

**CALIFORNIA CODE OF REGULATIONS
TITLE 3. FOOD AND AGRICULTURE**

Division 4. Plant Industry
Chapter 1. Chemistry
Subchapter 1. Fertilizing Materials

SUPPLEMENT TO THE INITIAL STATEMENT OF REASONS

The mill assessment rate is currently set at one mill (\$0.001). As per the Budget Act of 2013, seven additional positions were authorized for the Fertilizing Materials Inspection Program (FMIP) to increase the management, research, oversight, regulation and enforcement of the state's laws and regulations related to fertilizer. Therefore, the Department foresees the necessity to maximize the mill assessment rate by increasing it to two mills (\$0.002). The additional revenue will be used to fund: seven new positions; out-of-state and out-of-country inspections; demonstration projects; Certified Crop Advisor (CCA) and grower trainings; and to increase research and education projects pertaining to nitrogen management. Without raising the mill assessment rate to the maximum rate of two mills (\$0.002), the program will be unable to fund the seven new positions or increase the management, research, oversight, regulation and enforcement of the state's laws and regulations related to fertilizer.

Historically, the FMIP mill assessment rate has been set between one mill (\$0.001) and two mills (\$0.002), based on program needs. From 2003/04 to 2007/08 the mill assessment rate was set at the maximum rate of two mills (\$0.002), and from 2008/09 to current, the mill assessment rate was set at one mill (\$0.001).

This Supplement to the Initial Statement of Reasons includes additional information on the Economic Impact Analysis, Reasonable Alternatives to the Regulations and the Department's Reasons for Rejecting those Alternatives. It is intended to provide additional documents the Department relied upon, and to allow interested persons time to review the modifications on the supplement to the Initial Statement of Reasons and to provide written comments.

DOCUMENTS AND STUDIES RELIED UPON

- Draft Fertilizer Inspection Advisory Board meeting minutes dated February 20, 2014
- Enrolled Bill Report – Assembly Bill 2174
- Dollar Change in Appropriation – Non-Budget Act
- California Regional Water Quality control Board, Central Valley Region, Order R5-2014-0002

Supplement to the Initial Statement of Reasons
 Fertilizing Materials-Mill Assessment Rate

Table 1 details why it is in the best interest of the Department to increase the Fertilizing Materials Inspection Program (FMIP) mill assessment rate from one mill (\$0.001) to two mills (\$0.002).

Table 1: Additional revenue needed to support program activities.

Additional Expenses	Cost
Seven new positions -Salaries -Operational Expenses -Duties include: Undertake demonstration projects and oversee nitrate research projects; research and education on environmental issues; environmental impact studies; evaluation of fertilizer research for field application; enforcement and sampling activities on imported material products that may present a high risk of deleterious materials; and increase the management, research, oversight, regulation, and enforcement of the state's laws and regulations related to fertilizer.	\$1,219,000
Out-of-country/out-of-state OIM inspections -Out-of-state inspections \$395,000 -Mexico \$25,000 -Canada \$25,000 -Other \$50,000	\$495,000
Certified Crop Advisor Training -UC Contract	\$365,000
Grower training and education -Reference document relied upon "Waste Discharge Requirements General Order R5-2014-0002"	\$100,000
Additional research/education -Nitrate issues	\$500,000
TOTAL	\$2,679,000

Table 2 details potential additional revenue for the Department, varying based on the mill assessment rate increase. The program sees the necessity to increase the mill assessment rate to a maximum level to meet program projected expenditures.

Table 2: Program revenue needed to support program activities.

Additional Revenue	Increase in Mill Assessment Rate
\$1,300,000	\$0.0005 (one half mill)
\$2,600,000	\$0.001 (one mill)

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The Fertilizer Research and Education Program's (FREP) mill assessment rate is currently set at the maximum rate of one mill (\$0.001). Formalizing the FREP's mill assessment rate into regulation is solely for the purpose of clarity.

Mill assessment rates are based on dollar sales per company. The fertilizer industry, as a whole, reports annual sales of approximately \$2,600,000,000; not considering the impacts of the recent drought.

Table 3 provides examples of additional costs to fertilizer licensees due to the increase of one mill (\$0.001), based on dollar sales of company.

Table 3: Examples of additional costs to industry.

Annual Dollar Sales	Additional Annual Cost
\$100,000	\$100
\$500,000	\$500
\$1,144,000 (industry average)	\$1,144

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Historically, the FMIP mill assessment rate has been set between one mill (\$0.001) and two mills (\$0.002); two mills (\$0.002) being the maximum rate for the FMIP. From 2003/04 to 2007/08, the mill assessment rate was set at two mills (\$0.002). From 2008/09 to present, the mill assessment rate was set at one mill (\$0.001). The program received seven new positions through the Budget Act of 2013 to increase the management, research, oversight, regulation, and enforcement of the state's laws and regulations related to fertilizer. Therefore, the Department foresees the necessity to maximize the mill assessment rate by increasing it to two mills (\$0.002). The additional revenue will be used to fund: seven new positions; out-of-state and out-of-country inspections; demonstration projects; Certified Crop Advisor (CCA) and grower trainings; and to increase research and education projects, pertaining to nitrogen management.

