

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Adopt Section 6128 and Amend Section 6130  
Pertaining to Enforcement Response

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 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 adopt 3 CCR section 6128 and amend section 6130. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide enforcement. In summary, the proposed action would specify appropriate enforcement responses to be taken by the county agricultural commissioner (CAC) each time a violation(s) occurs.

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. CACs have joint authority with DPR in enforcing pesticide laws and regulations. Field enforcement on a local level is carried out by the CACs, under the supervision of DPR. The goal of the enforcement programs is to protect public health, property, pesticide handlers and fieldworkers, and environment of the State of California.

Consistent statewide enforcement of California's environmental laws is paramount for the protection of California's people, property, and the environment. However, local program administration naturally can result in variable enforcement decisions and responses. After finding inconsistent enforcement of environmental protection laws and regulations by CACs, DPR and the California Agricultural Commissioners and Sealers Association worked together to develop and adopt as guidelines a 2005 Enforcement Response Policy (ERP). ERP is intended to strengthen environmental enforcement and improve statewide consistency of enforcement responses used by CACs when acting upon pesticide violations. By creating a violation classification system and enforcement response procedure, CACs throughout California are able to follow the same guidelines.

During the 2005 legislative session, Senator Martha Escutia recognized the need for a consistent and timely strategy for enforcement of pesticide laws and amended Senate

Bill (SB) 455 that, in part, required DPR to adopt ERP into regulations. On October 7, 2005, Governor Schwarzenegger vetoed SB 455. However, in the Governor's veto message, DPR was directed to initiate the process of putting the 2005 ERP into regulation in an expedited manner. Therefore, DPR is proposing to adopt specific provisions for CACs to comply with when determining the appropriate enforcement response when a violation occurs.

Proposed section 6128 would specify the appropriate enforcement responses that CACs shall take for specific classes of violations in specific situations. The proposed enforcement responses are consistent with the guidelines established in the 2005 ERP. Proposed subsection (a) requires CACs to comply with this section.

Proposed subsection (b) contains definitions for "compliance action," "decision report," and "enforcement action." These definitions are needed to clarify the regulatory action in this proposed section.

Regulatory actions are most effective when a regulator uses enforcement tools that are likely to result in a positive change in behavior. Severity and frequency of violations are key factors in determining which enforcement response a regulator will use. Progressive enforcement responses use an assortment of tools, varying in degree, from a compliance action to an administrative, civil, or criminal action. Proposed subsection (c) sets up an enforcement response structure designed to be used based on the type of violation "class" specified in section 6130. Section 6130 identifies three types of class violations--A, B, and C. These classes are based upon the seriousness and potential harm to public health, worker safety, and the environment. CACs would respond to each violation with an enforcement response appropriate to that violation class.

An enforcement response for a Class A violation would either be:

- a formal referral to the District Attorney, City Attorney, or Circuit Prosecutor, or referral to the Director for a statewide licensing action or Attorney General action; or
- an enforcement action.

An enforcement response for a Class B violation would either be:

- a formal referral to the District Attorney, City Attorney, or Circuit Prosecutor, or referral to the Director for a statewide licensing action or Attorney General action; or
- an enforcement action; or
- a compliance action with a decision report, provided there has not been a compliance action for a violation in the same class within two years of the current alleged violation. In some instances, a compliance action may be taken in addition to the enforcement response in section 6128(c)(2)(A) or (B), in which case a decision report is not required.

An enforcement response for a Class C violation would either be:

- an enforcement action; or
- a compliance action with a decision report when there has been a compliance action for a violation in the same class within two years of the current alleged violation; or
- a compliance action without a decision report, provided there has not been a compliance action for a violation in the same class within two years of the current alleged violation.

It is believed that in some situations where a Class B or Class C violation has occurred, compliance can be met without the necessity of taking an enforcement action. The proposed enforcement responses for these classes allow a CAC to determine, in specified situations, if a compliance action is more appropriate. However, in some cases when a compliance action is determined to be the appropriate response, the CAC must submit a decision report to the Director for concurrence. The decision report allows DPR to monitor and ensure that like violations are being treated the same in each county, and consistent statewide enforcement is taking place.

Proposed subsection (d) specifies the information required to be submitted to the Director when a decision report is required. The decision report must be submitted within 30 days of the date of the compliance action for concurrence. If concurrence is not obtained from the Director, an enforcement action must be taken. Additionally, CACs shall retain a copy of the decision report for two years.

Proposed subsection (e) requires CACs to provide the opportunity to the District Attorney, City Attorney, or Circuit Prosecutor to participate in a priority investigation, as defined in the 2005 Cooperative Agreement or subsequent modifications to that agreement between DPR, the California Agricultural Commissioners and Sealers Association, and the U.S. Environmental Protection Agency, Region IX, and/or pursue a civil or criminal action if other than a compliance action is being contemplated. This will allow the District Attorney, City Attorney, or Circuit Prosecutor an opportunity to take part early on in an investigation.

Additionally, DPR proposes to amend section 6130 to clarify what determines a "repeat" violation. Proposed subsection (a)(2) improves the clarity of a "repeat" violation by simply stating that if a violation occurs within two years of a violation for which a civil penalty was levied in the same county and of the same class, it shall be classified as a "repeat" violation.

Proposed subsection 6130(a)(1) makes a reference change from "section" to "article."

#### CONSULTATION WITH OTHER AGENCIES

As required by FAC section 12981, DPR consulted with the Office of Environmental Health Hazard Assessment during the development of the text of proposed regulations, and they concurred with the development of the regulations. DPR has also consulted with the Department of Industrial Relations and the University of California at Davis.

DPR consulted with the California Department of Food and Agriculture during the development of the text of proposed regulations, as specified in FAC section 11454, and the February 6, 1992, Memorandum of Agreement that was developed per section 11454.2.

Additionally, DPR consulted the CACs during the development of the proposed regulations. ERP, upon which the proposed regulations are based, was approved by the California Agricultural Commissioners and Sealers Association on August 18, 2005.

The rulemaking file contains copies of correspondence with these agencies.

## ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

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

On August 24, 2005, a coalition of 17 major agricultural associations asked DPR to adopt its new ERP into formal regulations that carry the weight of law.

## EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

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

## DOCUMENTS RELIED UPON

1. Enforcement Response Policy, Department of Pesticide Regulation and County Agricultural Commissioners, August 2005.
2. Enforcement Letter 2005-025, Enforcement Response Policy.
3. Cooperative Agreement Between the U.S. Environmental Protection Agency, Region IX, the California Department of Pesticide Regulation, and the California Agricultural Commissioners and Sealers Association, April 2005.