

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6650, 6651, 6652, 6654, 6655, and 6656 and
Renumber to Sections 6980, 6981, 6982, 6983, 6984, and 6985
Pertaining to Protection of Bees

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 amend 3 CCR sections 6650, 6651, 6652, 6654, 6655 and 6656, and renumber to sections 6980, 6981, 6982, 6983, 6984, and 6985; and make section 6985 inoperative. The pesticide regulatory program activities that will be affected by this proposal are those pertaining to the protection of bees. The proposed action will update notification procedures for apiary operators who wish to receive advance notification of pesticide applications and for pesticide applicators who intend to apply pesticides labeled toxic to bees. The proposed action will also make the notification service and fees in the counties of Butte, Glenn, and Tehama inoperative. Additionally, this proposed action updates requirements during the citrus bloom period within a citrus/bee protection area.

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 oversight includes product evaluation and registration; statewide licensing of commercial and private 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. DPR is charged by FAC section 11501 to protect public health and safety while providing for the proper, safe, and efficient use of pesticides for the production of food and fiber, and to protect the environment from harmful pesticides by regulating and ensuring proper stewardship of those pesticides.

Background

Bees and pesticides both have essential roles in the success of California agriculture. Over 90 crops grown in the United States require bees for successful pollination of edible crops, including almonds and other tree nuts, stone fruits, most berries, pome fruits, and cucurbit species, or crops grown for seed such as carrots, onions, and Brassica vegetables. Certain

pesticides, applied when bees are actively foraging for nectar from blossoms on or near a treated crop, are toxic to bees. To protect bees from pesticide exposure, DPR adopted regulations in the late 1970's (Office of Administrative Law (OAL) File Number (No.) 78-0316-00) and last updated them in 2002 (OAL File No. 01-1109-03). These regulations require beekeepers to request notice of pesticide applications through the County Agricultural Commissioner's (CAC's) office and require pesticide applicators to notify beekeepers who are registered with the CAC of pesticide applications. The regulations also focus on areas designated as citrus/bee protection areas. These are areas within one mile of any citrus planting of one acre or more within the counties of Kern, Fresno, and Tulare where specific notification requirements and pesticide application limitations and exemptions have been established.

California's large and diverse agricultural production requires the work of pollinators, so protecting pollinators from pesticide exposure is an important responsibility for DPR and pesticide applicators. The U.S. Environmental Protection Agency (U.S. EPA) has supported multi-faceted efforts to protect pollinators, including a systematic identification of pesticide active ingredients toxic to bees. Since 2013, U.S. EPA has required augmented pollinator protection label language for pesticide products that contain active ingredients toxic to bees. Pesticides, including their product labeling, must be approved and registered by U.S. EPA before they are registered in California. All labels must bear a misuse statement (40 Code of Federal Regulations section 156.10(i)(2)(ii)), which explains that the label is the law. In addition, FAC section 12973 states in part that the use of any pesticide shall not conflict with the registered labeling. Further, in 2017, U.S. EPA released their *Policy To Mitigate The Acute Risk To Bees From Pesticide Products*, which includes U.S. EPA's recommended pesticide label restrictions to protect managed bees and encourages state efforts in reducing pesticide exposure to bees.

Many changes have occurred since these regulations were last amended in 2002. The technology farmers, apiary operators, pesticide applicators, and regulatory officials use to access, collect, exchange, and store information has changed significantly since the last revisions to the bee protection regulations in 2002. Additionally, sections within FAC Division 13 were revised when Assembly Bill (AB) 2468 (Chapter 320, Statutes of 2018) changed the term "beekeepers" to "apiary operator(s), or their designated representative." AB 2468 also revised FAC section 29070 to require apiary operators to notify the destination CAC of bees first coming into that county or leaving it within 72 hours of the movement. Recently, AB 450 (Chapter 300, Statutes of 2019) revised FAC section 29070.5 to state that the apiary operator must also notify the CAC within 72 hours when bees are being relocated within that same county. Furthermore, there are now Web sites, such as BeeWhere, that allow beekeepers and pesticide applicators electronic options to comply with Division 13 and its associated regulations. Technological advancements have resulted in a web-based mapping system called BeeWhere that will allow pesticide applicators to electronically self-check potential application sites, and receive apiary operator contact information and ability for contact, so they can notify the apiary operator of the application. This BeeWhere software program was implemented in 2019 and supports many services including the 48-hour notification to apiary operators for pesticide applications involving pesticides labeled as toxic to bees when applied to a blossoming plant or to sites in bloom (3 CCR section 6654).

