

# Chapter 1

## General Interpretation Guidelines

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## Section 1.1

### Agricultural and Non-Agricultural Pest Control Use

Interprets FAC sections 11403 and 11408; 3 CCR section 6000

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**How pest control activity is divided and why it is important**

Food and Agricultural Code (FAC) section 11408 provides the criteria to divide pest control activities into agricultural use and non-agricultural use. Pest control use is divided into these two categories by listing what activities are not agricultural uses. This classification is important because it is used to determine the applicability and implementation of other pesticide sale and use requirements.

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**What is pest control?**

Section 11408 describes the activity it is classifying as agricultural and non-agricultural by using the definition of "pest control" found in section 11403. The most complete understanding of what "pest control" includes requires taking into account the definition of "pest" (*FAC section 12754.5*) and "pesticide" (*FAC section 12753*). Combining these sections, "pest control" is the use of any pesticide, method, or device to:

- Control (including prevent, repel, or mitigate) any pest (insect, predatory animal, rodent, or weed)
  - Control a plant disease (viruses, fungi, bacteria, or other microorganism)
  - Regulate growth by the direct application of a plant growth regulator (defined by *FAC section 12756*)
  - Defoliate plants
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## Agricultural and Non-Agricultural Pest Control Use, Continued

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### What pest control does not include

Pest control does not include the following:

- Monitoring for pest presence (U.S. EPA interpretation)
  - The use of a tool or implement (hoe, rake, disc, or harrow) to control weeds (DPR licensing policy)
  - The use of a fertilizing material to maximize potential plant growth (as opposed to stimulate, regulate, or alter through physiological action)
  - The use of a substance (drug) to control, diagnose, mitigate, treat, or prevent disease in man or other animals, or substances used to control certain external pests considered animal drugs regulated by FDA<sup>1</sup>.
  - The control of microorganisms living in or on humans or animals. (These are not pests as defined in FAC section 12754.5.)
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### Agricultural pest control use categories

All pest control use that does not fit into the listed non-agricultural use categories is agricultural use. This includes watersheds, rights-of-way, landscaped areas (golf courses, parks, recreation areas, cemeteries, etc.).

**Production agriculture:** A subcategory has been created for pest control conducted in the "production for sale of an agricultural commodity" or "agricultural plant commodity" for the purpose of triggering certain requirements related to notice/use reporting and worker safety<sup>2</sup>. Commodity is defined as any unprocessed product of farms, ranches, nurseries, or forests (except livestock, poultry, and fish). (*Title 3, California Code of Regulations [3 CCR] section 6000*)

**Non-production agriculture:** All other agricultural use in non-production agriculture.

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<sup>1</sup> A 1971 Memorandum of Understanding (MOU) between U.S. EPA and the Food and Drug Administration (FDA) (FDA-225-73-8010; available for review at <http://www.fda.gov/oc/mous/domestic/225-73-8010.html>) outlines the basic jurisdictions of each Agency with respect to products that have been classified as a "New Human or Animal Drug." The MOU states that FDA is the Agency responsible for regulation of products that are *classified as Human or Animal Drugs*, even if a product could be considered a pesticide by the other Agency.

<sup>2</sup> See 3 CCR sections 6618, 6619, 6623, and 6626 relating to notice and use reporting; and sections 6724, 6730, 6731, 6732, and 6761.1 related to worker safety.

## Agricultural and Non-Agricultural Pest Control Use, Continued

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### Non-agricultural pest control use categories

Non-agricultural pest control use includes:

- **Home:** Use within, or in the immediate environment of, a household. (3 CCR section 6000)
- **Industrial:** Use within the confines of, or on property necessary for, the operation of factories, processing plants, packinghouses, or similar facilities, or use for or in a manufacturing, mining, or chemical process. In California, industrial use does not include use on rights-of-way. Post-harvest commodity fumigations at facilities or on trucks, vans, or rail cars are normally industrial use. (3 CCR section 6000)
- **Institutional:** Use within the confines of, or on property necessary for the operation of, buildings such as schools (playgrounds are necessary for the operation of a school), hospitals, office buildings, libraries, or auditoriums. When a licensed Structural Pest Control Operator treats these buildings, it is structural use. Landscaping of walkways, parking lots, and other areas immediately adjacent to these buildings is institutional. Landscaping of larger, more independent areas is not considered institutional. (3 CCR section 6000)
- **Structural:** Use by a licensed Structural Pest Control Operator within the scope of their license. (3 CCR section 6000)
- **Vector control:** Use by certain vector control (mosquito abatement) districts. (FAC section 11408(e))
- **Veterinarian:** Use by or pursuant to the written prescription of a licensed veterinarian within the scope of their practice. There is no requirement for veterinarians to write prescriptions to themselves, so although not specifically mentioned in the law, by policy, veterinarians are covered by this use pattern. (3 CCR section 6000)

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## Agricultural and Non-Agricultural Pest Control Use, Continued

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### **Classifying use -- examples**

Both the site or situation of use and the user must be considered to determine how a particular use is classified. A particular use in one context may be classified differently in another.

For example:

- A tree can be residential landscape (home), institutional landscape (institutional), or watershed (non-production agriculture) depending upon where it is growing. However, if that same tree is growing in an orchard, it would be production agriculture.
- Milk-handling equipment located on a dairy would be agricultural, while similar equipment located at a milk processing plant would be industrial.
- An agricultural commodity fumigated in storage on a farm could be production agriculture while that same commodity fumigated in storage at a processing plant would be industrial.
- A swimming pool that is part of a residential property would be home use. A city, school, or other public pool would generally be institutional.

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### **Difficult cases**

Classification is important because different regulatory requirements apply to each class. The difference between production agriculture and non-agriculture use often requires more analysis. Generally, treatments done by and on an agricultural production establishment tend to be production agriculture if the physical form of the commodity has not been changed (simply drying a commodity is not normally considered a change in its form). This rule may not apply if the agricultural production establishment also does treatments as a service or handles commodity from other producers. In that case, they are considered to have established an industrial facility adjacent to their agriculture production enterprise.

This general rule also applies to packing facilities. Packing produce in the field as part of the harvesting operation is normally considered production agriculture. However, if the agricultural production establishment has a separate packing facility, it would usually be considered an industrial facility and use in that situation would be considered industrial.

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## Agricultural and Non-Agricultural Pest Control Use, Continued

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**Difficult cases**  
(continued)

A unique situation is created by items such as drip lines and other irrigation systems, farm roads, egg-handling equipment, milk-handling equipment, and other similar items. While at first glance they would seem to be production agriculture, at least on a farm, their relationship to production is indirect, rather than direct. Treating weeds in ditches, algae in drip lines, and sanitizing egg or milk-handling equipment are considered non-production agricultural uses.

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**Federal labeling definition is not the same**

The California definition of agricultural use and non-agricultural use was created to determine the applicability of requirements related to licensing, restricted material permits, worker protection, and pesticide use reporting<sup>3</sup>. The definition of agricultural use on federal pesticide labels is different and is determined by federal law. The federal definition is more closely related to what DPR would call production agriculture. Therefore, when interpreting pesticide labeling statements such as, "for use in agricultural areas" or "for use in non-agricultural areas" the key factor is whether or not the pesticide is being used to produce an agricultural commodity.

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<sup>3</sup> See FAC sections 11407, 11407.5, and 11410 related to licensing; 3 CCR sections 6618, 6619, 6623, and 6626 related to notice and use reporting; sections 6724, 6728, 6730, 6731, 6732, and 6761.1 related to worker safety; and sections 6420 and 6430 related to restricted material permits.

