

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6130
Pertaining to Civil Penalty Actions by Commissioners

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR.) Section 6110 meets the requirement of Title 14, CCR section 15252 and Public Resources Code section 21080.5 pertaining to state regulatory programs certified under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR or Department) proposes to amend 3 CCR section 6130, subdivisions (c)(1) and (c)(2) related to civil penalty actions by County Agricultural Commissioners (CACs.) The pesticide regulatory program activities affected by the proposal are those pertaining to pesticide use enforcement. In summary, the proposed action would increase the fine range for administrative civil penalties levied by 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 conform the existing regulations to certain statutory changes made in Assembly Bill 211 (AB 211) (Stats.2022, ch. 574.) The purpose of AB 211 is to improve deterrence of illegal pesticide use and strengthen the statewide pesticide use compliance and enforcement program. AB 211 was enacted by the Legislature and has been effective since September 27, 2022.

SPECIFIC PURPOSE AND FACTUAL BASIS

Background

DPR is responsible for protecting human health and the environment for all Californians by regulating pesticide sales and use and by fostering reduced-risk pest management. In furtherance of this mission, DPR carries out a comprehensive science-based regulatory system. Robust enforcement of statutory and regulatory pesticide sales and use requirements is critical to protecting public health, workers, and the environment. Updating California's local pesticide use enforcement response regulations to align with AB 211 (2022) is necessary to strengthen the deterrence of illegal pesticide use, protect workers, and strengthen the local implementation of the statewide pesticide use compliance and enforcement program.

California law distributes responsibility for pesticide use enforcement between state and local authorities. (FAC § 2281.) The CACs and their staff of approximately 500 inspectors and biologists 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 specified in FAC section 12999.5, subdivision (a) and its implementing regulations at 3 CCR sections 6128, 6130 and 6131.

Pesticide use laws and regulations and related fines stated at 3 CCR section 6130 include violations of laws pertaining to pesticides and worker safety (FAC §§ 12980 et seq.) and the recommendation and use of pesticides (FAC §§ 12971-12979), including statutes providing that “[t]he use of any pesticide by any person shall be in such a manner as to prevent substantial drift to nontarget areas” (FAC § 12972), that “[t]he use of any pesticide shall not conflict with” the pesticide label registered with the Department (FAC § 12973) and making it unlawful to “possess or use any pesticide that is not registered” with the Department (FAC § 12995) among other violations.

3 CCR section 6130 implements, interprets and makes FAC section 12999.5 specific by designating violations by Class (Class A, B or C) and assigning a fine range (the maximum and minimum fine levels.) At this time, CACs must classify and determine fines based on the classes and ranges established in 3 CCR section 6130.

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. (3 CCR, § 6130, subd. (b)(1)(A)-(C).) The fine range as set forth in the current regulations for a Class A violation is \$700 to \$5,000. (3 CCR, § 6130, subd. (c)(1).)

3 CCR section 6130 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. (3 CCR, § 6130, subd. (b)(2).) The fine range as set forth in the current regulations for a Class B violation is \$250 to \$1,000. (3 CCR, § 6130, subd. (c)(2).)

3 CCR section 6130 establishes that a Class C violation occurs then there is a violation of a law or regulation that does not mitigate the risk of an adverse health, property of environmental effect. (3 CCR, § 6130, subd. (b)(3).) The fine range as set forth in the current regulations for a Class C violation is \$50 to \$400. (3 CCR, § 6130, subd. (c)(3).)

In 2022, AB 211 amended FAC section 12999.5 to increase penalty maximums for violations of pesticide use laws and regulations, thereby heightening the deterrent effect of administrative enforcement actions by CACs and strengthening the statewide pesticide compliance and enforcement program. Specifically, pursuant to AB 211, the fine range for a Class A violation as defined by 3 CCR section 6130 was increased from a maximum of \$5,000 to a maximum of \$15,000 per violation and the fine range for any other violation (Class B or C) was increased from a maximum of \$1,000 to a maximum of \$3,000 per violation.