Additionally, new quarantine pests as declared by the California Department of Food and Agriculture (CDFA), and ongoing crop pest challenges can each have major effects on the success of California food and fiber production. CDFA-declared quarantine pests are those pests for which CDFA has declared a quarantine or pest eradication area and must be swiftly controlled to reduce economic damage to an existing crop and to prevent spread to other crops in the state. Failure to treat quarantine pests with a CDFA approved treatment in a timely manner, when required, can result in the grower being unable to pack, ship, and/or sell in California, or to export the crop outside of California. Other common pests, if left untreated, can build up to levels that cause significant damage at certain growth stages of the crop, and result in loss of the commodity's quality and value. These treatments help control quarantine pests so marketable goods can be grown and are intended to reduce subsequent infestations to lessen the need for more treatments in the future.

California's bee protection regulations related to pesticides are in existing 3 CCR sections 6650 through 6656. Portions of these sections require revision for all of the various reasons stated above. In summary, the proposed regulatory amendments are necessary to improve organization, eliminate duplicative terms, accommodate CDFA quarantine pest treatments, reflect federal labeling changes, conform with U.S. EPA's pollinator protection policy and amended FAC statutes, and add flexibility for timely notification of beekeepers using the modern tools of communication and information technology.

Proposed Amendments

- Article 3. Protection of Bees

DPR proposes to repeal the article heading, Article 3. Protection of Bees. This article is no longer needed as the proposed renumbering of sections 6650 through 6656, all currently located in Article 3, will result in the sections being located in new article. This change has no regulatory effect.

- Chapter 4. Environmental Protection

DPR proposes to adopt the subchapter heading, Subchapter 6. Pollinator Protection, under Chapter 4. Environmental Protection. Additionally, under proposed Subchapter 6, DPR proposes to adopt the article heading, Article 1. Protection of Bees. These proposed headings coupled with the proposed renumbering of sections 6650 through 6656 will improve the organization of regulations pertaining to the protection of bees by more appropriately locating them under Chapter 4. Environmental Protection. These changes have no regulatory effect.

- Section 6650 (Renumbered to 6980) - Pesticides Toxic to Bees

DPR proposes to renumber this section to 6980 and delete the phrase, "highly or moderately," in subsection (a). Any pesticide with the words, "toxic to bees," on the label falls under the provisions of the existing regulation, so it is unnecessary to give examples of modifying words.

For consistency with other regulations in 3 CCR, DPR proposes to refer to “labeling” as “product labeling.” DPR also proposes to simplify the text through rewording. This rewording does not change the meaning of the text and therefore has no regulatory effect.

DPR also proposes to amend subsection (b) by reducing the temperature to below 50 degrees Fahrenheit to align with U.S. EPA’s pollinator protection policy. In U.S. EPA’s January 2017 *Policy To Mitigate The Acute Risk To Bees From Pesticide Products*, U.S. EPA states that “comments from beekeepers...indicated a 55 degrees Fahrenheit cut-off may be too high as bees will forage at or around this temperature. Therefore, to increase protection for pollinators, but to continue to provide flexibility to growers, the U.S. EPA will continue to use a temperature threshold but will lower it to 50 degrees F [for indeterminate blooming crops].” Additionally, in the 1981 publication, *The Response of Honey Bees to Variations in Solar Radiation and Temperature*, researchers advise the application of pesticides toxic to bees only in the late evening, night, or early morning while bees are not actively foraging, or while it is below a specified temperature. These researchers discovered that “...bees would not fly if temperatures did not exceed 9 degrees Centigrade (approximately 48.2 degrees Fahrenheit) regardless of light intensity.” DPR also proposes to add the option for sunset and sunrise times to be determined from the local news Web site to allow for modern technology’s ability to access weather information.