## Agricultural and Non-Agricultural Pest Control Use, Continued

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### Production Agricultural Use\*:

- Apiaries
- Aquaculture
- Christmas tree production
- Crop production (orchards, groves, fields)
- Crops grown for seed
- Drying product in the field
- Egg production
- Feed and forage
- Field packing
- Fish production
- Flowers (cut and sold)
- Forests/timber production
- Greenhouse/nursery/mushroom production
- Livestock production (meat)
- Milk production
- Post-harvest commodity treatment on the farm
- Poultry production (meat/eggs)
- Preplant soil treatments
- Rangeland and pasture
- Research (production)
- Tree hole fumigation
- Turf (grown for sod)
- Washing produce in the field

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### Non-Production Agricultural Use\*:

- Cemeteries
- Ditches and ditch banks
- Drip lines
- Egg handling equipment (on farms)
- Farm roads
- Field borders and headlands
- Golf courses
- Greenbelts
- Greenhouse/nursery/mushroom operations (outside general weeds and pests, as well as pest control within alley ways and other interior areas)
- Ground water recharge ponds
- Highway medians
- Irrigation canals
- Irrigation systems (drip lines)
- Lakes, rivers, and streams
- Milk-handling equipment (on farms)
- Mushroom (post-harvest kill)
- Parks
- Railroad shoulders
- Recreation areas
- Research (commodity destroyed)
- Reservoirs
- Roadsides
- Rights-of-way
- Uncultivated (fallow) agricultural ground

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## Agricultural and Non-Agricultural Pest Control Use, Continued

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### Non-Agricultural Use\*:

- Airports-*Industrial*
- Amusement parks-*Institutional*
- Apartments/townhouses-*Home*
- Auditoriums-*Institutional*
- Clubhouse landscape-*Institutional*
- Condominiums-*Home*
- Construction sites-*Industrial*
- Food manufacturing plants-*Industrial*
- Grain elevators (production agriculture if on farm)-*Industrial*
- Home gardens (no distribution)-*Home*
- Homeowner Association (HOA) Property (except golf courses)
- Homes and residences-*Home*
- Hospitals-*Institutional*
- Libraries-*Institutional*
- Lumber yards-*Industrial*
- Mobile home parks-*Home*
- Mosquito abatement districts-*Vector control*
- Nurseries (retail non-production)-*Industrial*
- Office complex (around outside)-*Institutional*
- Office parking lots-*Institutional*
- Oil wells-*Industrial*
- Packing houses-*Industrial*
- Paper mills-*Industrial*
- Pet animals-*Home*
- Ports-*Industrial*
- Post harvest commodity treatments-*Industrial*
- Prescription from veterinarian-*Veterinarian*
- Ranchette pasture (no distribution)-*Home*
- Restaurants-*Industrial*
- Schools (buildings and grounds)-*Institutional*
- Seed treatment-*Industrial*
- Sewage treatment plants-*Industrial*
- Sewer lines-*Industrial*
- Shipyards-*Industrial*
- Shopping malls (inside or outside)-*Institutional*
- Swimming pools-*Various*
- Uncultivated non-agricultural ground-*Various*
- Water treatment plants-*Industrial*
- Wood treatment plants-*Industrial*
- Zoos-*Institutional*

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\*The most common designation is indicated in italics. However, as previously discussed in this document, some of these use designations may change depending upon the setting or the status of the user.

## Section 1.2

### Commodity Seizure or Harvest Prohibition

Interprets FAC sections 12501, 12504, 12601, 12648, 12672, and 12673

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#### Introduction

*FAC sections 12501 and 12504* define produce as any food (for man or animals) in its raw or natural state. Attorney General's opinion no. 60/89 finds that pea vines and shelled peas, shelled nuts (walnuts), honey, milk and cream, pelleted alfalfa hay, ground almond hulls, chopped corn plants, and meat are all "raw agricultural products" subject to the law. Butter is not a raw agricultural product.

While the enforcement of pesticide residue tolerances is primarily a DPR responsibility, CACs have a role particularly in cases where commodity is unharvested or there is misuse or a preharvest interval violation. This section is included to give a better understanding of how CACs may fit into the overall program. Priority investigation crop loss criteria should be considered in these cases.

*FAC section 12601* allows DPR to seize any produce (including unharvested produce, if it is within one week of being in a harvestable condition) suspected of carrying an illegal residue. If not sampled previously, samples confirming the illegal residue must be taken and analyzed within 24 hours (*FAC section 12604*). The traditional routine procedure for responding to a finding of illegal residue is found in FAC sections 12601-12606. These sections outline a comprehensive due process procedure that allows DPR to seize and hold the produce and includes provisions for commodity reconditioning or byproduct use. This section **does not authorize** DPR to order the disposal or destruction of the commodity.

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#### General due process requirements

The statutes clearly outline due process procedures only for FAC section 12648 actions. This does not mean that there are not due process requirements for other actions outlined. For other than section 12648 actions, due process requirements are based on case law established by the courts, based on the Constitution. The closer we adhere to the procedures outlined in section 12648, the stronger is our position that we have given adequate due process in these other actions. See Compendium Volume 3, Restricted Materials and Permitting, for a general discussion of due process requirements.

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## Commodity Seizure or Harvest Prohibition, Continued

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### **NTE residues resulting from unintentional use**

DPR will generally handle “no tolerance established” (NTE) residue events that may have resulted from drift or other unintentional contamination, including reasonable labeling misinterpretation, pursuant to FAC section 12601. This section can be used even when there is some evidence of an illegal use. This would allow for reconditioning of the commodity, in these cases.

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### **FAC section 12642**

FAC section 12642 declares that any produce with an illegal residue is a public nuisance. The following sections (FAC sections 12643-12646) outline the procedure for DPR to take legal action to force disposal or destruction of the commodity. Due to the perishable nature of most produce, this provision is seldom used.

*FAC section 12672* allows DPR or the CAC to prohibit harvest if a preharvest interval has not been complied with, but only until the interval has expired. In these cases, no laboratory analysis confirming residue is necessary. However, even though laboratory analysis demonstrates that the crop does not contain pesticide residues in excess of established tolerances, harvest prior to the expiration of a preharvest interval is a violation of FAC section 12973 and action should be taken on that violation consistent with the Enforcement Response Regulations (3 CCR sections 6128 and 6130). DPR will not be a participant in any agreement to facilitate a violation of the law. In any willful violation of this section our further responsibility is to protect the public from the possibility of any illegal residues through appropriate measures.

*FAC section 12673* allows DPR or the CAC to prohibit the harvest of any produce that carries pesticide residue in excess of permissible tolerance. Even though field samples show an illegal residue, the plant, crop, or commodity, as marketed, may be legal due to residue degradation, growth dilution, trimming, or washing. This section should be used in cases of drift or reasonable label misinterpretation.

When illegal residues are suspected and no confirming analysis has been performed, DPR or county staff should collect samples and submit them to CDFR's Center for Analytical Chemistry for analysis. Sampling should be done in accordance with official sampling procedures of DPR.

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## Commodity Seizure or Harvest Prohibition, Continued

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**FAC section  
12642**  
(continued)

If further follow-up sampling and analyses are necessary, the farm operator, packinghouse, etc., should use the services of an accredited commercial laboratory. When accredited commercial laboratory results of a properly collected sample show residues to be legal, a confirming DPR sample would not normally be required, however, a sample may be submitted to the Center for Analytical Chemistry whenever thought to be necessary.

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**FAC section  
12648**

FAC section 12648 allows DPR to seize or prohibit harvest of any plant, crop, or commodity that has been “intentionally” treated with a pesticide that was not registered for that commodity. This section does not use the word “intentionally” but does appear to contemplate residue from “intentional” use rather than accidental contamination by use of the word “treated.”

The term “pesticide” as used in this section means active ingredient (substance) as defined in *FAC section 12753* rather than pesticide product. This is consistent with the stated purpose of preventing the gaining of an “unfair business advantage” through use of an unregistered pesticide substance. Also consider *FAC section 12995*. CACs may be asked to investigate cases where use of an unregistered pesticide is suspected. These cases are sometimes uncovered through use report review.