As currently drafted, existing language in 3 CCR section 6130 does not reflect the increased fine

ranges approved by the Legislature in AB 211. A regulatory amendment is necessary to address this lack of alignment.

Proposed Changes

This proposed action would amend 3 CCR section 6130 to conform with the increased CAC penalty maximums in FAC section 12999.5, as amended by AB 211, and align the regulations with the statutory scheme as amended. As proposed hereto, 3 CCR section 6130 would increase the penalty for a Class A violation to a maximum of \$15,000 per violation and increase the penalty for a Class B violation to a maximum of \$3,000 per violation. The maximum penalty amount for Class C violations would remain unchanged.

The proposed amendments are necessary to conform 3 CCR section 6130, subdivisions (c)(1) and (c)(2) to the increased CAC penalty maximums in FAC section 12999.5, as amended by AB 211. This will strengthen the penalties' deterrence of illegal pesticide use and the local implementation of the statewide pesticide compliance and enforcement program. The proposal increases fine levels for Class A and Class B violations – the most serious offenses – violations that cause actual harm to people or the environment, based on an aggravating circumstance, and, violations of orders designed to prevent or mitigate such injuries. In this way, the proposed amendments will benefit public health by promoting compliance with pesticide law, regulations and lawful orders and deterring unlawful actions. DPR is proposing to only adjust the fine levels for 3 CCR section 6130, subdivisions (c)(1) and (c)(2), to ensure timely adoption of the new penalty maximums.

CONSULTATION WITH OTHER AGENCIES

DPR consulted with CACs in drafting these regulations.

The proposal for amending regulations to align fine ranges for administrative civil penalties levied by CACs with increased levels established by the Legislature in AB 211 was an agenda item discussed at the June 16, 2023 meeting of the Pesticide Registration and Evaluation Committee (PREC), a committee whose members include representatives from public agencies that have jurisdiction over activities or resources that may be affected by the use of pesticides. A copy of the PREC minutes is contained in the rulemaking file.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION (GOVERNMENT CODE SECTION 11346.2, SUBD. (b)(4))

The proposed action will align the fine range for administrative civil penalties levied by CACs with current law. DPR has not identified any feasible alternatives to the proposed regulatory action that would achieve the purpose of the proposed amended regulations (to conform the regulations with existing law) with fewer possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

ECONOMIC IMPACT ON BUSINESS (GOVERNMENT CODE SECTION 11346.2, SUBD. (b)(5)(A))

The proposed regulatory action will align the maximum fine level for administrative civil penalties levied by CACs for Class A and Class B violations with statutory levels established by the Legislature in AB 211. DPR has determined that the proposal will have no impact on the lawful operations of pesticide users or businesses, including pest control advisers or pesticide dealers. DPR has determined that the proposed action is necessary to conform the regulatory requirements with the enacted statute. Fines are incurred only for violations of the FAC and 3 CCR. Therefore, DPR has determined these regulations will not have any significant economic impact on lawfully operating business operating in the state.

DPR has determined that the proposed action will not have a significant statewide adverse economic impact on the ability of California businesses to compete with businesses in other states, as all pesticide businesses, including pest control advisers and pesticide dealers, must be licensed with the state in order to operate, and all will be subject to the increased penalty maximums, should violations occur.

ECONOMIC IMPACT ASSESSMENT (GOVERNMENT CODE SECTION 11346.3, SUBD. (b))

