

FINAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Adopt Sections 6990 through 6990.16  
Pertaining to Neonicotinoid Pesticide Exposure Protection

UPDATE OF THE INITIAL STATEMENT OF REASONS

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on February 25, 2022.

During the 60-day public comment period, the Department of Pesticide Regulation (DPR) received comments on the proposed text. The comments are discussed under the heading “Summary and Response to Comments Received During the 60-Day Comment Period” of this Final Statement of Reasons. For the reasons stated below, DPR modified the originally proposed text. Furthermore, two additional documents were relied upon and added to the rulemaking file. The documents relied upon include a DPR memorandum documenting updated calculations for soybean residues. This DPR memorandum was relied upon to amend application rate and timing restrictions in Title 3, California Code of Regulations (3 CCR) subsection 6990.9(c) for the legume vegetables crop groups as described below. The second added document is a memorandum from the California Department of Agriculture (CDFA) estimating the number of farms that used neonicotinoid pesticides in previous years. The CDFA memorandum was relied upon to make changes to the original economic and fiscal impact statement (Form 399) as described below.

DPR received comments addressing the modified text during the 15-day public comment period. These comments are discussed under the subheading “Summary and Response to Comments Received During the 15-Day Comment Period.”

These regulations will go into effect on January 1, 2024.

*Changes to the Text of Proposed Regulations*

- DPR amended the definition of “crop group” in subsection 6990(a)(2) to add a reference to Volume 87, Issue 57627 of the Federal Register published on September 21, 2022. As mentioned in the initial statement of reasons (ISOR), the United States Environmental Protection Agency (U.S. EPA) establishes a list of crop groups, identifying each crop group by a name and listing all commodities included in that crop group for purposes of tolerance establishment. Incorporating U.S. EPA’s established crop groups by reference streamlines and simplifies the regulations by organizing the restrictions into recognized crop-specific sections. On September 21, 2022, U.S. EPA finalized amendments to its pesticide tolerance crop grouping regulations for Crop Group 6 (Legume Vegetables), Crop Group 7 (Foliage of Legume Vegetables), Crop Group 15 (Cereal Grains), and Crop Group 16 (Forage, Fodder and Straw of Cereal Grains). These amendments took effect on November 21, 2022. In these finalized amendments, U.S. EPA added minor specialty commodities to each crop grouping, modified subgroups within the crop group, made changes to representative commodities for each subgroup, and made changes to terminology/definition (such as clarifying commodity

sub-species). DPR's originally proposed regulations apply to the crop grouping as a whole, and thus, U.S. EPA's modifications made within the crop group originally incorporated by reference, including clarifying subspecies, re-distributing the sub-crop groups, and changing the representative crops, have no impact on DPR's originally proposed regulations. Only the addition or removal of a commodity from a crop group by U.S. EPA could potentially impact DPR's originally proposed regulations. While U.S. EPA added minor specialty crops to these crop groups, the added crops are not currently listed on neonicotinoid pesticide labels in California, and thus are not approved for use in California. Although neonicotinoids are neither registered for use nor used in California on any of the added crops at this time, the proposed regulations may impact the added crops, should neonicotinoids be registered for use on the crops in California in the future. DPR determined that these additional crops and subspecies are taxonomically and botanically similar to other commodities already in the legume vegetables or cereal grains crop groups and thus appropriate for inclusion in the respective crop groups. Additionally, DPR has determined that the proposed mitigation for the legume vegetables and cereal grains crop group is appropriate to bridge to the added commodities. In making these determinations, DPR used the bridging strategies of relying on data from one crop as a surrogate for another crop within the same crop group for the same active ingredient. This is consistent with the bridging strategies used to establish the regulatory requirements for other crops that are currently subject to the proposed regulations as previously described in the ISOR and a document relied upon titled, "Additional Information Related to the Department of Pesticide Regulation's (DPR's) 2018 California Neonicotinoid Risk Determination and Addendum" (Tafarella, 2020). It is necessary to incorporate these crop grouping updates by reference to remain consistent with federal regulations and provide clarity for compliance and enforcement, currently and in the future.