Produce treated with a pesticide not registered for that commodity is defined to be a public nuisance by *FAC section 12648(a)*. This section gives DPR the authority to seize and hold the produce, requires DPR to provide a hearing to allow the owner or person in control of the produce to challenge the seizure, and provides DPR with significant additional powers regarding disposition of the produce.

In addition, *FAC section 12648(b)* establishes two rebuttable presumptions (an assumption that is made that will stand as a fact unless someone comes forward to contest it and prove otherwise) that if the produce is treated with a pesticide not registered for that use:

1. The contaminated produce presents a hazard.
2. The pesticide was used to gain an unfair business advantage.

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## Commodity Seizure or Harvest Prohibition, Continued

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**FAC section  
12648**  
(continued)

After due process procedures outlined in *FAC section 12648(c)*, DPR can:

1. Order destruction of the produce
  2. Prohibit harvest or sale of produce grown on the site
  3. Prohibit use of the site for any specified plant back period
  4. Take any other appropriate measure
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**NTE residues  
resulting from  
"intentional"  
treatment**

DPR will generally use the disposal and other provisions authorized by *FAC section 12648* whenever there is sufficient evidence that the produce was treated with an unregistered pesticide.

*FAC section 12648* sets forth that a commodity is to be declared a public nuisance and may be seized by DPR when treated with a pesticide not registered for use on that plant, crop, or commodity. Where DPR can prove that the commodity was treated with a pesticide that is not registered or is not registered for that use, DPR will use the authority vested by *FAC section 12648* pursuant to the guidelines outlined in this policy. To establish this fact, DPR inspectors will rely on residue evidence (laboratory analysis), testimony, pesticide use records, and such other evidence as can be discovered as in any other investigation.

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**Due process**

Where the evidence shows that it is more likely than not (preponderance of the evidence) that the pesticide residue is the result of an unlawful "treatment" under *FAC section 12648*, DPR will adhere to the following "due process" procedures outlined in the law:

- Notice and Seizure
  - Hearing
  - Appeal
- 

**Notice and  
seizure**

Notice, as required by statute to the owner or person in control of the commodity, shall be made prior to seizure, unless DPR has reason to believe that prior notice will result in loss of control of the commodity. The notice will allege that the commodity was treated with a pesticide not registered for use on that commodity, describe the evidence upon which the allegation is based, and inform the owner or person in control of the commodity of their right to a hearing. DPR will then seize the commodity. The respondent must request a hearing within 15 days of receipt of the notice.

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## Commodity Seizure or Harvest Prohibition, Continued

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**Hearing waived** If the respondent does not request a hearing, DPR may take any of the actions described in the statute, including destruction of the commodity as described in **Crop / commodity disposition** that follows.

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**Hearing and determination** If the owner requests and appears at a hearing:

- DPR need only show that the commodity was treated with a pesticide and that pesticide was not registered for use on that commodity.
- DPR shall render a written decision.
- If the pesticide use is found unlawful under *FAC section 12648*, DPR may take any of the actions listed in the statute, including destruction of the commodity or other appropriate measure. Rebuttal of the two presumptions (hazard to human health and unfair business advantage) at hearing may be used to determine the appropriate action.

**Note:** If DPR determines the illegal residue did not result from the intentional use of a pesticide not registered for use on the commodity and the commodity is no longer marketable due to storage or inability to harvest on time, DPR could be subject to an action for compensation under the Governmental Tort Claims Act for damage to the commodity before its release.

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**Appeal** Appeal may be made to the appropriate court for a review of DPR's decision. If the court determines there was not substantial evidence presented at the hearing to support the allegation of illegal treatment with a pesticide not registered for use on that commodity, DPR could be subject to an action for compensation under the Governmental Tort Claims Act for damage to the commodity before its release.

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## Commodity Seizure or Harvest Prohibition, Continued

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### Crop / commodity disposition

After a final determination of illegal treatment under FAC section 12648 and the appropriate action is “destruction of the commodity,” disposition of the crop should be based on the guidelines outlined below, with exceptions approved by DPR’s Enforcement Branch Chief where the situation warrants.

#### Single-Harvest Commodities

- Destruction of all commodities (harvested or un-harvested).

#### Multi-Harvest Commodities

- Destruction of currently marketable commodity (harvested and un-harvested).
- Strip all immature commodity from the plant. Continue stripping immature commodity until grower’s test (using an acceptable laboratory) shows there is no longer any residue.
- Consider destruction of the plants if the potential for unfair business advantage warrants it.

#### Long-term/Permanent Tree or Vine Commodities

- Destruction of currently marketable commodity (harvested and un-harvested).
- Tree or vine destruction is not normally a reasonable option. Strip all immature commodity from the plant. Continue stripping immature commodity until grower’s test (using an acceptable laboratory) shows there is no longer any residue. This may mean grower’s testing of the crop produced following year.

Either DPR or CAC staff may issue an order to stop or prevent harvest. Except when urgent action is required, DPR or county staff should confer and decide the appropriate agency to issue the order. The agency that issues the order will provide a copy of the order to the other agency and provide information on any changes.

The order to stop or prevent harvest must be in writing and should be hand-delivered to the farm operator along with a copy to the harvest labor contractor when applicable. Releases of stop or prevent harvest orders should also be in writing.

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## Section 1.3

# Complaint Handling by DPR and the CAC

Interprets FAC sections 2281 and 11501.5

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**In this section** This section contains the following topics:

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Complaints Involving Priority Episodes	1-20
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## General Policy

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### Introduction

DPR's policy is to respond to all complaints, notifications, or reports of episodes that come to the attention of DPR or the CAC alleging misuse of pesticides, pesticide exposure (including odor), or pesticide damage or injury to crops, property, humans, animals, or the environment. There is a further responsibility under the Enforcement Response Regulations to take appropriate action when a violation is documented. Enforcement response must be undertaken without regard to outside events, such as insurance settlements or private legal action taken by persons alleging pesticide injury or damage. Taking established, consistent enforcement response maintains the integrity of the pesticide regulatory program and provides an even playing field for the regulated community.

The CAC's office is the lead agency for use-related complaints, in consultation with DPR. The amount of resources that the CAC commits to the investigation of any particular complaint is dependent upon available resources and other workload. Complaints involving pesticide product compliance or pesticide residue on commodities in the channels of trade should be referred to DPR.

For a complaint that is outside DPR/CAC jurisdiction, you should connect the complainant with the agency responsible for the investigation of the activity whenever possible.

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## Complaint Handling by DPR and the CAC, Continued

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### Complaint Handling Overview

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#### FAC section 2281

FAC section 2281 states in pertinent part, “. . . the commissioner shall be responsible for local administration of the enforcement program. The director shall be responsible for overall statewide enforcement and shall issue instructions and make recommendations to the commissioner.”

FAC section 2281 further states, “. . . The director shall furnish assistance in planning and otherwise developing an adequate county enforcement program, including uniformity, coordination, training, special services, special equipment, and forms, statewide publicity, statewide planning, and emergency assistance.”

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#### Terminology

The term “complaint” as used here is a “notice” or “report” that someone believes a violation of pesticide law or regulation or a human/environmental effect, including exposure (episode), has occurred or is threatened.

It may also include a report of alleged CAC performance deficiency. A complaint does not include requests for information or labeling interpretation.

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#### Exception

DPR staff will review and follow the guidelines outlined when handling (receiving or referring) complaints for investigation. They are provided as guidelines for CAC staff to consider.

Guidelines for the investigation of complaints are found in Compendium Volume 5, *Investigation Procedures*.

Situations that dictate different handling may arise and supervisors have discretion to appropriately address those situations.

Routine illness reports handled for DPR's Worker Health and Safety (WH&S) Branch are not impacted by this process. Consult Pesticide Use Enforcement Program Standards Compendium Volume 5, *Investigation Procedures*, for guidance in handling illness reports.

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## Complaint Handling by DPR and the CAC, Continued

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### Follow-up reports

DPR does not normally ask the investigating agency for a follow-up report on routine complaints. Exceptions would be if the complaint referral came from U.S. EPA and DPR has a need to do a follow-up report or there is a specific DPR executive assignment.

