

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION  
Citrus/Bee Protection Areas  
DPR Regulation No. 21-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6650, 6651, 6652, 6654, 6655, and 6656, and renumber those sections to 6980, 6981, 6982, 6983, 6984, and 6985; and make section 6985 inoperative. In summary, 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.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on June 2, 2021. Comments regarding this proposed action may also be transmitted via e-mail to <dpr21001@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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.

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. Certain

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<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

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 and last updated them in 2002. These regulations are currently located in 3 CCR sections 6650 through 6656.

Section 6650 defines pesticides toxic to bees and residual toxicity, and establishes when bees are considered inactive. Section 6651 provides an exemption for local vector control agencies making certain pesticide applications. Section 6652 requires beekeepers who wish to receive notification of pesticide applications toxic to bees to follow specific procedures and be available to receive those notifications during a certain time period. Section 6654 specifies notification procedures for a person intending to apply a pesticide labeled as toxic to bees to a blossoming plant, requiring them to inquire of the county agricultural commissioner (CAC) if any beekeeper with apiaries located within one mile of the intended application site has requested notification. If so, the pesticide applicator is required to notify those beekeepers of specific application information at least 48 hours in advance. Section 6655 establishes the counties of Butte, Glenn, and Tehama as a notification region for beekeepers and pest control operators, and specifies fees for participation in the notification service. The last section of the article, section 6656, defines a citrus/bee protection area (any citrus planting of one acre or more in the counties of Fresno, Kern, or Tulare) and establishes requirements for those areas during the March 15 through May 31 citrus bloom period each year. This section requires the CAC to declare the beginning and ending of bloom, specifies when growers/applicators are required to notify beekeepers of applications, and requires beekeepers to file a notice of apiary locations with the CAC and be available for notification during a specified time period. Additionally, the section specifies when a notice of intent shall be filed with the CAC if a pesticide toxic to bees is applied to citrus during a citrus bloom period, specifies pesticide applications toxic to bees that are exempt from beekeeper notification requirements depending on the timing or other application and/or site specific factors, and specifies pesticides applications to citrus that are prohibited. Lastly, the section specifies an exception that allows pesticides toxic to bees to be applied during the citrus bloom period to control lepidoptera larvae or citrus thrips if the need for control has been established by a representative of the University of California, Agricultural Extension Service, or a licensed agricultural pest control adviser.

The U.S. Environmental Protection Agency (U.S. EPA) has also 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 with U.S. EPA before they are registered in California. All labels must bear a misuse statement (40 CFR 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.

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. There are now Web sites, such as BeeWhere, that allow beekeepers and pesticide applicators electronic options to comply with FAC Division 13 (Bee Management and Honey Production) 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, sections within FAC Division 13 were revised when Assembly Bill (AB) 2468 (Chapter 320, Statutes of 2018) was passed, changing the term “beekeepers” to “apiary operator(s), or their designated representative” and revising 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. AB 450 (Chapter 300, Statutes of 2019) also revised FAC section 29070.5, requiring apiary operators to notify the CAC within 72 hours when bees are being relocated within that same county.

To reflect federal labeling changes, conform with U.S. EPA’s pollinator protection policy and amended FAC statutes, eliminate duplicative language, improve organization, and add flexibility for timely notification of beekeepers using the modern technology, DPR is proposing to amend California’s bee regulations. The section numbers of these regulations will be renumbered from sections 6650, 6651, 6652, 6654, 6655, and 6656 to 6980, 6981, 6982, 6983, 6985, and 6984, respectively.

The proposed regulatory action will make clarifying edits to the definition of pesticides toxic to bees and delete the definition for residual toxicity, which is specified on pesticide product labeling. It will also decrease the temperature that establishes when bees are considered inactive from 55 to 50 degrees Fahrenheit, which would affect the timing of pesticide applications, but will be more protective of both managed bees in the area of those applications and native pollinators that do not forage in as wide a range as managed honey bees. Additionally, in section 6652 (renumbered to section 6982), this action will delete the archaic beekeeper availability requirements and add a requirement for an apiary operator, or their designated representative, to inform the commissioner of their desire to receive notification of pesticide applications toxic to bees when registering their apiaries with the county. In section 6654 (renumbered to section 6983), this action will change the term “beekeeper” to “apiary operator [or their designated representative]” to conform with FAC, reword and reformat the section, and delete language that has been incorporated into section 6656 (renumbered to section 6984). With respect to a request received from the commissioners of Butte, Glenn, and Tehama counties, this action will make the tri-county notification region established in section 6655 (renumbered to section 6985) inoperative. In section 6656 (renumbered to section 6984), this action will remove redundant language and change the term “beekeeper” to “apiary operator, or their designated representative” to conform with FAC. The action will also amend requirements for areas designated as citrus/bee protection areas by requiring apiary operators to provide notice to the CAC of apiaries moving within or out of a county within 72 hours, consistent with FAC sections 29070 and 29070.5. DPR also proposes to remove the archaic requirement for beekeeper availability for notification, add a requirement for apiary operators to inform the CAC if they desire advance notification of pesticide applications of products labeled toxic to bees, and clarify exemptions from the citrus/bee protection area requirements for certain pesticide applications by deleting pesticides that are no longer registered for use and redundant language, and by adding an exemption allowing pesticides toxic to bees to be applied during the citrus bloom period for control of California Department of Food and Agriculture declared quarantine pests. Lastly, DPR proposes

to require the written recommendation for the need for control of lepidoptera larvae or citrus thrips to 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 state one or the other.

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.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California Department of Food and Agriculture have regulatory mandates to protect bees, DPR's statutory authority is to enforce pesticide laws and regulations when pesticides are used.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR 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. DPR has determined that some nondiscretionary costs or savings imposed upon local agencies may result from the proposed regulatory action. In the counties of Glenn, Butte, and Tehama where the Tri Counties Bee Notification is located, Glenn County will no longer be collecting the \$10-100 fee from apiary operators and the \$75 fee from pest control operators specified in section 6655 (renumbered to 6985). However, each county will no longer need to pay administrative fees of \$1200 to Glenn County since there will no longer be a program to administer. DPR estimates a loss of \$6,125 in revenue. However, since these funds were primarily used to administer the notification program, with no notification program to administer, the loss of funds should not be a burden to Glenn County.

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

## EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

## SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR made an initial determination that adoption of this regulation 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.

## COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

In reasonable compliance with the proposed action, 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.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: 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 labeling. It will also provide a clearer description of compliance options, required communication between the beekeepers, 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.

## CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

## AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 29080, 29081, 29082, and 29102.

## REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 29080, 29081, 29082, 29100, 29101, and 29102.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

## AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Senior Environmental Scientist (Specialist)  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Peggy Byerly, Senior Environmental Scientist (Specialist)  
Enforcement Branch  
916-603-7750

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION



Director