In subsection (c), DPR proposes to delete a definition that is included in federal pesticide labeling. As mentioned in existing subsection (c), Residual Toxicity (RT) time is already specified on pesticide product labeling, so this definition is no longer necessary.

- Section 6651 (Renumbered to 6981) - Vector Control Exemption

DPR proposes to renumber this section to 6981.

- Section 6652 (Renumbered to 6982) - Availability for Notification

DPR proposes to renumber this section to 6982, and revise the section title to clarify the purpose of this section by renaming it “Apiary Operator Request for Notification.” The proposed section revisions now more accurately address the current industry practice of the request for notification of these applications instead of availability and reflects current statutory terminology.

Additionally, DPR proposes to amend subsection (a) to change the term “beekeeper” to “apiary operator, or their designated representative,” in keeping with AB 2468 changes, and add in the clarifying phrase “toxic to bees.” The deletion of the designation of a two-hour period each day for the apiary operator to receive the pesticide application information and the requirement of “...at the beekeeper’s expense...” is also proposed. When this provision was originally adopted (OAL File No. 78-0316-00), communication was limited and beekeepers had to be physically present to receive notification through landline telephone calls (such as collect calls at their expense) or fax machine messages. These proposed revisions will give apiary operators more options for receiving notifications. With these added electronic communication options, apiary operators can receive more timely pesticide application information from applicators without the

restrictions that the current two-hour daily designation imposes. Without the restrictions of the two-hour period, apiary operators can now receive notification any time of day. Additionally, to be consistent with FAC section 29101, DPR also proposes to amend this section by specifying that each apiary operator, or their designated representative, that wishes to receive notification shall inform the CAC at the time the apiaries are registered pursuant to FAC section 29040 in that county.

DPR proposes to delete subsection (b). The purpose of subsection (b) was to clarify that the provisions in existing section 6656 (renumbered to 6984) would apply when the provisions in existing section 6652 were in conflict during the specified time period (March 15 through May 15). This specified time period was added as part of OAL File No. 89-1201-04 with the intent of adding the time period (March 15 through May 31) specified in section 6656, which describes a citrus/bee protection area. This subsection is no longer necessary and this change addresses the date discrepancy as this time period is proposed to be included in the revisions to existing section 6656 (renumbered to 6984).

- Section 6654 (Renumbered to 6983) - Notification to Beekeepers

DPR proposes to renumber this section to 6983. In the section title, and throughout this section, DPR proposes to change each reference of “beekeeper” to “apiary operator [or their designated representative]” in keeping with the AB 2468 changes. DPR also proposes to add the word “labeled” in subsection (a) for uniformity of interpretation with existing subsection 6650(a) (renumbered to 6890(a)), and change “notice” to “notification” of applications.

In subsection (b), DPR proposes to reformat the list of notification requirements, change the term “advised” to “made aware,” and change “identity” to “active ingredient(s)” for clarity and readability. The term “advised” implies there is advice given about what to do; the intent of this notification provision is to make the apiary operator “aware” of the information related to the application of a pesticide toxic to bees, so the apiary operator can protect their bees. The term “identity” is being changed to the more accurate term “active ingredient(s)” because the pesticide is identified by its ingredients. Furthermore, DPR proposes to add the phrase “advance notification” to clarify the meaning of the reference to “time” in that sentence, since there is more than one reference to “time” in the subsection.

DPR also proposes to delete subsection (c). The purpose of subsection (c) was to clarify that the provisions in existing section 6656 (renumbered to 6984) would apply when the provisions in existing subsection 6654(c) were in conflict during the specified time period (March 15 through May 15). This specified time period was added as part of OAL File No. 89-1201-04 with the intent of adding the time period (March 15 through May 31) specified in existing section 6656 (renumbered to 6984), which describes a citrus/bee protection area. This subsection is no longer necessary and this change addresses the date discrepancy as this time period is proposed to be included in the revisions to existing section 6656 (renumbered to 6984).