Routine complaint referrals need not be issued a tracking number at the state level. CACs should consult Compendium Volume 5, Investigation Procedures, Chapter I, Part C, *Pesticide Episode/Complaint Tracking Log*, for guidance on tracking complaint investigations.

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### Complaint tracking

DPR individually tracks only U.S. EPA priority investigations pursuant to the Cooperative Agreement Between the State of California Department of Pesticide Regulation, the California Agricultural Commissioners and Sealers Association, and the United States Environmental Protection Agency, Region 9. Staff receiving a complaint should attempt to determine the classification of the complaint as either priority or routine pursuant to criteria in the U.S. EPA/DPR/CACASA cooperative agreement.

Illness reports referred by WH&S are also issued a tracking number by them. In addition, when a complaint is filed using the Cal/EPA on-line system, a number is generated and assigned by the computer.

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## General DPR Responsibilities

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### Commodity residue

“Commodity residue” (lots of produce in the channels of trade) does not include follow-up investigation of possible misuse or drift incidents. These drift or misuse issues fall into the scope of CAC responsibility. Information about the source grower of the illegal produce will be forwarded to the CAC for investigation of possible misuse. Commodity residue issues involving commodities in the channels of trade should be referred to DPR's Enforcement Branch Food Safety Coordinator.

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### Product compliance

“Product compliance” (pesticide registration, labeling, sales, and assessment) complaints should be referred to DPR's Product Compliance Branch Chief. CAC staff should refer these issues to the Enforcement Branch Liaison (EBL) assigned to their county for forwarding.

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## Complaint Handling by DPR and the CAC, Continued

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### **Complaints of county performance deficiency**

If the complainant has previously reported an alleged violation of pesticide law or regulation or has reported an actual or threatened human/environmental effect to the CAC and is calling DPR due to dissatisfaction with the CAC handling of the complaint, DPR has a responsibility to investigate the CAC's response and evaluate county performance.

These issues should be referred to the Enforcement Branch Environmental Program Manager responsible for field operations for forwarding to the appropriate Enforcement Branch Regional Office (RO). The investigating RO should provide the CAC with its findings and recommendation.

If the DPR investigation finds the CAC investigation has met expected standards, the RO will notify the complainant of the findings with a copy to the CAC.

If the DPR investigation finds the CAC investigation lacking, the CAC should be provided the opportunity to reopen the investigation, implement the corrective action, and correspond with the complainant prior to the RO responding to the complainant about the findings and any additional action recommended to the county.

A copy of the recommendations should be sent to DPR's Agricultural Commissioner Liaison.

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## Complaint Referrals

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### **Pesticide misuse and unlicensed activity**

DPR generally refers complaints of pesticide misuse and unlicensed activity to the CAC through the Enforcement Branch for response.

The CAC is the field arm of the pesticide regulatory program. DPR does not generally take the lead investigator role or routinely assist CACs in investigating these situations. DPR will monitor CAC handling of investigations as part of the effectiveness evaluation process, but not routinely participate in this CAC activity.

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## Complaint Handling by DPR and the CAC, Continued

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### Complaints not the responsibility of DPR or CAC

Refer complaints that are not the responsibility of DPR/CAC to the appropriate agency.

These complaints would include such things as pesticide disposal (refer to the Department of Toxic Substances Control [DTSC]), retaliation against employees (refer to the Department of Industrial Relations [DIR]), fraud by structural operators (refer to the Structural Pest Control Board [SPCB]), and non-pesticide related issues.

Give the complainant appropriate contact information if available. If the complaint was received in writing, a response giving appropriate contact information should be sent.

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### Non-priority episodes

There are three options for complaint referral of non-priority and non-pesticide related episodes:

1. Inform the complainant of the on-line Cal/EPA complaint filing system. If their complaint is filed using this system, they will receive an acknowledgement and a record is created. This is the best way for the public to file an environmental complaint.
  2. Inform the complainant of the appropriate CAC or other agency and give him/her the contact information if available. This is preferred over option #3, if acceptable to the complainant, because it may result in more complete and appropriate information provided to the ultimate investigating agency.
  3. Take the complaint information on the *Complaint Referral* form (PR-ENF-211) and forward it to the appropriate CAC or other agency. This would include referrals from U.S. EPA, the directorate, or the division. **If this option is used, be sure to get the complainant's address and ensure that a letter is sent to the complainant confirming the referral and informing him/her that any request for follow-up information should be made to the investigating agency.** Copies of the letter go to the investigating agency and to the appropriate RO, if applicable. Do not indicate a particular EBL as an investigator on referral forms. DPR staff should generally not be physically involved in the investigation (except oversight). However, DPR can give advice, counsel, and direction, as necessary.
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*Continued on next page*

## Complaint Handling by DPR and the CAC, Continued

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### Complaints Involving Priority Episodes

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**Receiving the complaint** DPR Enforcement Branch headquarters or RO receiving the complaint is responsible for numbering and notification of other parties according to established procedures for priority investigations.

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**Priority episode handling procedures** The following priority episode handling procedures will be observed by DPR. CACs should immediately report suspected priority episodes to their EBL or RO.

Step	Action
1	<p><b>Immediately</b> upon <u>learning</u> of an incident that <b>appears</b> to meet one or more of the human effects criteria for priority investigation and is <b>alleged</b> to be pesticide related, notify WH&amp;S of the incident by e-mail. The numbering of the incident and processing of the Pesticide Episode Notification Record (PENR) should be done as soon as possible with as much information as you have at that point. In no case should the delay exceed eight work hours.</p> <p><b>NOTE:</b> An episode can meet both of the priority parameters and yet have the lead responsibility fall to another agency such as DIR or DTSC. For this reason, the chart on page 1-23 shows classification as the first step.</p>
2	Once a number has been obtained and distributed, that episode must be followed through to closing. <b><u>Priority numbers are not cancelled, recycled, or rescinded.</u></b>
3	After the hard copy of the PENR is reviewed by the RO supervisor, it will be electronically sent or faxed by the RO to all appropriate outside agency parties and routed to appropriate DPR headquarters personnel.
4	RO is responsible for progress reports (15-day reports). Progress reports are handled similarly to the initial notification. Everyone who received a copy of the PENR should also get a copy of the 15-day report.

*Continued on next page*

## Complaint Handling by DPR and the CAC, Continued

Priority episode  
handling  
procedures  
(continued)

Step	Action
5	<p>RO supervisor is responsible for <i>Pesticide Episode Closing Report</i> (PR-ENF-055) review, approval, and distribution to all parties. Each section of the <i>Pesticide Episode Closing Report</i> should be completed before the form is signed and distributed to other parties.</p> <ul style="list-style-type: none"> <li>A. The investigation's <b>Summary of Findings</b> section of PR-ENF-055 must be a brief summary of relevant points (who, what, when, where, why) from the county investigation report.</li> <li>B. The <b>Violations Found</b> section is where the specific sections violated are listed; they do not need to be duplicated in the summary. Paraphrase the violation to give some specific indication of what it was. If there were violations uncovered, they must be listed even if no enforcement action was taken.</li> <li>C. The <b>Investigation Considerations/Impacts/Effects</b> section is used to indicate the environmental or health impacts of the episode. It is based upon the EBL's assessment of the CAC investigation report and any other information available. Remember, pesticide product impacts may not be available to the CAC.</li> <li>D. The <b>Enforcement Action</b> section is where the action taken is listed. <u>It does not have to be repeated in the summary.</u> Indicate the type of action and include the administrative civil penalty case number if there is one. If there is no action taken, check “none.” If there was a violation and no action was taken, include the CAC’s decision report for that decision if required. If the CAC has indicated an intention to take action but has not, check “pending.”</li> </ul>

Continued on next page

## Complaint Handling by DPR and the CAC, Continued

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### Priority episode handling procedures (continued)

Step	Action
6	RO supervisor is responsible for sending a copy of the <i>Pesticide Episode Closing Report</i> together with a copy of the CAC investigation report and final decision for any action taken to the field operations Environmental Program Manager for review and filing. If it is a human effects episode, a second copy of the entire county investigation report must be sent to the WH&S Branch Pesticide Illness Surveillance Program. All other agencies get a copy of the <i>Pesticide Episode Closing Report</i> only. Everyone who got a copy of the PENR should receive a copy of the closing report.
7	RO supervisor is responsible for following up on enforcement and compliance actions pending on priority investigations and ensuring that a copy of the final decision is forwarded to the Environmental Program Manager for review and filing with the investigation report.