Creation or Elimination of Jobs within the State of California: DPR has determined that the proposed action would not create or eliminate jobs in California. This action would have no impact on the lawful operations of pesticide users or pesticide business, including pest control advisers and pesticide dealers. Fines are incurred only for violations of the FAC and its implementing regulations at 3 CCR section 6000 et seq. The proposed action does not mandate the creation of new jobs, nor does it require that an existing job be eliminated in the State of California.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California: DPR has determined that the proposed action would not create new businesses nor will the proposed action eliminate existing businesses within the State of California. This action would have no impact on the lawful operations of pesticide users or pesticide business, including pest control advisers and pesticide dealers. Fines are incurred only for violations of the FAC and its implementing regulations at 3 CCR section 6000 et seq. Thus, the proposed action would not create new businesses or eliminate existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business within the State of California: DPR has determined that the proposed action would not result in the expansion of businesses currently doing business within California. This action would have no impact on the lawful operations of pesticide users or pesticide business, including pest control advisers and pesticide dealers. Fines are incurred only for violations of the FAC and its implementing regulations at 3 CCR section 6000 et seq. Thus, the proposed action would not result in an expansion of businesses currently doing business with the State of California.

The Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulations are designed to promote the public 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 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.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL (3 CCR SECTION 6110, SUBD. (a)(3))

The Natural Resources Secretary determined that DPR's pesticide regulatory program, including the adoption, amendment, and repeal of pesticide regulations, qualifies as a certified regulatory program under Public Resources Code section 21080.5 and California Code of Regulations, Title 14 (14 CCR) section 15251, subdivision (i). This determination means DPR's pesticide regulatory program is functionally equivalent to California Environmental Quality Act's (CEQA) requirements for preparing environmental impact reports (EIRs), negative declarations, and initial studies, and is therefore exempt from such requirements. This initial statement of reasons serves as the public report required under California Code of Regulations, Title 3, section 6110 and satisfies the requirements of DPR's CEQA certified regulatory program for rulemakings at California Code of Regulations, title 3 sections 6110-6118.

DPR's public report, as the substitute document satisfying CEQA functional equivalency requirements, must include a description of the proposed activity, and either (A) alternatives to the activity and mitigation measures to avoid or reduce any significant effects that the project might have on the environment, or (B) a statement that DPR's review of the project showed that the project would not have any significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. (3 CCR § 6110, subs. (a)(3), (a)(4).) DPR shall not adopt a regulation that would cause a significant adverse environmental impact if there is a feasible alternative or mitigation measure that would substantially lessen those significant adverse environmental impacts. (3 CCR § 6116, subd. (a)(2).)

The proposed amendments would conform the regulations to FAC section 12999.5 as amended in AB 211. The proposed amendments make FAC section 12999.5 specific, by providing guidance to the CACs on how to calculate a proposed fine when the violation is classified as a Class A or Class B violation relative to the statutory maximum. The purpose of the increased administrative civil penalties is to deter illegal pesticide use and strengthen the statewide pesticide compliance and enforcement program.

The proposed action, rather than causing an adverse environmental effect, is designed to promote public health, the health and safety of workers, and the health of the environment by strengthening administrative penalties' deterrence of illegal pesticide use and strengthening the local implementation of the statewide pesticide compliance and enforcement program. Against this environmental and regulatory baseline, no possible significant adverse effect to California's environment can reasonably be expected to occur from implementing the proposed regulations. Therefore, the proposed regulation is categorically exempt from environmental review under 14 CCR section 15061, subdivision (b)(3). Because there is no possibility of a significant adverse effect to California's environment occurring from implementing the proposed regulation, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS
(GOVERNMENT CODE SECTION 11346.2, SUBD. (b)(6))

The proposed regulatory action does not duplicate or conflict with the Code of Federal Regulations. Although there are some similarities in the regulatory requirements between the Federal pesticide law and regulation, California's statutory and regulatory scheme (see generally, FAC Division 6 and Division 6 and 3 CCR section 6000 et seq.), DPR maintains a separate regulatory structure from the Federal standards. Moreover, California law and regulation exclusively regulates the implementation of pesticide use compliance on the local level, including the CAC's authority to levy administrative civil penalties, the classification of fines, and the fine levels.

DOCUMENTS RELIED UPON (GOVERNMENT CODE SECTION 11346.2, SUBD. (b)(3))

1. Assembly Bill No. 211 (Stats.2022, ch. 574)
2. Pesticide Registration and Evaluation Committee Meeting Minutes, June 16, 2023.