- Section 6655 (Renumber to section 6985) - Notification Region for Butte, Glenn and Tehama Counties

DPR proposes to renumber section 6655 to section 6985, and make the section inoperative when this regulation goes into effect. Technological advancements have resulted in a web-based mapping system called BeeWhere that will allow pesticide applicators to electronically self-check potential application sites, and receive apiary operator contact information and ability for contact, so they can notify the apiary operator of the application. This BeeWhere software program was implemented in 2019 and supports the same service levels currently provided by this section, also known as the Tri-Counties Bee Notification service, specifically the 48-hour notification to apiary operators for pesticide applications involving pesticides labeled as toxic to bees when applied to a blossoming plant or to sites in bloom. Therefore, this section is no longer needed and has been requested to be suspended by the Glenn, Tehama, and Butte CACs who administer this service. This section is being made inoperative rather than being fully repealed, so the existing text can be left in for informational purposes and to help facilitate the transition to the new BeeWhere system.

DPR also proposes to change the reference to section 6654 to 6983 to reflect the renumbering of that section.

- Section 6656 (Renumbered to 6984) - Citrus/Bee Protection Area

DPR proposes to renumber existing section 6656 to section 6984, and revise the definition in subsection (a) by clarifying that the provisions within this section apply to a citrus/bee protection area during the March 15 through May 31 time period. These proposed changes were added so the term, "citrus/bee protection area," and the March 15 through May 31 time period do not need to be repeated throughout the section since they apply to all existing subsections of 6656 (renumbered to 6984) in the three-county area.

Additionally, DPR proposes to remove the repetitive term, "citrus/bee protection area," in subsections (d), (e), (g), (h), and (i) of this section since the term is included in the revisions to subsection (a). DPR proposes to add the phrase "of products labeled toxic to bees" in subsections (c) and (e) for consistency with other subsections in the article.

The phrase "and label interpretation" in subsection (b) is proposed to be removed for clarity as it is no longer necessary. The bloom period designation in the citrus growing district is solely a local declaration by the CAC each year and does not help interpret pesticide product labels.

Specific references to subsections 6654(a), (b), and (c) (renumbered to 6983) are proposed to be removed from existing subsection 6656(c) (renumbered to 6984(c)) because subsection 6654(c) has been deleted. As a result, subsections (a) and (b) are the only remaining subsections within section 6654 (renumbered to 6983), so it is cleaner to reference the entire section than to specify the only two subsections within that section.

DPR also proposes to remove the repetitive phrase, "from March 15 through May 31," in subsection (d) since the time frame is included in the revisions to subsection (a), which applies to the entire existing section 6656 (renumbered to 6984). Additionally, DPR proposes to amend

subsection (d) to add the requirement that the apiary owner or operator who moves bees within a citrus/bee protection area to another location (including into and out of that county) shall update the apiary locations' notice filed with the commissioner within 72 hours in accordance with recent revisions to FAC sections 29070 and 29070.5. Adding this requirement will assist the commissioners in the counties of Fresno, Kern, and Tulare in maintaining up to date records, so that all registered apiary operators in a citrus/bee protection area are notified of pesticide applications in those areas. Pesticide applicators are required by existing 3 CCR section 6654 (renumbered to 6983) to notify beekeepers at least 48 hours in advance of the proposed application, so this will also ensure enough time is given.

DPR proposes to delete the subsection (e) requirement that includes the archaic designation of a beekeeper's hours of availability to be contacted and the constraints for the communication to be "at the beekeeper's expense." At the time of the last revision in 2002, a beekeeper normally had to be physically present to receive landline telephone calls (and was charged for "collect" calls) or retrieve fax machine messages. This proposed revision will give apiary operators more options for receiving notifications, and allow for more timely pesticide application information from applicators without the restrictions imposed by the current hours of availability. Apiary operators can now receive notification any time of day. Additionally, to be consistent with FAC section 29101, DPR also proposes to amend this section by specifying that each apiary operator, or their designated representative, that desires advance notifications shall inform the CACs as specified in proposed section 6982.

In subsection (f), DPR proposes adding the phrase "as defined in section 6980(a)" for statewide interpretation consistency.