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## Complaint Closing

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### Senior Special Investigator responsibility

The DPR Enforcement Branch Headquarters Senior Special Investigator is responsible for:

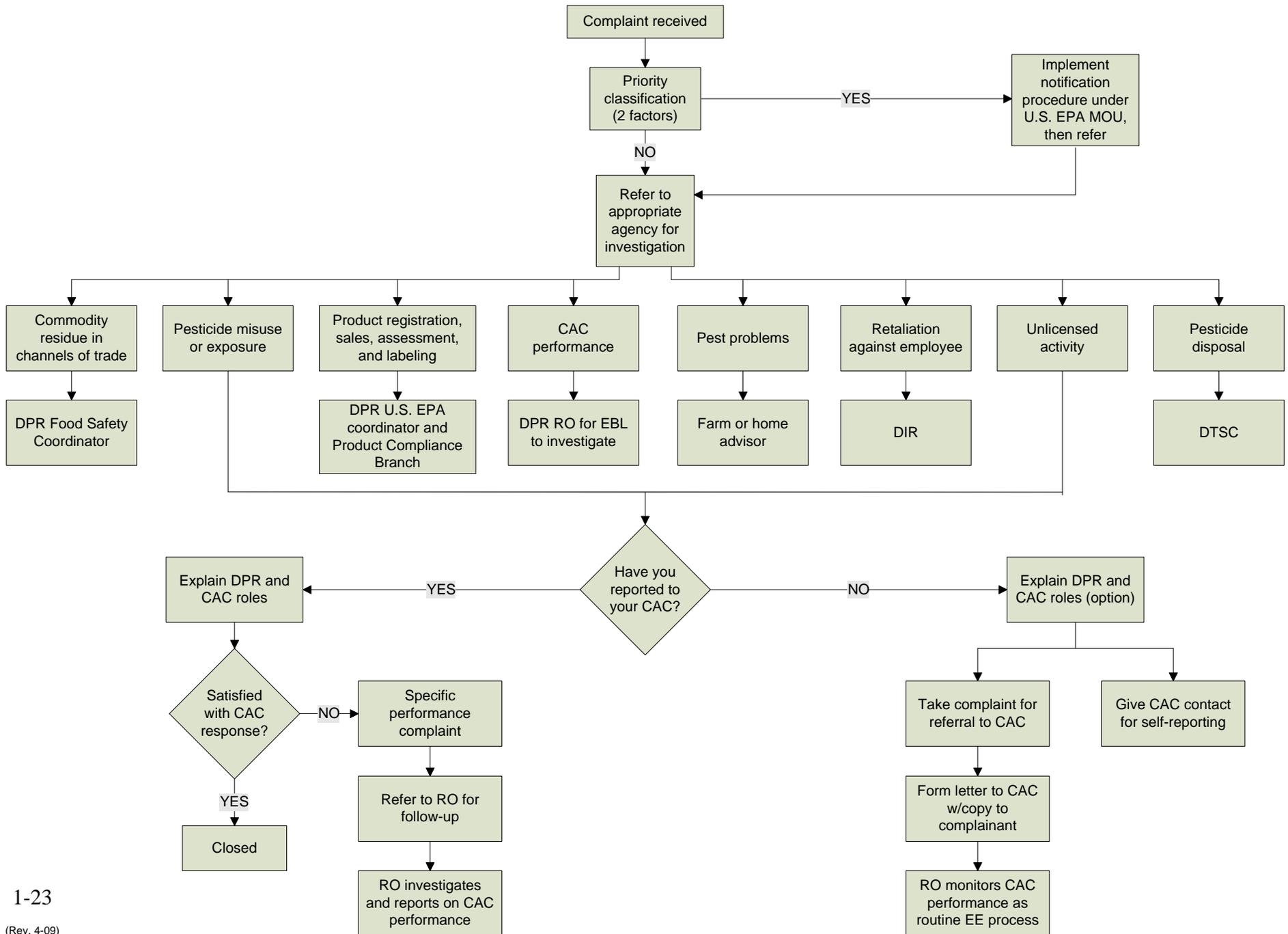
1. Reviewing and refining case files on all state actions referred by the ROs and forwarding to the Office of Legal Affairs for legal action.
  2. Data management for closed investigations and cases:
    - Identifying repeat offender patterns;
    - Trend analysis; and
    - Developing summary reports
  3. Training Branch staff on complaint handling procedures.
  4. Bringing any concerns about closed investigations to the attention of the field operations Environmental Program Manager.
- 

### DPR/CAC Complaint Handling Procedures chart

The DPR/CAC Complaint Handling Procedures chart follows on the next page.

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# DPR/CAC Complaint Handling Procedures



## Section 1.4

### Drift

Interprets FAC section 12972; 3 CCR sections 6000, 6600, and 6614

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**Definition**

DPR considers pesticide drift to be an off-target deposition of pesticide residues at the time of an application, not from volatilization or other off site movement. Some off-target deposition at a measurable level is expected and may occur from ground and air applications. In some instances during or after a pesticide has been applied, some people may smell an odor. The presence of an odor does not necessarily mean that the applicator has violated requirements or that substantial drift has occurred and public health is at risk. See Compendium Volume 5, Investigation Procedures, for a discussion of odor episode response.

Pesticides are intended to be applied to a particular target such as a field, orchard, structure, or even an individual plant or particular place within a structure. The applicator is responsible for this placement. When the pesticide is released and does not reach the application target, contributing factors may include climatic conditions, equipment malfunction, application error, or ineffective application.

Pesticides may move off of the application target, after application, due to volatilization of the pesticide, wind-blown dust, irrigation run-off, or by other means. The responsibility for off site movement of pesticides is less clear. Volatilization is a characteristic of the pesticide itself, which cannot be controlled by the applicator. It may be a characteristic that creates a "hazard that is known to exist." The appropriateness of selecting or recommending a pesticide with this characteristic in the particular situation should be evaluated. When pesticide movement results from other factors, the roles of both the operator of the property and the applicator must be evaluated to determine which may have been able to prevent it and may have violated a pesticide law or regulation.

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*Continued on next page*

## Drift, Continued

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### Regulatory standards

Pesticide labeling often directs applicators to avoid drift, implying that any drift would be a violation. Given the reality of pesticide applications, this is not a reasonable standard. More appropriately, labeling may direct the applicator not to apply products when environmental conditions favor drift. Also, as discussed below, laws and regulations direct applicators to operate in a manner to prevent “substantial drift” (see definition) and not to apply pesticides when there is a reasonable possibility of contamination of persons or damage to nontarget property.

*FAC section 12972* requires applicators to use pesticides in a manner that will prevent substantial drift to nontarget areas. The regulations define the term “substantial drift” as meaning that the quantity of pesticide outside the area treated is greater than that which would have resulted had the applicator used due care.

Also, *3 CCR section 6614* requires applicators to continuously evaluate conditions and surrounding environment and not make or continue an application when:

- There is a reasonable possibility of contamination of the bodies or clothing of persons not involved in the application process,
- There is a reasonable possibility of damage to nontarget crops, animals or other public or private property; or,
- There is a reasonable possibility of contamination of nontarget public or private property preventing normal use of such property.

