

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3. California Code of Regulations

Division 4. Plant Industry

Chapter 1. Chemistry

Subchapter 1. Fertilizing Materials

**INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture's (CDFA's) Fertilizing Materials Inspection Program (FMIP) is statutorily tasked with licensing and label registration, tonnage reports, field inspections, and administration of the Fertilizer Research and Education Program (FREP). The Fertilizing Materials Inspection Program is responsible for reviewing and registering product labels, promoting agronomically sound and environmentally safe use of fertilizing materials through FREP, and ensuring fertilizing materials are safe, effective, and meet the nutrients guaranteed by the manufacturer. Producers of agricultural minerals, auxiliary soil and plant substances, commercial fertilizers, soil amendments, specialty fertilizers and organic input materials are statutorily mandated to register with the FMIP.

Historically, the FMIP mill assessment rate has been set between one mill (\$0.001) and two mills (\$0.002). 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 recently received seven new positions from the Assembly Budget Committee to increase the management, research, oversight, regulation and enforcement of the state's laws and regulations related to fertilizer. Therefore, the Department foresees the need to maximize the mill assessment rate by increasing it to two mills (\$0.002). The additional revenue will be used to fund additional research and education in the development and implementation of nutrient management projects that result in more agronomically sound uses of fertilizing materials and minimize the environmental impacts of fertilizer use, and to fund the seven new positions.

The purpose of these proposed regulations is to clarify language in the Food and Agricultural Code (FAC) related to the mill assessment rate. The following paragraphs provide the specific purpose, rationale, and summaries of the proposed changes.

Adopt Section 2326 – The specific purpose for adopting Section 2326 is to set the mill assessment rate in regulation, in order to clarify FAC Section 14611.

The proposed adoption would set the mill assessment rate for the Fertilizing Materials Inspection Program and for the Fertilizer Research and Education Program.

This is necessary to clarify the mill assessment rate for transparency; it cannot exceed two mills (\$0.002) for the Fertilizing Materials Inspection Program and it cannot exceed one mill (\$0.001) for the Fertilizer Research and Education Program.

Adopt Section 2326.1(a) – The specific purpose for adopting Section 2326.1(a) is to clarify FAC Section 14611 and establish a new mill assessment rate for the Fertilizing Materials Inspection Program.

The proposed adoption would increase the mill from one mill (\$0.001) to two mills (\$0.002) per dollar of sales of all sales of fertilizing materials.

The increase is necessary to provide funding for research and education regarding the use and handling of fertilizing materials, including, but not limited to, support for University of California Cooperative Extension, the California resource conservation districts, other California institutions of postsecondary education, or other qualified entities to develop programs in the following areas:

(1) Technical education for users of fertilizer materials in the development and implementation of nutrient management projects that result in more agronomically sound uses of fertilizing materials and minimize the environmental impacts of fertilizer use, including, but not limited to, nitrates in groundwater and emissions of greenhouse gases resulting from fertilizer use.

(2) Research to improve nutrient management practices resulting in more agronomically sound uses of fertilizing materials and to minimize the environmental impacts of fertilizer use, including, but not limited to, nitrates in groundwater and emissions of greenhouse gases resulting from fertilizer use. The additional resources will also be used to fund seven additional positions that were given to the program by the Assembly Budget Committee to increase the management, research, oversight, regulation and enforcement of the state's laws and regulations related to fertilizer.

Adopt Section 2326.1(b) – The specific purpose for adopting Section 2326.1(b) is to clarify the FAC 14611 and establish a mill assessment rate for the Fertilizer Research and Education Program.

The proposed adoption would set the mill at one mill (\$0.001) per dollar of sales of all sales of fertilizing materials.

This is necessary to set the current rate in regulation for transparency.

Adopt Section 2326.2 – The specific purpose for adopting Section 2326.2 is to clarify FAC Section 14613, and to ensure fertilizing materials sales are being reported accurately and in a timely manner from licensees whose name appears on the label that sell or distribute bulk fertilizing materials.

The proposed action would require licensees whose name appears on the label that sell or distribute bulk fertilizing materials to report their sales on a quarterly basis, even if they have no sales.

This is necessary for the program to adequately track fertilizer sales and project future mill assessment revenue.

Adopt Section 2326.3 – The specific purpose for adopting Section 2326.3 is to set penalties for delinquent payments, and to clarify FAC Section 14613.

The proposed action would add a fifteen percent penalty for payments received one calendar month past the due date.

This is necessary to encourage the fertilizer industry to make payments in a timely manner, which ensures a positive cash flow for the program.

### **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

The Department relied upon the following documents in establishing this proposed rulemaking action:

- Draft Fertilizer Inspection Advisory Board Meeting Minutes, October 11, 2013
- Report of the 2013 -14 Budget Plan, June 14, 2013

### **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The proposed regulatory action would cost each licensee who pays a mill assessment approximately an additional \$1,144 annually. There are 2,312 fertilizer licensees who would be impacted; hence the impact to the entire fertilizer industry impact will be \$2,644,196.

UC Davis's Report for the State Water Resources Control Board Report to the Legislature, "Addressing Nitrate in California's Drinking Water," identifies cropland as the largest nitrate source contributing 96 percent of all nitrate leaching to groundwater. The Fertilizing Materials Inspection Program will fund research on:

Demonstrating Agronomically Sound Uses of Fertilizing Materials at the Field Scale:

- Demonstrate results from basic experimental research trials (prior FREP research, etc.) with organic or conventional fertilizers at the field scale.

Managing Agricultural Nitrogen:

Research the agronomically sound use of nitrogen fertilizing materials, including:

- Minimizing nitrate movement below the root zone
- Minimizing nitrous oxide emissions related to fertilizer use
- Evaluating strategies to increase crop N use efficiency

Developing Best Management Practices (BMPs):

- Development of nutrient BMPs and educational materials for agriculture and urban landscapes.

Education and Outreach:

- Development of educational materials to increase awareness of agronomically sound use of fertilizing materials. Extension efforts to implement best management practices.

Filling Gaps for Nitrogen Management in Specific Crops Such as the top ten FREP is producing fertilization guidelines on:

- Almonds
- Cotton

- Processing Tomatoes
- Broccoli
- Lettuce
- Wheat
- Corn
- Rice
- Walnuts
- Grapes

These regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within the State of California;  
or
- (3) Affect the expansion of businesses currently doing business within the State of California.
- (4) The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

**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 a cost of \$2,644,196 to the fertilizer industry as a whole; \$1,144 per licensee. The additional revenue will be used to fund seven new positions and to increase research projects.

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

The Department has considered leaving the mill assessment rate at \$0.001 for the Fertilizing Materials Inspection program, but the program would not be able to fund the seven new positions that are needed to increase the management, research, oversight, regulation and enforcement of the state's laws and regulations related to fertilizer. In addition to the seven new positions, the additional revenue will assist the program in funding research projects related to nitrates in groundwater, training certified crop advisers and growers on best management practices, and other agricultural related projects such as field demonstration projects.

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.