- In subsection 6990(b)(3) and 6990(b)(9), DPR revised the listed crop group numbers to include new revised crop group numbering "15-22" and "16-22." This change is necessary to remain consistent with the proposed definition of "crop group" and for the reasons stated above regarding the definition of "crop group."
- DPR added an exemption in subsection 6990(c)(4) for certain neonicotinoid applications allowed under an active Section 18 emergency exemption issued pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (Title 7, United States Code, section 136p). Section 18 emergency exemptions are governed under Title 40, Code of Federal Regulations (40 CFR) part 166 and 3 CCR section 6206. Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes U.S. EPA to allow a state or federal agency the ability to grant the limited use of an unregistered use of a pesticide in a defined geographic area for a limited time if U.S. EPA determines that an "emergency condition" exists. An "Emergency Condition" is defined, in part, as an urgent, non-routine situation that requires the use of a pesticide (40 CFR section 166.3). The agency issuing the Section 18 emergency exemption must conduct assessments of potential risks to human health and the environment to confirm the pesticide use meets any required safety standards. In addition, in California, any pesticide used under an emergency exemption is designated as a restricted material (3 CCR section 6400(b)), which requires additional regulatory controls, including a restricted materials permit issued by the local county agricultural commissioner. California requires permits for the purchase or use of restricted materials so the local County Agricultural Commissioner (CAC) can assess, in advance, the potential effects of the proposed application on human health and the environment and establish site-specific

requirements or restrictions over and above state regulations if needed. In the case of using a neonicotinoid as part of a Section 18 emergency exemption, the grower would need to obtain a permit from the local CAC to apply a neonicotinoid in addition to complying with the restrictions identified in the issued emergency exemption. DPR has issued zero neonicotinoid Section 18s in the last five years. Therefore, this exemption from the proposed regulations would only apply under limited circumstances and is unlikely to pose significant risks to pollinators. During the 60-day comment period, DPR received comments regarding the need to clarify how the proposed regulations will intersect with existing Section 18 emergency exemption regulations (3 CCR section 6206). DPR determined that this proposed exemption is necessary to ensure that the proposed regulations will not impact necessary emergency programs under the existing regulations. This proposed exemption is also consistent with the intent of the proposed exemptions in subsections 6990(c)(2) and (c)(3), which allow for timely control of pests in a declared emergency.

- DPR added subsection 6990(c)(5) which provides an exemption for an application of any neonicotinoid authorized for research purposes to support potential amendments to these regulations. This exemption is being proposed in response to comments received requesting a method to develop data in support of potential future changes to these regulations. The data used to support the proposed application rates and timing in this rulemaking are based on current neonicotinoid pesticide labels. However, pest management practices and strategies to control agricultural pests may change over time. Thus, there may be a need for different application rates or different application timings than are currently listed on California-registered pesticide labels. Additionally, as mentioned in the ISOR, residue data are not available for every crop grown in California, thus DPR used crop groups to bridge data from one crop to another crop that lacks sufficient residue data. Residue studies on certain crops would need to be conducted to inform and support any potential amendment to these regulations based on study results. This exemption would allow for these future-described studies. The proposed exemption requires that before using a neonicotinoid in this manner, a written authorization for research must be obtained from the Director. This requirement allows DPR to review any research proposal and is necessary to ensure potential risks to human health and the environment are assessed in advance of a proposed application. DPR may specify conditions under which the research must be conducted, including required safety and/or other standards in the written authorization. The exemption also provides that the Director may terminate, amend, or refuse to issue an authorization for research if the Director makes any of the following determinations: (A) The research may involve a hazard to human health or the environment, (B) The research may be used for purposes unrelated to pesticide data development, or (C) A violation of the authorization for research, prior authorization for research, or Divisions 6 or 7 of the Food and Agricultural Code (FAC), or a regulation adopted pursuant to them, has occurred in connection with the research. The ability for the Director to terminate, amend, or refuse to issue an authorization for research based upon (A) through (C) is necessary to ensure that DPR can continuously protect human health and the environment. This is also consistent with 3 CCR section 6260 and FAC section 12978.7(e)(7), which authorize the Director to terminate, amend, or refuse to issue an authorization for research for similar reasons as stated above. DPR's research authorization regulations under 3 CCR section 6260 are only applicable for research on unregistered pesticide uses. This exemption language is necessary for DPR to consider requests for neonicotinoid research on both registered and unregistered uses.