Subsection 6614(a) requires applicators to evaluate meteorological conditions, the application equipment they intend to use, and the target and surrounding properties to determine the likelihood of exposure, contamination or damage from the application. This information aids the applicator in deciding whether to begin or continue an application and how to conduct the application. Pesticide applicators have a duty to stop or reschedule an application when conditions exist which could reasonably be expected to cause exposure, contamination or damage.

Other regulations prescribe application standards for specific pesticides to minimize drift. These include: *3 CCR section 6460* (Drift Control); *3 CCR section 6462* (Propanil); *3 CCR section 6464* (Phenoxy and Certain Other Herbicides); *3 CCR section 6466* (Paraquat); and *3 CCR section 6470* (Cotton Harvest Aids).

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*Continued on next page*

## Drift, Continued

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### Enforcement

While there may be rare exceptions, in most cases the existence of damage or contamination (e.g., fish kills, phytotoxicity, damaged crops, or human exposure) establishes the fact that the damage or contamination could have reasonably been expected to occur. In those cases, the applicator should not have made (or continued) the application, and the pest control business or the applicator should be cited for violating *3 CCR section 6614(b)*.

If the applicator applied the pesticide under conditions the labeling directed against, the pest control business or the applicator can be cited for violating *FAC section 12973* (using the pesticide in conflict with its registered labeling). Citing for a violation of *FAC section 12972* requires the establishment of, with some particularity, the aspect of due care that the applicator failed to exercise.

When an investigator determines there is sufficient evidence showing that a law or regulation was violated in an episode or complaint involving pesticide drift, the *Enforcement Response Regulations (3 CCR sections 6128 and 6130)* should be used to determine the appropriate action. In most instances, the first violation warrants an Agricultural Civil Penalty or State action.

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## Section 1.5

### Recommendations (Faulty) Followed by Applicators

Interprets FAC sections 12971 and 12973

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**Interpretation** Both the person making the recommendation (adviser) and the applicator are clearly in violation when an applicator applies a pesticide in accordance with a recommendation that is in conflict with approved labeling. Disciplinary action should be taken against both parties for use and recommendation in conflict with approved pesticide labeling, but can be adjusted to reflect relative responsibility in the specific situation. The adviser is responsible for certain judgment factors in a recommendation just as the applicator is responsible for the condition of his/her equipment and monitoring weather conditions during the application. Each is responsible for complying with the label.

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## Section 1.6

### Labeling Requirements--Interplanted Crops

Interprets FAC section 12973; 3 CCR section 6000

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**Interpretation** Each pesticide application to a crop grown in an interplant cropping system, such as beans grown between the rows of a non-bearing almond orchard, will have to be reviewed separately to determine if the application can be made without contacting the crop for which the pesticide is not registered. It is “use in conflict” with the labeling and a violation of FAC section 12973 to use a pesticide on a commodity or site for which it is not registered. Crops with residues of unregistered pesticides or over-tolerance residues at the time of harvest are illegal and may be required to be destroyed (see Section 1.2). Certain formulations (such as granular), or certain application methods (such as a ground rig or drip irrigation systems), may provide the necessary separation. Aerial applications, fumigants, and soil-applied systemic materials would, in most cases, be prohibited.

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## Section 1.7

### Product Labeling at Use Site

Interprets FAC sections 12852, 12882 and 12973; 3 CCR section 6602

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**Background** 3 CCR section 6602 clarifies and makes specific what is meant in FAC section 12973 by “delivered” and exactly what must be present. This section requires that a “copy” of the registered labeling covering the actual use be available at the use site. Typically, there is a registrant’s container onsite with a label attached -- this is accepted as a copy of the registered labeling.

However, there are occasions where the registrant’s container may not be at the use site, a service container may be in use, or the use is covered only by supplemental labeling or a Section 24(c) Special Local Need registration. In these situations, the user must arrange for alternate means of ensuring the appropriate labeling is on site.

*Note:* Section 18 Emergency Exemption use instructions are not considered labeling but exemptions *from* labeling. If the required Section 18 use instructions are not present at the use site, there is a violation of FAC section 12973 if the use is in conflict with the registered labeling.

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**Requirement** To be in compliance with 3 CCR section 6602, the labeling at the use site must completely cover both the general requirements and directions specific to the use. The text of the label must be the same as registered labeling, which has been approved by DPR’s Registration Branch. Differences in the directions, restrictions, or precautions are unacceptable. Differences in format or layout are acceptable, unless they create a false or misleading impression.

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**Limitation** This interpretation should not be construed as permitting registrants to distribute new “FIFRA section 3” labels as supplemental labeling to change the use pattern of existing labeled product. This practice would be a violation of FAC section 12852.

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**Guidance** Any document that is an accurate depiction of the directions, restrictions, and precautions on the registered labeling is acceptable for complying with 3 CCR section 6602. Acceptable labeling can be formatted in various media including physical formats (i.e. paper copies, photographs, or facsimiles) as

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*Continued on next page*

## Product Labeling at Use Site, Continued

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### Guidance

well as digital formats (i.e. web distributed labeling, digital images, specimen labels downloaded from a registrant website or similar service, or other electronic formats).

During a pesticide use inspection, the pesticide user demonstrates compliance with section 6602 by physically producing a copy (paper or digital) of the labeling for CAC staff to review. The user can demonstrate compliance by producing either a paper copy or a digital copy of the labeling.

The same standard applies to paper or digital labels: the user must make viewable the contents of the labeling. The mere presence of a mobile device or computer at the use site does not demonstrate that a digital copy of the labeling is at the use site no more than an unidentifiable stack of papers at the use site demonstrates the physical presence of the registered labeling. For either medium, the user must provide a copy of the relevant labeling, either by displaying the labeling in the case of an electronic device, or presenting the physical copy of the labeling relevant to the use.

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### Enforcement

Regardless of the medium (paper or digital), it is the responsibility of the user to ensure that the labeling at the site accurately reflects currently registered labeling. If the electronic device fails, the user would be in violation of section 6602 if that was the only means of reviewing the labeling relevant to the use.

If it is discovered the labeling on site is not a true and accurate copy of the registered labeling, action can be taken for a violation of 3 CCR section 6602. Any use of a pesticide in conflict with **registered** labeling that was **delivered** with the pesticide is a violation of FAC section 12973.

It is not expected that CAC staff routinely conduct detailed comparisons of the labeling on site to registered labeling on file with DPR during field inspections. When the labeling attached to the container or electronically distributed is not the same as the labeling registered with DPR, it could be considered misbranded and a potential violation of FAC section 12882(d). However, situations which raise concerns about misbranding should be investigated and referred to the EBL assigned to your county for possible DPR product compliance action.

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## Section 1.8

### Pesticide Bag Disposal

Interprets 3 CCR section 6670

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**Interpretation** The California Environmental Protection Agency (Cal/EPA) has adopted a policy for the disposal of emptied pesticide bags in a letter to Interested Parties entitled *California Environmental Protection Agency Policy on Disposal of Properly Emptied Pesticide Bags*, dated December 14, 1995, and signed by Mr. Jack Pandol, Undersecretary. DPR recognizes this policy; however, some of Cal/EPA's Boards, Departments, and Offices (BDOs) and/or their local partners may interpret some parts of this policy slightly differently than DPR understands it. It is not DPR's role to directly enforce its interpretation of Agency policies against other BDOs or their local partners.

The Department of Toxic Substances Control adopted regulations stating that pesticide bags properly emptied will not be regulated as hazardous waste. These regulations are found in 22 CCR sections 66260.10, 66261.7, and 66262.70.

