

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Adopt Section 6385
Rebuttable Presumption Pertaining to California Pesticide Sales

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) proposes to adopt 3 CCR section 6385. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to product compliance and enforcement. In summary, the proposed action specifies the documentation that a person selling or distributing a pesticide into or within California must provide in order to rebut the presumption that the pesticide products were sold or distributed for use in the state, and therefore exempt from mill assessment.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

A pesticide product must be registered (licensed for sale and use) in California before it can be used, possessed or offered for sale in the state. Pursuant to FAC section 12841, the person who first sells a pesticide product registered by the Director for use in the state must pay mill assessment on the first sale of the pesticide in the state. FAC section 12843 requires mill assessment payments be made quarterly.

DPR's Product Compliance Branch (PCB) is charged with ensuring all pesticide products sold for use in California are registered and properly labeled. They do so with field inspections of pesticide wholesalers and retailers to determine whether products are registered and if labels are identical to registered labels. PCB also audits pesticide registrants, dealers, and brokers throughout the U.S. to ensure that they comply with sales reporting and mill assessment payments and to determine whether their products are registered and if labels are identical to registered labels. When violations of pesticide sales or labeling requirements are found, the branch takes the

lead in directing the investigation, collecting evidence, and documenting findings that will serve to prove the violation.

Not all pesticide products sold or distributed into California are intended for use in California. For example, a pesticide registrant may make a sale to another company, perhaps a nationwide hardware chain store, which maintains a central warehouse in California where all its pesticide product shipments are received. From that central warehouse, the company then reships the product to its retail stores both in California and other states. In this situation, the pesticide products reshipped out of California are exempt from the mill assessment.

FAC section 12841(b) states that there is a rebuttable presumption that pesticide products sold or distributed into or within California by any person are sold or distributed for use in the state. In other words, it is presumed that pesticide products sold or distributed into or within California are for use in the state and, unless the seller can provide documentation that this is incorrect, the seller must pay mill assessment each quarter for all sales. However, it is unclear what kinds of documentation must be made available to DPR in order to rebut the presumption that the pesticide sold or distributed into or within California was for use in the state.

DPR proposes adopting section 6385 identifying the documents that need to be provided to rebut the presumption of FAC section 12841.

Proposed subsection (a) would require the person selling or distributing the pesticide products in the state to provide accounting records of all sales transactions of pesticide products not intended for use in California. Accounting records would provide PCB key sources of information and evidence used to verify and/or audit the pesticides not intended to be sold or used in the state.

Proposed subsection (b) would require a bill of lading or invoice showing that the pesticide product left the state during the quarter for which mill assessment is due. Not only will these documents further validate where outside of California the pesticide products were delivered but when shipment occurred. As previously mentioned, mill assessment is paid quarterly and is based on sales that occurred during each quarter. The assessment is due one month after March 31, June 30, September 30, and December 31 of each year. Because the presumption that pesticide products sold or distributed into or within California by any person are sold or distributed for use in the state, the seller must pay mill assessment for sales made in that quarter unless there is evidence that the pesticide products were shipped out of California during that same quarter in which the sale was made. The bill of lading or invoice will verify the transaction.

Proposed subsection (c) would require the seller to demonstrate that the bill of lading or invoice specified in (b) was in their possession at the time mill assessment is due. When PCB conducts audits, at times the seller may not have in their possession the bill of lading or invoice. In these situations, PCB cannot complete the audit and it can be quite some time before the seller provides the documentation to PCB. By requiring the seller to have the documentation in their possession, PCB will be able to complete audits in a timelier manner.

The adoption of section 6385 will clearly identify to persons selling or distributing pesticides into the state the information that the Department will use as evidence to determine the pesticide is not intended for use in the state, and therefore would not be subject to mill assessment.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(5)]

DPR has not identified any feasible alternatives to the proposed regulatory action that would achieve the purpose of the regulations with less possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

ECONOMIC IMPACT ON BUSINESSES [GOVERNMENT CODE SECTION 11346.2(b)(5)(A)]

The proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation provides the option for registrants and brokers to rebut the presumption that the pesticide products sold or distributed were for use in the state in order to be exempt from paying mill assessment. Costs associated with providing documentation would occur only if the registrant or broker benefits by being exempt from paying mill assessment.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

The intent of the proposed regulation is to clearly identify to persons selling or distributing pesticides into the state the information that the Department will use as evidence to determine the pesticide is not intended for use in the state, and therefore would not be subject to mill assessment. Therefore, DPR has determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs within the State of California. DPR has determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of existing businesses with the State of California. DPR has determined that it is unlikely that the proposed regulatory action will impact the expansion of businesses currently doing business within the State of California.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: DPR does not anticipate any benefits to the health and welfare of California residents, worker safety, or the environment. The proposed regulation clearly identifies the information that DPR will use as evidence to determine whether a pesticide is not intended for use in the state, and therefore would not be subject to mill assessment.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

DPR's review of the proposed action showed that no significant adverse effect to California's environment can reasonably be expected to occur from implementing the proposal. Therefore, no

alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID CONFLICT OR DUPLICATION OF FEDERAL REGULATIONS

The proposed action does not duplicate or conflict with federal regulations because there are no federal regulations contained within the Code of Federal Regulations that address this issue.

DOCUMENTS RELIED UPON

None.