

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Civil Penalty Actions by Commissioners
DPR Regulation No. 23-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) section 6130 to implement, interpret and make specific Food and Agricultural Code (FAC) section 12999.5. In summary, the proposed action would increase the fine range for administrative civil penalties levied by county agricultural commissioners (CACs) from a maximum of \$5,000 to a maximum of \$15,000 for Class A violations of pesticide use law (subdivision (c)(1)) and from a maximum of \$1,000 to a maximum of \$3,000 for Class B violations of pesticide use law (subdivision (c)(2).) These changes are necessary to promote and protect human health and the environment by aligning the existing regulations with certain statutory changes made in Assembly Bill 211 (AB 211) (Stats.2022, ch. 574.), which was enacted by the Legislature and has been effective since September 27, 2022.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than November 20, 2023. Comments regarding this proposed action may also be transmitted via e-mail to <dpr23002@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small business that operate lawfully. There will be some impact to small business if they are found to be in violation of California pesticide laws and regulations under FAC section 12999.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. FAC section 2281 distributes responsibility for pesticide use enforcement between state and local authorities. The CACs and their staff who operate across 58 counties are responsible for supporting compliance with and enforcing pesticide use laws and regulations at the local county level. CACs have various regulatory tools at their disposal to support grower, pesticide applicator, and pesticide user compliance with, and to enforce, pesticide laws and regulations. One key tool utilized by CACs is administrative civil penalty authority. The FAC provides that in lieu of civil prosecution by the Department, the CAC may levy a civil penalty (fines) for violations of pesticide use law and regulations, as

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

specified in FAC section 12999.5, subdivision (a) and its implementing regulations at 3 CCR, sections 6128, 6130 and 6131.

Under existing law, 3 CCR section 6130 establishes that a Class A violation occurs when a violation causes a health, property or environmental hazard, or when there is a violation of a law or regulation that mitigates the risk of adverse health, property or environmental effects and the CAC determines that certain specified aggravating circumstances support elevation to a Class A violation, or when a respondent violates a lawful order issued by the CAC. The fine range set for a Class A violation is \$700 to \$5,000. 3 CCR, section 6130 also establishes that a Class B violation occurs when there is a violation of a law or regulation that mitigates the risk of adverse health, property or environmental effects that is not designated as a Class A violation. The fine range set for a Class B violation is \$250 to \$1,000.

In 2022, AB 211 amended FAC section 12999.5 to increase penalty maximums for violations of pesticide use laws and regulations, increasing the fine range for “Class A” violations from a maximum of \$5,000 to a maximum of \$15,000 per violation and the fine range for all other violations (Class B or C) from a maximum of \$1,000 to a maximum of \$3,000 per violation. AB 211 was chaptered and went into effect on September 27, 2022.

The proposed regulations would amend 3 CCR section 6130 to conform with AB 211 and align the regulations with the statutory scheme as amended. The proposed amendments would increase the penalty for a Class A violation from a maximum of \$5,000 to a maximum of \$15,000 per violation and increase the penalty for a Class B violation from a maximum of \$1,000 to a maximum of \$3,000 per violation.

The broad objective of the proposed action is to deter illegal pesticide use, protect workers, and strengthen the local implementation of the statewide pesticide use compliance and enforcement program. The proposed amendments will permit CACs to levy fines up to the statutory maximums as set forth in AB 211 for Class A and Class B violations. In this way, the proposed amendments will benefit the public, including California residents and workers, by promoting compliance with pesticide law, regulations and lawful orders and deterring unlawful actions.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. DPR is the only state agency that has the authority to regulate the use of pesticides under the authority of FAC section 12781 to implement FAC section 12999.5.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq.

OTHER NONDISCRETIONARY COSTS OR SAVINGS IMPOSED UPON LOCAL AGENCIES

DPR has determined that there are no other nondiscretionary cost or savings imposed upon local agencies that are expected to result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action. Fiscal impacts will depend on whether there is a change in number of violations, which is unknown.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR made an initial determination that adoption of these regulations will not have any significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulatory action will have no impact on lawful operations of pesticide users, pest control advisers, or pesticide dealers. Fines are incurred only for violations of the FAC and 3 CCR.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California. The proposed regulatory action will have no impact on lawful operations of pesticide users, pest control advisers, or pesticide dealers. Fines are incurred only for violations of the FAC and 3 CCR.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulations will promote the health and welfare of California residents, promote worker health and safety, and safeguard California's environment and natural resources, by strengthening the deterrence of pesticide use violations and local implementation of the statewide pesticide compliance and enforcement program. The proposed amendments will permit CACs to levy fines up to the statutory maximum as set forth in AB 211 for Class A and Class B violations. In this way, the proposed amendments will benefit the public, including California residents and workers, by promoting compliance with pesticide law, regulations and lawful orders, and deterring unlawful actions.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. The proposed amendments will increase the fine range for administrative civil penalties levied by CACs, aligning existing regulations with current law. Interested members of the public are invited to submit written comments regarding alternatives during the written comment period.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC section 12781.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC section 12999.5.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE.

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the proposed text of the regulations, the Initial Statement of Reasons, and the documents relied upon. Copies may be obtained from the agency contact person named in this Notice and are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulations permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action, requests for a copy of the Initial Statement of Reasons and the proposed text of the regulations, and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Senior Environmental Scientist (Specialist)
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015

916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Emily Edgerton, Environmental Scientist
Enforcement Headquarters Branch
916-603-7735

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9, subdivision (a) may be obtained from the agency contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.