Subsection (g) currently states that certain pesticide applications may be made during the citrus bloom period when bees are inactive without notification to beekeepers. DPR proposes to add the phrase "as defined in section 6980(b)," to clarify when bees are considered inactive for citrus/bee protection area pesticide applications and to ensure statewide consistency.

DPR proposes to add another exemption in subsection (g). The proposed exemption in new subsection (g)(1) will be for any pesticide that does not include the words "toxic to bees" on the product labeling. This subsection change is being made to accommodate and align with federal pollinator protection labeling changes for various pesticides. It also is consistent with subsection (f), which impliedly authorizes applications of pesticides that are not labeled as toxic to bees without notification.

DPR also proposes to delete references to the specific pesticides, methomyl, formetanate, and chlorpyrifos, which are currently listed as pesticides that may be applied within a citrus/bee protection area when bees are inactive during the citrus bloom period without prior notification. Since the last revision in 2002, bee protection restrictions, such as "apply only when bees are not active/actively visiting" and a Residual Toxicity period, have been added to the federal labeling for registered products containing one of these pesticides with longer residual toxicity periods that allow foliar applications during bloom. The specific exceptions for methomyl, formetanate, and chlorpyrifos are no longer necessary. As of December 31, 2020, chlorpyrifos will no longer

be registered in California for any use that could result in exposure to bees. Any California registered product labels for methomyl and formetanate are covered under proposed section 6984(g)(2) general exemption.

Additionally, DPR proposes to add subsection (g)(3) to allow applications of products toxic to bees without prior notification if the labeling allows applications when bees are inactive. This provision is necessary to allow for applications without prior notification when bees will not be affected, thus eliminating an unnecessary step for those applicators.

DPR also proposes to reword subsection (h) for clarity due to proposed changes previously discussed in subsection (g), including deleting the redundant phrase “citrus/bee protection area,” eliminating the phrase “...applications of pesticides that are not toxic to bees” because it is no longer needed with the revision to (g)(1), and changing the term “listed” to “allowed,” since no specific pesticide names will be listed in (g).

Currently subsection (i) prohibits applications of carbaryl and azinphos-methyl to citrus in a citrus/bee protection area from citrus bloom until complete petal fall. DPR proposes to delete the pesticide product trade name “Sevin,” because the name was included as an example of a pesticide product containing the active ingredient carbaryl. Removing the name has no regulatory effect as the name was only included as an example of a product and the carbaryl restriction still applies in a citrus/bee protection area to all carbaryl products registered for use on citrus and labeled “toxic to bees.” DPR also proposes to remove azinphos-methyl from subsection (i) because it is no longer registered for use in California. As aforementioned, a pesticide product must be registered with U.S. EPA before it can be registered in California. From 2006-2012, U.S. EPA phased out the remaining federally registered crop uses for azinphos-methyl, which resulted in voluntary cancellations of registered azinphos-methyl products by pesticide registrants. Consequently, the remaining azinphos-methyl products registered with DPR were also phased out by 2012.

DPR proposes to add an exemption for pesticides applied to control a CDFA declared quarantine pest in subsection (i)(2). Timely control of declared quarantine pests is urgent and necessary to avoid the potential for a serious economic impact for that crop. Quarantine pests discovered close to harvest time that are not promptly treated could prohibit the grower from being able to export that crop outside that area of California; other quarantine pests can vector plant diseases that could severely and/or permanently damage the crop. DPR also proposes to update the name “University of California, Agricultural Extension” to reflect its current name, “University of California Cooperative Extension.” DPR also proposes that the recommendation state that the citrus planting does not meet the citrus bloom period criteria “and” why alternatives less hazardous to bees would not be effective, rather than “either”/”or.” Both pieces of information are necessary to be more protective and reduce exposure to bees as it will ensure that bees are less likely to be present and that less hazardous alternatives have been considered

Lastly, DPR proposes to change references to sections 6654 and 6656, to 6983 and 6984, respectively, to reflect the renumbering of those sections.

CONSULTATION WITH OTHER AGENCIES

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 Memorandum of Understanding updated on January 15, 2019, that was developed per FAC section 11454.2.