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**Proper disposal** The options outlined in the Cal/EPA policy for disposal of properly emptied pesticide bags are:

Part	Function
Emptying pesticide bags	<ul style="list-style-type: none"><li>• Pesticide bags should be opened and emptied in a manner that results in no pesticide material remaining in the bag that can be poured, drained, or otherwise feasibly removed.</li><li>• Empty the bag completely and hold the bag upside down for five seconds after continuous flow ceases.</li><li>• Straighten out the seams so that bag is in its original "flat" position.</li><li>• Hold the flattened bag upside down for another five seconds. Shake the bag twice and hold for an additional five seconds. If there is any continuous flow during this step, it must be repeated.</li></ul>

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*Continued on next page*

## Pesticide Bag Disposal, Continued

### Proper disposal (continued)

Part	Function
Land disposal	<ul style="list-style-type: none"> <li>• Handlers of empty bags should wear all protective clothing and use safety equipment required for handling of the chemical in the bag.</li> <li>• Empty bags stored before transit to a landfill need to be in an area of controlled access. Bags can be stored for no longer than 90 days (to avoid need for a waste generator's permit).</li> <li>• Sulfur bags may be disposed of in any Class III landfill. Empty sulfur bags should be flattened and bundled separately from other bags.</li> <li>• Dispose of other properly emptied pesticide bags at lined Class III landfills or on a site-specific basis at unlined Class III landfills subject to approval by the Regional Water Quality Control Board. Bags should be flattened and baled or bundled.</li> </ul>
Burning at use site	<ul style="list-style-type: none"> <li>• Obtain an agricultural burn permit issued by the local air pollution control district to the grower.</li> <li>• Burn at the application site under the conditions of the agricultural burn permit. Only one day's accumulation of empty bags can be burned in any one day. Only paper bags, inner bags, and outer containers may be burned. The ash does not need to be tested.</li> <li>• A commercial applicator, either ground or aerial, can burn properly emptied pesticide bags where the bags are opened and emptied at the application site and under the agricultural burn permit issued to the grower by the local air pollution control district.</li> <li>• The person burning the bags and anyone working in close proximity must wear eye protection and respiratory protective equipment rated for protection against the particular type of pesticide material being burned, as well as airborne particulates.</li> </ul>

*Continued on next page*

## Pesticide Bag Disposal, Continued

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### Proper disposal (continued)

<b>Part</b>	<b>Function</b>
Burning bags	<ul style="list-style-type: none"><li>• Bags may be burned only at locations specified on the agricultural burn permit. These locations should be selected to minimize the amount of smoke blowing over areas where people or domestic animals are present. Selection should also consider distances to sensitive sites such as, homes, schools, parks and business.</li><li>• Evaluate potential wind speed and direction and also inversions during the time needed to burn the bags.</li><li>• Place a rock, brick or similar non-combustible weight on top of the stack of bags to be burned.</li><li>• Light the bottom-most bag.</li><li>• Stand upwind of the burn site to avoid breathing the smoke.</li><li>• Control the site until burning is completed and the fire is extinguished.</li></ul>

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## Section 1.9

### Pre-harvest Interval Enforcement

Interprets FAC section 12972; 3 CCR section 6000

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**Interpretation** Pre-harvest intervals are intended to provide a period between the application of a pesticide and harvest so the crop will meet the established pesticide residue tolerance and protect the public from possible exposure to excessive residues. Harvest prior to the expiration of a pre-harvest interval is a violation of FAC section 12973 and action should be taken on that violation consistent with the Enforcement Response Regulations (*3 CCR sections 6128 and 6130*). DPR will not be a participant in any agreement to facilitate a violation of this or any other section of the law. In any willful violation of this section, our further responsibility is to use our authority to protect the public from any illegal residues through appropriate measures.

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## Section 1.10

### Recognition of Federal Tolerances

Interprets FAC sections 12561 and 12565; 3 CCR section 6490

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**Interpretation** U.S. EPA and FDA have adopted tolerances and other recognized levels of pesticide residue. Tolerances are the most formal by virtue of being addressed in statute and adopted in the Code of Federal Regulations. “Action levels” have been established to allow for the presence of low levels of inadvertent residue from no longer used pesticides that remain in the environment. To avoid expending limited resources on actions related to insignificant residues, other levels, such as “levels of quantification,” have been established and are routinely used by FDA in its food safety program. Note that these are not “permissible” levels; they are simply levels below which the risk is insignificant and further attention is not considered a prudent use of resources. This does not mean that the reason for the residue will not be investigated when the produce was grown in California.

DPR generally recognizes all federal established levels, in addition to tolerances, unless the specifics of a given situation indicate that it would be inappropriate to do so. The Enforcement Branch Chief will determine when it is inappropriate to apply any established federal residue level.

This interpretation is not a bar to any action under FAC sections 12648 or 12973 against either the commodity or a person responsible for pesticide misuse.

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**California-specific tolerances for pesticide residues**

Pesticide residue tolerances within California are identical to U.S. EPA tolerances.

FAC section 12561 states that DPR has regulatory authority to set California-specific tolerances for pesticide residues in produce.

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## Recognition of Federal Tolerances, Continued

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**California-specific tolerances for pesticide residues**  
(continued)

In reality, however, state authority is severely limited by the Federal Food, Drug, and Cosmetic Act (FFDCA), chapter IV, section 408(n)(4), which states in part:

"(4) STATE AUTHORITY - Except as provided in paragraphs (5), (6), and (8) no State or political subdivision may establish or enforce any regulatory limit on a qualifying pesticide chemical residue in or on any food if a qualifying Federal determination applies to the presence of such pesticide chemical residue in or on such food, unless such State regulatory limit is identical to such qualifying Federal determination. . . . "

Both FFDCA section 408(n)(4) and FAC section 12565 authorize DPR to establish "state-specific" tolerances that are identical to the corresponding federal tolerances. DPR exercises this very limited power via 3 CCR section 6490(b). The formal incorporation of federal tolerances into California regulations via 3 CCR section 6490(b) is useful, in that it clarifies the authority of DPR and CAC staff to enforce tolerances. But, at present, pesticide tolerances within California are identical to U.S. EPA tolerances.

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## Section 1.11

### Rinsate and Washwater Disposal

Interprets 3 CCR sections 6670, 6684, and 6686

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**Interpretation** Note: “rinsate” refers to the water used to remove remaining pesticide from a container (triple rinse) and “washwater” refers to the water used to clean contaminated equipment. This distinction is necessary because they are addressed differently in the regulations.

Except for the home use exemptions provided in 3 CCR section 6686, each empty pesticide container which has held less than 28 gallons of a liquid pesticide must be rinsed at the time of use. Holding empty pesticide containers for rinsing later is not in compliance with this section.

In general, any pesticide rinsate, concentrate, diluted tank mix solution, or unrinsed container may be considered a "hazardous waste." Handling and disposal of materials designated as hazardous wastes are regulated by DTSC.

Any unused pesticide material remaining in a container or spray tank, and the water used to rinse the container or wash equipment after an application of a pesticide is completed, can be applied directly onto the originally treated crop or site for which the pesticide material is registered. This practice would basically be considered part of the original application process rather than as a disposal or discharge of a hazardous waste. The regulations require the container rinsate to be added to the mix and applied to the crop. This is an option for equipment washwater. However, if amounts are more than minimal, this practice could result in an overdose and potentially, a violation of *FAC section 12973* (using the pesticide in conflict with its registered labeling). If the pesticide rinsate or washwater is applied to non-registered areas, the application would be considered as a "use in conflict."

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## Section 1.12

### Requirement for a Visible Inversion Indicator

Interprets 3 CCR section 6464

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**Interpretation** Restricted material regulations in 3 CCR section 6464(b) require that a visible column of smoke (or other device) be employed at the time and place of air applications of restricted herbicides in the Central Valley below 1,000 feet elevation during the period beginning March 16 and continuing through October 15 of each calendar year.

A visible column of smoke can indicate inversion conditions, while the use of flags and gauges can only indicate wind direction and speed. Smoke generated by equipment attached to the aircraft making the application would not be adequate. The smoke would not be a column and in most cases would not be continuous. In any instance not already specifically covered by regulation, a visible inversion indicator may be expressly required as a condition of a restricted material use permit. Other options, such as multi-level thermometers, should be considered whenever possible.

You should contact State and local air pollution control districts regarding any additional restrictions and in obtaining any required permits.

