

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Sections 6391, 6393, 6394, and 6396, and Repeal Section 6395  
Pertaining to the Criteria Used for Allocation of the  
Department of Pesticide Regulation's Mill Assessment Funds to Counties

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

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM  
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend Title 3 CCR sections 6391, 6393, 6394, and 6396, and repeal section 6395. The pesticide regulatory program activities that will be affected by the proposal pertain only to the criteria used for allocation of DPR's mill assessment funds to county agricultural commissioners (CACs) for use in their pesticide use enforcement programs.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR is mandated by state and federal law to protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes extensive scientific product evaluation and registration, and statewide licensing and certification of commercial applicators, dealers, and advisers. The field enforcement of regulations governing pesticide use is carried out by the CACs under the supervision of DPR.

The funding for the local pesticide field enforcement activities comes from four sources—mill assessment, locally generated fees and penalties, county general fund (GF), and unclaimed gas tax. The allocation of funds needed to administer local pesticide programs is largely contingent upon the budget decisions of each individual county.

Over the past two years, the availability of county GF has resulted in reductions in some pesticide use enforcement programs. The reduction of county GF has exposed serious flaws in how pesticide use enforcement is funded. The reliance on county GF for approximately one-third of the pesticide use enforcement program poses a serious problem in and of itself, but there is also a more fundamental structural problem that exists. The disbursement of the mill assessment and unclaimed gas tax specifically depend upon the expenditure of county funds, i.e., county GF. Mill assessment and gas tax funds are disbursed to the counties in proportion to each county's expenditures. The unavailability of county GF can result in an erosion of pesticide use enforcement funding. The state is left with little ability to influence the

outcome of the local pesticide enforcement programs. The net result is that the state has no control over the pesticide use enforcement resources available in any particular county. This creates a situation in which the areas of the state that may need the greater enforcement resources sometimes fail to receive them, while other areas may receive more than the average. The pesticide regulatory program funding is thereby disjointed and disconnected from DPR and the county prioritization process, resulting in a lack of uniformity and stability in program delivery and confusion within the regulated community. DPR believes that the availability of county GF should not dictate the distribution of resources for pesticide use enforcement.

Under statute and regulation, DPR distributes mill assessment to the counties as partial reimbursement for their cost of carrying out the pesticide enforcement program. Mill assessment is a fee levied on the sale of pesticides sold for use in California. All pesticides offered for sale or use in California must first be registered by DPR. Persons who sell DPR-registered pesticide products in California are assessed a mill (\$0.001) fee based on dollar sales of the products sold within or into the state. DPR receives 71 percent of its funding from this mill assessment. Each county within the state receives a portion of these funds for local enforcement of pesticide laws by the CACs.

Existing law requires DPR to reimburse counties for costs incurred in the administration and enforcement of Division 6 (commencing with section 11401) and Division 7, Chapter 2 (including section 12979, as enacted by Chapter 1200, Statutes of 1989), Chapter 3 (commencing with section 14001), Chapter 3.4 (commencing with section 14090), Chapter 3.5 (commencing with section 14101), and Chapter 7 (commencing with section 15201) of the Food and Agricultural Code (FAC) from the revenue collected from mill assessment. The amount subvented to the counties equals the revenue derived from 7.6 mills of the total mill assessment revenue collected by DPR.

FAC section 12844 requires the Director and the CACs to jointly develop regulations specifying the criteria to be used in allocating the mill assessment funds to the counties based upon four factors--each county's pest control activities, costs, workload, and performance. During 2004, DPR met a number of times with representatives of the California Agricultural Commissioners and Sealers' Association's Pesticide Regulatory Affairs Committee to discuss regulatory improvements relative to how the mill funds are disbursed to the counties and the performance evaluation of each county's pesticide use enforcement program. Minutes from these meetings are contained within the "Documents Relied Upon" section of this initial statement of reasons.

The proposed regulations are a culmination of these meetings. DPR proposes to amend sections 6391, 6393, 6394, and 6396, and repeal section 6395. A discussion of each section of the proposed text is found below.

Currently, section 6191 (County Reimbursement) references subsection 6393(b). The reference to this subsection is being deleted since proposed revisions to section 6393 will make reference to subsection (b) incorrect.

Section 6393 (Criteria Items and Apportionment) currently consists of subsections (a) and (b). DPR calculates each county's portion of the mill assessment funds based on its reported pest control activities, costs, and workload "criteria items" listed in section 6393. Existing subsection (a) requires that allocation to each county for each criteria item listed in subsection (b) shall be based on each county's costs or workload in proportion to the costs or workload of all counties. Existing subsection (b) states that the apportionment for each criteria item shall be a percentage of the total mill assessment funds available for reimbursement to counties. Subsection (b) lists the apportionment percentage for each of 11 criteria items.

Proposed amendments to section 6393 would replace existing subsections (a) and (b) with a new subsection (a) that simplifies and prioritizes the order for the allocation of the total mill assessment funds available for disbursement. This creates a new funding baseline for counties built on historical workload, pest control activities, costs, and performance. First, proposed subsection (a)(1) would allocate \$2,790,585 (based on historical amount) in the same proportion as disbursed in the 2003-04 fiscal year for the regulation of restricted materials. Second, proposed subsection (a)(2) would allocate the total mill assessment funds available for disbursement based on dollar amounts equaling the greater of either the average of the amounts disbursed on April 1 of 2002, 2003, and 2004, or the amount disbursed to the counties on April 1, 2004. The April 1 date is used because it is specified in existing section 6391 as the date by which reimbursement is made. Third, proposed subsection (a)(3) would provide a provision to allocate additional funds to a county if the amount they received in (a)(1) and (2) was less than \$27,600, unless the level of funding prevents this or the county did not expend this amount. The new disbursement formula maintains the workload base required by FAC section 12844, but rather than continue to react to annual trends, relies on a three-year average that is in itself based on a 20-year history of workload. This new disbursement formula is less resource intensive for DPR and allows for more precise budgeting by the counties.