DPR has also consulted with several county agricultural commissioners.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(4)]

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. The proposed regulations allow for use of modern technology, and align regulations with federal policy, federal pesticide product labeling, and state laws.

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

The proposed regulations will not have a significant economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states. DPR is proposing amendments to California bee protection regulations to include additional options for the required communications between pesticide handler and beekeepers. The proposed regulatory requirements will also keep California honey bee protection regulations in alignment with the revised federal pesticide product labeling restrictions and state laws to protect pollinators.

Businesses in the counties of Kern, Fresno, or Tulare who use pesticides labeled as toxic to bees when the temperature is between 50 and 55 degrees Fahrenheit during citrus bloom may be impacted if they choose to continue making pesticide applications during that time period. Applications of pesticides labeled toxic to bees made during this time period will now require notification to beekeepers and a Notice of Intent to the CAC. It is expected that some businesses will move their applications to a different time of day to avoid notification. The impacts will affect growers in the counties of Kern, Fresno, and Tulare who continue making applications of pesticides labeled as toxic to bees when the temperature is between 50 and 55 degrees Fahrenheit during citrus bloom. The initial costs to growers is estimated to be \$49.60-\$495.50, with recurrent annual cost impacts of \$49.60-\$495.50 in subsequent years.

The document relied upon to make this determination is the “Economic analysis of proposed changes to regulations regarding bees.” This document is listed in the “Documents Relied Upon” section of this initial statement of reasons and is available from DPR.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs, Creation of New Businesses or the Elimination of Existing Businesses, and the Expansion of Businesses Currently Doing Business within the State of California: DPR has determined that the proposed action would not create or eliminate jobs in California; create new businesses or eliminate existing businesses within California; or result in the expansion of businesses within California because the proposed action is designed to align with federal pesticide product labeling, state laws, and current communication methods and practices required for pesticide handlers and apiary operators.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulatory requirements will bring California Bee protection regulations into alignment with the 2013-2018 revised pollinator protection related federal pesticide labeling. It will also provide a clearer description of compliance options, required communication between the beekeepers, county agricultural commissioners, and pesticide applicators, and how to reduce risks associated with honey bee exposure to toxic pesticides by pesticide applicators. These regulations will have long term benefits to commercially managed bees as apiary operators will be able to receive timely notification of pesticide applications toxic to bees, allowing them to be able to protect their hives. It will also provide a secondary benefit to wild bees in the environment who are also susceptible to exposure effects of pesticides labeled toxic to bees and active during similar temperature ranges and time of day as commercially managed bees.

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

The Secretary of Natural Resources 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 title 14, California Code of Regulations (14 CCR) section 15251(i). This determination means DPR's pesticide regulatory program is functionally equivalent to the 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 3 CCR section 6110 and satisfies the requirements of DPR's CEQA certified regulatory program for rulemakings at 3 CCR sections 6110-6116.

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 section 6110.) 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 section 6116.)

Under existing law, apiary operators (formerly termed “beekeepers”) must register their apiaries (bee hives) with the CAC when first entering a county, when leaving a county, or when relocating within a county. (FAC sections 29070, 29070.5.) Apiary operators may also request, through the CAC, that growers provide the apiary operator notifications of planned pesticide applications that are toxic to bees, allowing the apiary operator to move their hives or request a postponement of the planned pesticide application. While previously reliant on phone calls and paper lists, the bee notification program now has expanded capacity through the BeeWhere website to allow for electronic registration for apiary operators and for applicators to search online for nearby apiaries that requested notification. Finally, existing law provides for a “citrus/bee protection area” in Fresno, Kern, and Tulare counties with specific notification requirements and pesticide application limitations and exemptions.