- In subsection 6990.3, DPR revised the section header to include new revised crop group numbering “15-22” and “16-22.” This change is necessary to remain consistent with the proposed definition of “crop group” and for the reasons stated above regarding the definition of “crop group.”
- In subsection 6990.9, DPR corrected typographical errors. The text, “legumes vegetable” is being corrected to “legume vegetables.” Additionally, in subsection 6990.9(c), “legume vegetable crop group” is being corrected to “legume vegetables crop groups.” These are nonsubstantive changes.
- DPR also revised the section header in 6990.9 to include new revised crop group numbering “6-22” and “7-22.” This change is necessary to remain consistent with the proposed definition of “crop group” and for the reasons stated above regarding the definition of “crop group.”
- DPR amended application rate and timing restrictions in subsection 6990.9(c) when managed pollinators are used for crops in the legume vegetables crop groups. Previously, DPR proposed to prohibit applications of thiamethoxam to crops in the legume vegetables crop groups. Now, upon further analysis, DPR is proposing to allow foliar applications of thiamethoxam up to a maximum application rate of “0.126 pounds of active ingredient per acre per growing season” with a required timing of “apply only from pre-planting until bloom.” During the 60-day comment period, DPR received a comment noting that there was contamination in a set of samples DPR used to assess risks for the legume vegetables crop groups. DPR reviewed the original study report and confirmed that the data from these samples should not be included in its assessment of risk. As such, DPR recalculated the data used to assess risks for legumes and found that thiamethoxam could be applied to legumes under the application rate and timing restrictions described above. DPR documented its analysis in a September 2022 memorandum titled, “Updated Calculations for Conversion Factor Method to Use Bee-collected Soybean Nectar Residues in Neonicotinoid Risk Determination.” This memorandum is being added as a document relied upon in support of this revision.
- In subsection 6990.12(a), DPR corrected a typographical error. The text, “arracha,” is being corrected to “arracacha.” This is a nonsubstantive change.
- In section 6990.14, DPR corrected a typographical error. The text, “gingko,” is being corrected to “ginkgo.” This is a nonsubstantive change.
- In subsection 6990.16(b), DPR added a space between “crops” and “is.” This is a nonsubstantive change to correct a typographical error.

*Changes from Original Economic and Fiscal Impact Statement (Form 399)*

DPR estimates that the total statewide annual cost of the regulations is \$33.3 million annually or \$166.3 million over a 5-year period. This value has not changed, rather DPR revised the number of businesses impacted to be a range instead of a single number. Accordingly, DPR also revised the cost impact per business to reflect a range.

DPR originally estimated that the total number of businesses impacted by the regulations could be equal to the number of farms in California as reported by the United States Department of Agriculture (USDA) National Agricultural Statistics Service's 2017 Census of Agriculture (USDA 2019). The USDA report indicates that about 70,500 farms operated in California during 2017. During the 60-day public comment period, DPR received comments that not all farms use neonicotinoids. DPR has since consulted with CDFA to determine an estimation of farms that used neonicotinoids in past years from 2018-2020. CDFA estimates that between 5,900-6,200 farms use neonicotinoid pesticides each year. See the 2022 memorandum titled, "Number of farms using nitroguanidine-substituted neonicotinoid insecticides" (Mace, K. 2022). While not all farms have used neonicotinoid pesticides in previous years, more have the potential to do so in future years based on evolving pest management practices and future demand to control critical pests. Thus, DPR estimates that the total number of businesses impacted by these regulations ranges between 5,900 -70,500. Accordingly, the average initial and annual cost of compliance with the regulations for each affected grower is estimated at about \$470 (\$33.3 million / 70,500 growers) to \$5,600 (\$33.3 million / 5,900 growers).

In compliance with FAC section 12838, DPR adopted 3 CCR section 6990 through 6990.16 as control measures necessary to protect pollinator health as identified in the "California Neonicotinoid Risk Determination" and "Addendum to the July 2018 California Neonicotinoid Risk Determination." These control measures will affect the pesticide regulatory program activities pertaining to pesticide use and enforcement by regulating certain production agricultural applications of pesticide products containing the nitroguanidine-substituted neonicotinoid active ingredients, clothianidin, dinotefuran, imidacloprid, and thiamethoxam (collectively referred to as neonicotinoids). In summary, these control measures consist of application method and rate restrictions, application timing restrictions, and seasonal application rate caps for the four neonicotinoid active ingredients and are specific based on crop group.

#### PUBLIC HEARING

DPR scheduled and held a virtual public hearing on April 25, 2022. A transcript of the hearing is contained in the rulemaking file.

#### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 60-DAY COMMENT PERIOD

See Attachment #1.

#### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

See Attachment #2.

#### MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulatory action.

County agricultural commissioner (CAC) offices are the local government agencies responsible for enforcing pesticide regulations in California, including any changes to pesticide regulations such as the proposed regulations. DPR establishes an annual work plan with the CACs, which already requires the CACs to conduct pesticide use inspections and investigations and enforce compliance with California worker protection laws and regulations. CACs will continue to enforce regulations according to their work plan and should be able to accommodate for any cost associated with enforcing the proposed regulations, within their existing budgets and resources. Therefore, DPR anticipates that there will be no fiscal impact on these agencies.

#### ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons or businesses than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. In compliance with FAC section 12838, these regulations will protect pollinator health from risks as identified in the “California Neonicotinoid Risk Determination” and “Addendum to the July 2018 California Neonicotinoid Risk Determination.”

#### POSTING REQUIREMENT

3 CCR section 6110, states in part that, “The public report shall be posted on the official bulletin board of the Department for 45 days.” DPR posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>.