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

Based upon the reasons stated in the economic impact assessment/analysis, the Department has determined there is an additional cost of \$2,644,196 to the fertilizer industry as a whole, considering the fertilizing industry reports approximately \$2,600,000,000 in sales annually. An average registrant has approximately \$1,130,000 in annual sales; therefore the average company would pay an additional \$1,144 per licensee. The additional revenue will be used to fund: seven new positions; out-of-state and out-of-country inspections; demonstration projects and grower and CCA trainings; and to increase research and education projects.

When the mill assessment rate was set at the maximum rate of two mills (\$0.002) from

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2003/04 to 2007/08, there was not a significant impact passed on to the fertilizer industry or consumers.

At the October 11, 2013 Fertilizer Inspection Advisory Board (FIAB) meeting, the board moved to raise the mill assessment rate from one mill (\$0.001) to one and one half mill (\$0.0015). At the February 20, 2014 FIAB meeting, the Department explained the need to raise the mill assessment rate to the maximum rate of two mills (\$0.002), the board did not object. Additionally, when the Department submitted their proposed regulations to increase the mill assessment rate, the Notice of Proposed Rulemaking was sent to all fertilizer licensees, (approximately 2,300), the FIAB, and all interested parties. Out of all of the entities who received the notice, only one responded with a comment addressing the mill assessment rate increase.

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

The Department considered leaving the FMIP mill assessment rate at \$0.001, but the program would be unable to fund the seven new positions that are needed to increase the management, research, oversight, regulation, and increase enforcement of the state's laws and regulations related to fertilizer. In addition to the seven new positions, the revenue will assist the program in funding research projects related to managing nitrates in groundwater; training certified crop advisers and growers on best management practices; fund out-of-state and out-of-country inspections; and other agricultural related projects such as field demonstration projects. Historically, the mill assessment rate for the FMIP has fluctuated between the maximum rate of two mills (\$0.002) and one mill (\$0.001), based on the needs of the program. The Department is already collecting the maximum mill assessment rate of one mill (\$0.001) for the FREP, so there will not be an additional economic impact to the industry. The Department is formalizing the mill assessment rate for FREP in regulation for clarity, and to ensure the Administrative Procedure Act (APA) is adhered to.

The Department considered raising the mill assessment rate to \$0.0015, as the Fertilizer Inspection Advisory Board originally recommended. The additional funds would allow the Department to fund the seven new positions, but would not meet expenses for the additional directives from the Budget Act of 2013, which are to increase the management, research, oversight, regulation, and enforcement of the state's laws and regulations related to fertilizer. To comply with these instructions, additional revenue will be required to fund research projects related to nitrates in groundwater; train certified crop advisors and growers on best management practices; fund out-of-state and out-of-country inspections; and to implement other agricultural related endeavors such as field demonstration projects.

The Department considered raising the license fees. The fertilizing material license fee can be raised from one hundred dollars (\$100) to the maximum rate of three hundred dollars (\$300) bi-annually. This increase would bring an additional \$250,000 to the

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Department annually. This additional revenue would be insufficient to fund the seven new positions, which requires \$1,200,000 annually. This type of increase would be prohibitive to new small businesses, would not evenly distribute the fees to the industry based on dollar of sales, and would be burdensome on small businesses.

Additionally, the Department considered raising the registration fees. The OIM registration fee is already at its maximum rate of \$500 bi-annually; therefore cannot be raised. Currently registration fees for conventional products are set at one hundred dollars (\$100) bi-annually, and registration renewal is set at fifty dollars (\$50) bi-annually. The registration fees can be set at the maximum rate of one hundred dollars (\$100) for registration renewal. This would bring an additional \$150,000 annually to the Department. The additional revenue would be insufficient to fund the seven new positions, which requires \$1,200,000 annually. This type of increase would be prohibitive to new small businesses, would not evenly distribute the fees to the industry based on dollar of sales, and would be burdensome on small businesses.

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be effective as and less burdensome to affected private persons than the proposed regulations.

Pursuant to Government Code section 11346.9(a)(4), the Department has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Pursuant to Government Code section 11346.9(a)(5), if anyone proposes an alternative that would lessen the adverse economic impact on small businesses, the final statement of reasons must include an explanation setting forth the Department's reasons for rejecting any proposed alternatives.