The proposed regulations would lower the temperature identified for when bees are inactive from 55 degrees to 50 degrees; allow for a broader range of notification options for applicators to notify apiary operators; allow for pesticide applications without prior notification in citrus/bee protection areas during periods of bee inactivity for pesticides that are not toxic to bees and for pesticides that are toxic to bees but the label of which specifies it may be applied during bee inactivity; and add an exception for pesticides applied during citrus bloom to manage CDFDA-declared quarantine pests. The proposed regulations make additional formatting, clarity, and renumbering changes that have no possible environmental or regulatory effects but that may improve enforcement and compliance with the regulations. The proposed regulations also make changes to align with existing state and federal law, such as updating the terminology “beekeepers” to “apiary operators,” and updating the apiary operator registration requirements to conform to state law.

The proposed changes to the notification regulations would not have any adverse environmental effects. Specifically, DPR considered the following potential environmental effects:

- Human health
- Flora (Plants)
- Fauna (Fish & Wildlife)
- Water
- Air

DPR did not consider potential environmental effects on human health, flora, water quality, air quality, or other environmental factors because the proposed regulations do not change the rate,

timing, use, type, or amounts of pesticides applied, and so would have no effect on these environmental factors. Rather, the proposed regulations update the advanced notification requirements to apiary operators when a pesticide will be applied, and clarify when pesticides may and may not be applied during citrus bloom to protect managed bees.

The proposed regulations that expand the temperature range (3 CCR section 6980) and increase the methods of notification (3 CCR sections 6982, 6983) will have a potentially beneficial effect on managed bees. By allowing additional methods to provide advance notification, such as by e-mail or in person instead of only by telephone, and by expanding the temperature range in which bees are considered inactive, the proposed regulations would potentially increase the total number of notifications, thereby allowing more apiary operators to take actions to protect their bees from pesticide applications. This would reduce the likelihood of managed bees having accidental contact with lawfully applied pesticides. Because the proposed regulations only expand the notification requirements, they would not change the amount of pesticides applied, where they are applied, when they are applied, or to what they are applied. Therefore, while there is a potential environmental benefit to managed bees, no possible significant adverse effect to California's environment can reasonably be expected to occur from implementing these changes to the notification requirements.

The proposed regulations add an exception to allow application of pesticides that are not toxic to bees during the citrus bloom period without prior notification. (3 CCR section 6984(g)(1).) This provision merely clarifies existing law that requires notification to apiary operators when applying pesticides that are toxic to bees, and is the converse of the requirement in new 3 CCR section 6984(f). Therefore, this clarifying exception would not have any positive or negative effect on managed bees or California's environment.

The proposed regulations eliminate the exceptions in 3 CCR section 6984(g) for methomyl, formetanate, and chlorpyrifos because these exceptions are no longer necessary. As of December 31, 2020, chlorpyrifos will no longer be registered in California for any use that could result in exposure to bees. Any California registered product labels for methomyl and formetanate are covered under section 6984(g)(2). Therefore, this change has no environmental or regulatory effect.

The proposed regulations add an exception to allow for any pesticide toxic to bees to be applied without prior notification if applied when bees are inactive and the pesticide label permits that application. (3 CCR section 6984(g)(3).) Although this provision would expand the types of pesticides that may be used without prior notification, it is not reasonably expected to increase the use of these pesticides, as a notification requirement does not prohibit or limit use of pesticides. Moreover, adding this exemption from notification is not anticipated to have any adverse effect on bees as bees must be inactive at the time the pesticide is applied to qualify for the exemption and therefore would not come into contact with the pesticide when it is being applied.

The proposed regulations add an exception that would allow pesticides toxic to bees to be applied during the citrus bloom period to control CDFA-declared quarantine pests. (3 CCR section 6984(i)(2).) CDFA-declared quarantine pests are those pests for which CDFA has declared a quarantine or pest eradication area and must be swiftly controlled to reduce economic damage to an existing crop and to prevent spread to other crops in the state. Allowing for pesticide applications to control quarantine pests provides a potential environmental benefit in protecting the state's environment from invasive and environmentally damaging species that could destroy entire orchards and crops. (See DPR, Summary of Pesticide Use Data – 2017 (June 2019), Section 5, <https://www.cdpr.ca.gov/docs/pur/pur17rep/17sum.htm>.) CDFA works directly with CACs to alert them when a quarantine pest is discovered and to identify appropriate treatments. CDFA's programmatic environmental impact report for its pest control program, which includes its quarantine program, is available at <<https://www.cdfa.ca.gov/plant/peir/>>.

