Vice Chair Silveria inquired about FREP's status on a three-year timeline. Cady stated the timeline of when the regulations will fall into place is unknown; however, FREP continues to provide services to get infrastructure in place to help farmers.

Other FREP activities included attendance of the Stakeholder Advisory Group and NII staff training.

Cady updated the FIAB on Water Board agricultural regulation. The Central Coast Irrigated Lands Regulatory Program (ILRP) Ag Order 4.0 was the initial set of regulations in 2019 pertaining to limits of total fertilizer use. The Ag Order 4.0 was appealed to the California State Water Resources Control Board (CSWRCB) with the thought that it was too early for the Central Coast Regional Water Quality Control Board (CCRWQCB) to take regulatory action on fertilizer application for excess nitrogen. Several items in the proposed regulations were remanded to the CCRWQCB who lacked data or info available to enforce a strict level of regulatory compliance at a pound per acre level. The CCRWQCB requested a second new agricultural expert panel for discussion on fertilizer efficiencies which is expected to convene in July 2024. The goal of this panel discussion is to address whether there is sufficient data/information from ILRP and Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) to set fertilizer limits or change a precise regulatory approach of farming operation requirements. Through a Memorandum of Understanding with the CSWRCB, FREP is submitting informal comments to address questions from CCRWQCB. Questions will be released in two weeks for public comment.

Cady announced ILRP CV-SALTS coalitions have been charged with a proposal of acceptable ranges of nitrogen use efficiency.

Gallo commented, inquired about nitrogen management plan data. Cady stated nitrogen management plans are grower self-reported to coalitions and to the Central Valley Board. FREP's consultation takes the same data and compares participants and non-participants to identify the impact.

Gallo presented thoughts on how to quantify the top tier growers to identify what is a normal standard and to advocate for improvement by bottom tier growers. Cady stated FREP leans on growers to have model data which shows the differences with top tier growers, but the challenge is that data only traces back to 2019.

Gallo continued thoughts about where the push for fertilizer industry to continue irrigation approach and systems in place is captured. Cady stated this information is captured in a general nitrogen management plan but may not have sufficient marketing or broadcasting to present the potential. As mentioned above, growers self-report nitrogen management plans and it is captured by looking at how these plans are applied on the ground.

Gallo acknowledged, stating once it is adopted to a certain percentage level it is unknown of where it gets captured in a nitrogen management plan. Gallo suggested FREP showcase how well the fertilizer industry is doing for the purpose of reporting.

Chair McQueen asked FIAB to review and motion to approve the board bylaws.

Maria Tenorio Alfred commented, stating most of the information was taken directly from the Department's Fertilizer Laws and Regulations and from prior bylaws. Some changes were added to the language from Bagley-Keene Open Meeting Act. Overall, no major changes were made to the board's bylaws.

MOTION: Jake Evans moved to approve the FIAB bylaws as presented; Chris Gallo seconded. The motion passed unanimously by all board members present with a vote of 6 to 0.

CENTER FOR ANALYTICAL CHEMISTRY (CAC) LAB UPDATE

Dr. Barzin Moradi, Branch Chief for the Center for Analytical Chemistry Lab, presented lab updates. Dr. Moradi reported three of five staff left the program for promotional opportunities; two transferred within the Department and one transferred to a different agency. As a result, CAC's sample turnaround time was impacted. The average turnaround time is 11 days. From January 1, 2023, through December 31, 2023, CAC received a total of 1,131 samples; 89.8% were routine samples and 10.2% were priority samples. Dr. Moradi highlighted that CAC typically has an average of four assays completed per sample; however, it has been six assays completed per sample.

Dr. Moradi reported sample turnaround times are still longer than usual by 8-10 business days. The SES Supervisor who oversees the sample processing and turnaround times has been extended on leave; however, lead staff have been able to manage the workload. Staff have been cross-trained so they have at least two people that can assist with sample processing. Laboratory bench and infrastructure is underway to further modernize and improve lab adaptability to new technology and sample flow. A new Kjeldahl instrument was ordered to serve as a backup and promote sample throughput.

FERTILIZER INSPECTION ADVISORY BOARD VACANCY

Chair McQueen announced Tim Howard's, former FIAB member, early resignation from the FIAB. The FIAB is tasked with reviewing the six board applicants and making a motion to recommend potential board members to the Department's secretary.

Chair McQueen stated that they have worked with board applicant one Steve Aichele, Chief Financial Officer/Co-Owner of the Pacific Coast Resources Corporation, a wholesale fertilizer company. This company has been in the fertilizer industry for many years. Aichele has experience with environmental compliance and regulations.

Chair McQueen asked for FIAB comments on other board applicants, reviewing the second board applicant, Chris Bradway, General Manager of Down to Earth Distributors, Inc. Gallo mentioned the location of the board applicants would be helpful to know. Bradway responded that they reside in Eugene, Oregon.

Chair McQueen commented, board applicant three Jay Irvine, prior FIAB member, changed associations to a fertilizer retailer company in California called Farmers Fertilizer and Supply in December of 2023.

Chair McQueen asked for FIAB input on board applicant four, Nick Kanellos, President/Co-Owner of EZ-GRO. Smith commented, stating they have completed an inspection for EZ-GRO who is primarily based out of Canada. No other comments were made.

Chair McQueen presented board applicant five, Andrew Larson, Key Account Manager of Compass Minerals, a potash producer. Board applicant six, Victor Lopez, President and CEO of Rockwood Ag Services, Inc., is in Imperial Valley.

Gallo gave recognition to four of the six board applicants who all have strong backgrounds. Chair McQueen agreed, stating FIAB is seeking a fair representation of the fertilizer industry from manufacturing to distribution, to organic to farm mill, to consumer.

Evans stated Andrew Larson stands out as a potential board applicant to recommend to the secretary because of their representation of potash business, a part of the sector that is not often discussed on the FIAB, which would bring a broad range of business to the FIAB.

Vice Chair Silveria asked how many years Jay Irvine served on the board, acknowledging Irvine's years of service to the FIAB. Chair McQueen stated Irvine has experience with micronutrients, humic acid, biostimulants, and a background with laboratory.

Chair McQueen commented, stating all board applicants presented are a good fit to serve on the FIAB.

MOTION: Jake Evans moved to approve Andrew Larson for board recommendation to the secretary; Gus Olson seconded. The motion passed unanimously by all board members present with a vote of 6 to 0.

PUBLIC COMMENTS

There were no public comments.

AGENDA ITEMS FOR FUTURE MEETINGS

Chair McQueen requested a vote for Chair and Vice Chair for the FIAB be an agenda item, stating the position can be carried on to multiple years but an annual vote should

occur to allow other FIAB members the opportunity. Tenorio Alfred asked if mushroom kits should be included as an agenda item for the FIAB meeting in the fall. Smith stated a brief update can be given at the next FIAB meeting if the mushroom kits are a continued issue.

NEXT MEETING

The next meeting will be held on Thursday, June 27, 2024, in Sacramento, California.

ADJOURNMENT

The meeting was adjourned at 12:40 PM.

MOTION: Gary Silveria moved to adjourn the meeting; Chris Gallo seconded. The motion passed unanimously by all board members present with a vote of 6 to 0.

ORIGINAL SIGNED BY NICK YOUNG

Nick Young
Environmental Program Manager I
Fertilizing Materials Inspection Program

02/08/2024

Date