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# Section 1.13

## Service Containers

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**About this section** This section contains two parts: Service Container--Application Equipment and Service Container--Selection.

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### **A. Service Container--Application Equipment**

**Interprets FAC section 12757.5; 3 CCR section 6678**

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**Application of the definition** Measuring vessels and application equipment are not considered to be service containers while they are in use. However, they are, and must be labeled as a service container, if they are used to store or hold pesticides for a prolonged period or to transport pesticide down a public road to another site. This interpretation applies to all application equipment from backpack sprayers to tractor mounted or towed equipment.

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### **B. Service Container--Selection**

**Interprets FAC sections 12757.5; 3 CCR section 6680**

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**Application of section 6680** We must recognize that both the consumer products listed in 3 CCR section 6680 and pesticides are distributed in a wide variety of containers and some overlap of types is inevitable.

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**Prohibits use of empty containers** Anything that is not the original registrant's container but holds the pesticide is a service container. 3 CCR section 6680 prohibits end users from using empty containers that are readily identifiable or recognizable as food or beverage containers as pesticide service containers.

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**Generic containers** This section does not prohibit end users from using generic plastic or glass bottles, plastic bags, or similar containers (that have no identifiable food or beverage use labeling, either printed or embossed, or are not uniquely shaped to be identifiable as a branded food container) as service containers. Each service container must be properly labeled as a pesticide service container, pursuant to 3 CCR section 6678.

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## **Service Containers, Continued**

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**Exception for farmers**

The exception from service container labeling requirements for farmers using service containers on their own property does not apply to home, structural, or other uses nor does it apply to the restrictions on the kind of containers acceptable for use as pesticide service containers. 3 CCR section 6680 also applies to farmers.

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**Does not apply to registrants**

3 CCR section 6680 applies to pesticide users only. This section does not apply to pesticide registrants and their choice of packaging for their products. Pesticide packaging is preempted by U.S. EPA pursuant to FIFRA.

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## Section 1.14

### Pesticide Storage

Interprets 3 CCR sections 6670 and 6672

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**Interpretation** "Attended" means a responsible person present in the vicinity at all times to maintain control over the pesticide to prevent contact by unauthorized persons. Adjacent to roadways or populated areas, a person must have pesticides in sight. NOTE: Certain materials are exempt from storage requirements according to 3 CCR section 6686(b). However, this exemption may be waived if the CAC determines that a hazard to public health or the environment exists.

"Enclosure" means a truck or trailer with side racks, the top of which is a minimum height of six feet above the ground, a lockable storage compartment, or a locked, fenced (6 feet high chain link or other mesh) area.

Certain large storage containers of liquid pesticides are allowed to have a locked closure on the container [section 6672(b)(2)] rather than be contained within an enclosure. This provision applies only to the true "liquid" formulations only. It does not include gaseous pesticides that are "liquids under pressure" as stored (chlorine, for example).

Storage posting is required when toxicity category 1 or 2 pesticides are stored. The signs must warn from any direction of probable approach. This section is intended to apply to pesticide use situations. Warehouses, dealerships, and other similar commercial facilities should instead, comply with the universal hazardous material "diamond" sign posting requirements. One or the other posting signs must be in use.

See also *Vehicles-Storage Area Posting*.

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## Section 1.15

### Vector Control Exemption

Interprets 3 CCR sections 6614 and 6620

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#### Background

Vector control districts conduct area wide pest control projects to protect public health from vector borne diseases. These treatments are at a low dose and may be made as low volume or ultra low volume applications. To be efficient, these applications commonly utilize swath dispersion to obtain more uniform coverage within the target area.

As with many uses of pesticides, public concern sometimes arises about contamination of people and property. This interpretation provides guidance to CACs on issues related to the deposition of pesticides within the overall treatment zone of the project.

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#### Interpretation

3 CCR section 6620 specifically exempts any public agency or its contractor conducting vector control under a cooperative agreement with the Department of Public Health from certain regulatory requirements. Specifically, the consent and notice requirements of 3 CCR sections 6616 and 6618 do not apply to these vector control pesticide applications. Section 6620 also specifically exempts these activities from the restriction of 3 CCR section 6614(b)(1) that prohibits applications that could create the reasonable possibility of exposing people (clothing or bodies) to pesticides, provided that the pesticide is registered for use in residential areas for vector control.

3 CCR section 6614(b)(2) and (3) that prohibits contamination or damage to nontarget crops, animals, and property still apply to vector control, but should have only very limited impact on such activities or their consequences. If the product is registered for use in residential areas for vector control, there would be no violation of these subsections resulting from pesticide falling anywhere within the boundaries of the area targeted for a vector control application. The vector control district or its contractor conducting the application may agree to take steps to minimize deposition on certain areas within the targeted treatment zone to address general public or specific property owner's concern or to minimize potential liability for damage caused by the vector control district's activities, but such deposition that may occur despite these efforts, would not constitute a violation of 3 CCR section 6614.

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# Section 1.16

## Vehicles

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**About this section** This section contains two parts: Vehicles--Storage Area Posting and Vehicles--Pesticides in Passenger Compartment.

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### **A. Vehicles-Storage Area Posting** **Interprets 3 CCR section 6674**

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**Interpretation** Posting of pest control service vehicles as a storage area is generally not required provided:

- The primary use and purpose of these vehicles is to transport and apply rather than store, pesticides.
- The vehicle is not routinely used as a fixed pesticide storage site.
- Pest control vehicles are identified, as required, with descriptive language that denotes pesticide activity and uses as specified in 3 CCR section 6630.
- Service containers and pesticides are attended or enclosed at all times, as specified in 3 CCR sections 6670 and 6672.

If the pest control operator has no fixed storage area other than the service vehicle and more than “use amounts” of pesticides labeled with the signal word “Danger” or “Warning” are being stored, then vehicle posting is required. When determining "use amounts," consider the total of the situation. Amounts of pesticide that would reasonably be expected to be used between restocking trips to the headquarters would generally be considered as "use amounts" and not require posting.

*Note:* Storage area posting should not be confused with the equipment identification requirements of 3 CCR section 6630.

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*Continued on next page*

## Vehicles, Continued

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### **B. Vehicles--Pesticides in Passenger Compartment** **Interprets 3 CCR section 6682**

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**Interpretation** This regulation section was not intended to apply to persons who fall under the jurisdiction of commercial transportation regulations, although they may be transporting pesticides, food, and feed in the same “compartment” (cargo box). This regulation was intended to apply only to persons engaged in pest control businesses (structural or agricultural), growers, and other users who may transport opened or sealed containers to and from an application site.

Section 6682 was enacted to provide a reasonable level of protection from physical (dermal) contamination of people and certain commodities which, at times, are transported to or from a use site together with pesticide containers in the same vehicle. It was never intended to address inhalation exposure.

When a van or SUV-type vehicle is being used, creating separation through utilization of a mounted panel or baffle that substantially separates passengers and cargo areas meets the intent of this regulation. An air-tight or even leak proof separation is not required to meet this standard. A separate compartment may also be created through the use of a container, such as a cargo box or cabinet, secured to the vehicle.

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## Section 1.17

### Preemergent Herbicides--Wellhead Protection

Interprets 3 CCR section 6609

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**Interpretation** For the purposes of 3 CCR section 6609 only, "preemergent herbicides" are limited to only those listed in 3 CCR section 6800(a) or (b).

Section 6609 is intended to protect wellheads from pesticide contamination. It prohibits, among other provisions, the application of a "preemergent herbicide" within 100 feet of an unprotected well. That prohibition was adopted because "preemergent herbicides" are the primary pesticides that have been found in ground water due to agricultural use.

Preemergent herbicides that have been found in ground water are both mobile and persistent, which are characteristics of pesticides listed in section 6800 (The Ground Water Protection List). However, there are preemergent herbicides that are not listed in section 6800 because they are either not mobile or not persistent. These preemergent herbicides are considered to have a low potential to move offsite to ground water.

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