Proposed subsection (a)(4)(A), (B), and (C) would disburse any mill assessment funds remaining after the allocation specified in subsection (a)(1), (2), and (3) based on the following criteria and apportionment:

- Fifty percent would be based on a county's pesticide use report data records in relation to the total number of these records submitted to DPR by all counties.
- Twenty-five percent would be based on the total pounds of nonagricultural labeled pesticides sold in California in relation to each county's population.
- Twenty-five percent would be based on CAC requests to support restricted materials permitting and reporting system activities not to exceed \$100,000, and any other program element that DPR and the CACs jointly agree upon.

Proposed subsection (b) would specify that if the current total mill assessment funds available for disbursement to the counties are less than the amount of funds made available to the counties on April 1, 2004, the allocated amounts to each county shall be reduced proportionately.

Proposed subsection (c) states that the provisions of section 6393 shall be used to reimburse counties beginning on April 1, 2006, for the work in the 2004-05 fiscal year.

Existing section 6394 (Effectiveness Evaluation) would be renamed "Performance Evaluation" in order to more accurately emphasize that a county's performance is the basis to be used in the evaluation of its pesticide use enforcement program.

Currently, DPR staff evaluate each county's pesticide use enforcement program annually using the essential program element guidelines recognized by the Director. "Essential program element guidelines," as mentioned in section 6394, refer to a written document developed by DPR and the CACs. This internal document provides procedures to DPR staff on conducting county evaluations, including the detection of noncompliance items and corrective actions initiated by a CAC.

Proposed amendments to subsection (a) specify that the evaluations will be prepared regularly instead of annually, and that the evaluations shall be in accordance with state program areas recognized by DPR in statute or regulation, or agreed upon by the county and/or DPR. The term "essential program element guidelines" would be removed. The proposed change from annually to regularly reporting is consistent with DPR's ongoing evaluation methodology. Currently, the county is evaluated on a fiscal year cycle from July through June of the following year. Because a great deal of pest control work is done in the months of May and June the evaluation of regulatory activities during this period is critical to an overall report. Often, the county may not receive the evaluation results until mid August or September. The time available to develop and implement corrective actions is not adequate to assess their impact and make necessary revisions.

The proposed change to regularly evaluate the county would allow implementation of jointly developed corrective actions or programmatic changes to be operational long enough to demonstrate whether or not the changes are effective. Generally speaking, most county programs do not change dramatically from one year to another. Ongoing program evaluation eliminates redundant reports of program areas that are effective and meet the State program mandates.

Proposed amendments to subsection (b) emphasize that the report provided by DPR to the CAC is a performance evaluation report that documents the performance in implementing the state program areas recognized by DPR. Existing text in subsection (b) discusses conflicts and corrective actions resulting from reports identifying deficient program areas. This text would be deleted, with corrective actions addressed in proposed subsection (c).

Proposed subsection (c) states that if the performance evaluation report identifies the need for improvements in a CAC's pesticide use enforcement program, any corrective actions shall be jointly developed and documented by both DPR and the CAC.

Existing subsection (c) would become subsection (d). Proposed amendments to this subsection clarify the language used and would add a phrase stating that DPR shall take measures to improve a CAC's program if an agreement on corrective actions cannot be reached. Currently, language in this subsection states that a corrective measure may include a reduction not exceeding 25 percent of the county's annual mill assessment allocation. DPR proposes to eliminate this 25 percent cap.

The proposed regulatory action would repeal existing section 6395 (Minimum Reimbursement). This section mentions benchmark dates of June 30, 1979, and March 1, 1980, and is obsolete. Proposed amendments to section 6393 would cover any concerns pertaining to minimum reimbursements.

Existing section 6396 (Residual Funds) references sections proposed to be amended or repealed. DPR proposes to revise this section so that upon adoption of amendments to sections 6391, 6393, and 6394, and repeal of section 6395, the correct subsections will be referenced.

DPR proposes to divide section 6396 into subsections (a) and (b). Editorial corrections are proposed in subsection (a) to reference correct subsections. Proposed subsection (b) would specify the distribution of any residual funds resulting from application of corrective actions taken against a CAC pursuant to proposed subsection 6394(d).

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION (GOVERNMENT CODE SECTION 11346.2(b))

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

As discussed in the Notice of Proposed Regulatory Action, published in the *California Regulatory Notice Register*, DPR has determined that the adoption of this regulation will not have a significant cost impact on private persons or businesses.

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

DPR can identify no adverse environmental effects from the proposed amendment.

#### EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with the Code of Federal Regulations.

#### DOCUMENTS RELIED UPON

1. Minutes of the California Agricultural Commissioners and Sealers Association's Pesticide Regulatory Affairs Committee: June 22, 2004; July 8, 2004; July 16, 2004; July 23, 2004; August 3, 2004.