Although an exception for pesticide applications to citrus during the citrus bloom period for CDFA-declared quarantine pests is critical to protecting California's citrus crop, the exception is likely to be used only infrequently and in limited geographic areas as necessary to prevent spread of quarantine pests in California. In the citrus/bee protection area, CDFA expects two ongoing quarantine pests each year – Asian citrus psyllid (ACP) and glassy-winged sharpshooter (GWSS) – and typically two additional invasive pests that occur once every ten years. According to CDFA, treatment for quarantine pests in citrus/bee protection areas could result in 2-10 sprays of insecticides per orchard per year, depending on the severity of the invasion, or an average of 3.5 sprays per orchard per year over ten years. Application rates will vary depending on the size of the invasion, the life-stage of the invasive pest, and the pesticide used. This exception is not expected to affect managed bees, as advanced notification of the pesticide application must still be provided to apiary operators, as required under these regulations. However, this exception may possibly affect native bees or other beneficial insects in citrus orchards in the three counties that form the citrus/bee protection area by allowing insecticide sprays that would otherwise have been prohibited. Because the type of pesticides used to control quarantine pests are also used to control other insects, pesticide use reports do not provide information about how often these treatments have occurred outside of the citrus/bee protection area, and DPR is unable to extrapolate the change in applications that will result from this exception, making any conclusion about the change in treatments speculative. Nonetheless, because of the limited number of treatments for quarantine pests expected each year, and because the treatments must still be made consistent with product labels that themselves contain mitigation measures to protect bees, DPR does not expect these impacts to rise to a significant level. Therefore, this exemption is not reasonably expected to have a significant adverse impact on California's environment, including on native bees.

The proposed regulations eliminate the prohibition on applying azinphos-methyl during the citrus bloom period. This change has no regulatory effect because azinphos-methyl has no registered uses in California and therefore cannot legally be applied in the state.

In sum, the proposed regulations are not reasonably expected to have a significant adverse effect on California's environment, so no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with federal regulations. Federal regulations contained within Title 40, Code of Federal Regulations, section 156.10, address pesticide labeling statements required for products applied to agricultural crops during the blooming period. Beyond labeling requirements, there are no federal regulations that address the issue of bee protection from pesticides. As discussed in U.S. EPA's Policy Notice 2014-0818-0477-1, the agency encourages states to design their own bee protection programs through a variety of regulatory and nonregulatory ways.

DOCUMENTS RELIED UPON

1. U.S. Department of Agriculture. Attractiveness of Agricultural Crops to Pollinating Bees for the Collection of Nectar and/or Pollen. January 2018.
2. Burill, R. and A. Dietz. The Response of Honey Bees to Variations in Solar Radiation and Temperature. *Apidologie*, 1981, 12 (4), 319-328.
3. Mayer, D.F., and C.A. Johansen. How to Reduce Bee Poisoning from Pesticides. PNW591. A Pacific Northwest Extension Publication. March 2016.
4. U.S. Environmental Protection Agency Pesticide Registration (PR) Notice 2000-XX (Draft). Notice to Manufacturers, Producers, Formulators and Registrants of Pesticide Products. Bee Precautionary Labeling Statements.
5. U.S. Environmental Protection Agency's Policy To Mitigate The Acute Risk To Bees From Pesticide Products. United States Environmental Protection Agency, Office of Pesticide Programs. EPA HQ-OPP-2014-0818-0477-1. January 2017.
6. Skelton, M., D. Rulofson, and L. Mendoza. "Re: 3CCR 6655 Notification Region for Butte, Glenn and Tehama Counties. Rulemaking Request for 2020: Tri-County Bee Notification." Received by Lauren Otani. 19 December 2019.
7. U.S. Environmental Protection Agency's Final Decisions for the Remaining Uses of Azinphos-methyl. United States Environmental Protection Agency, Office of Pesticide Programs. November 2006.
8. Economic analysis of proposed changes to regulations regarding bees. California Department of Food and Agriculture, Office of Pesticide Consultation and Analysis. January 2020.