



Mill Assessment Frequently Asked Questions and Answers

What you need to know about the mill assessment:

1. What is the Pesticide Mill Assessment?

California assesses a "mill assessment" fee on sales of the Department of Pesticide Regulation (DPR) registered pesticides. A mill is equal to one-tenth of a cent. The maximum assessment rate is set by statutes in California Food and Agricultural Code (FAC) sections 12841/12841.1. The Director sets the actual rate by regulation in Title 3 of the California Code of Regulations (3 CCR) section 6386 (Established Rate). The assessment rate is currently set at 21 mills, or 2.1 cents on each dollar of sales. There is also an additional assessment on the sale of agricultural use pesticides. Further information on the current rate can be found on DPR's Web site.

2. How is agricultural use pesticides assessed differently than other pesticides?

An additional 0.75 mill (\$0.00075) assessment per dollar of sales is collected by DPR pursuant to FAC section 12841.1(a). FAC section 12841.1(a) requires an additional assessment be collected on sales of all pesticides, except those labeled solely for home, industrial, or institutional use. Therefore, a pesticide label that contains any "agricultural use" sites and applications will be subject to the additional mill assessment.

Agricultural use pesticides are labeled for the production of an agricultural commodity. An agricultural commodity, as defined in 3 CCR section 6000, "means an unprocessed product of farms, ranches, nurseries, and forests (except livestock, poultry and fish). Agricultural commodities include fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn and sorghum; legumes, such as field beans and peas; animal feed and forage crops; rangeland and pasture; seed crops; fiber crops such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals, and cut flowers; and turf grown commercially for sod."

Also, statements that include uses such as rights-of-way, golf courses, cemeteries, parks, and waterways are agricultural uses. Expressing the application rate in pounds/gallons per acre on the label is also an indication the pesticide is for agricultural use. A thorough discussion of agricultural vs. non-agricultural use pest control is found on DPR's Web site at:

http://www.cdpr.ca.gov/docs/enforce/enf_003_rev_5-09.pdf.

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3. Where do mill assessment fees go?

The mill assessment is collected by DPR, with some funds distributed to the California Department of Food and Agriculture (CDFA) and the County Agricultural Commissioners (CACs) as discussed below.

Department of Pesticide Regulation

Mill assessment revenues are placed in the *Department of Pesticide Regulation Fund* pursuant to FAC section 12841(g) and used to pay for the state's pesticide regulatory program. DPR's programs are funded mainly from fees on pesticide registrations, professional licenses, and from the mill assessment.

California Department of Food and Agriculture (CDFA)

The additional 0.75 mill (\$0.00075) assessment per dollar of sales on agricultural use pesticides goes entirely to CDFA for funding the activities of its Consultation and Analysis Unit (CAU). DPR confers with the CAU on certain pesticide related regulatory actions and the CAU serves in a liaison capacity between DPR and the agricultural industry.

County Agricultural Commissioners (CACs)

An amount equal to the revenue derived from 7.6 mills per dollar of sales is allocated to the CACs as reimbursement for costs incurred by them in the local enforcement of pesticide laws and regulations. In California, local pesticide enforcement is carried out, in large part, by the CACs in nearly all of the 58 counties. The CACs have joint authority with DPR in the enforcement of pesticide laws and regulations.

4. Who is responsible for reporting pesticide sales in California and how do they pay the mill assessment?

In general, the registrant is always responsible for reporting sales and paying mill assessment when they have knowledge, at the time of sales, the pesticide is being sold in California. However, if the registrant does not have knowledge at the time of sale, the party that is the first to sell the pesticide in California is responsible for reporting and paying the mill assessment. If a party other than the registrant is the first to sell a pesticide into or within California, this first seller party must obtain either a pesticide broker or a pest control dealer license (whichever is appropriate) from DPR.

The mill assessment program is a self-assessment system. Each quarter, DPR issues mill assessment-reporting forms to registrants, and to "licensed" pesticide brokers and dealers. This includes a "Report of Pesticide Sales in California" and "Report of Pesticide Mill Assessments in California" pursuant to FAC section 12843. That is why it is so important that all firms that are first sellers of pesticides into and within California are licensed. Without the ability to track all pesticide sellers, it is impossible to ensure an equitable marketplace where all pay their fair share.

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5. Do registrants, pesticide brokers, and pesticide dealers need to send a report to DPR if they had no sales?

Yes. They are responsible for reporting all sales each quarter of their registered pesticides, including zero sales. Complete the mill assessment form showing no sales were made for the quarter by writing "none" or "0," then sign and mail by the due date.

6. Is there a penalty for a late or deficient mill assessment payment?

Yes. FAC section 12843 provides that the DPR director add a penalty of 10 percent of the amount that is due. See also 3 CCR section 6382 (Penalties).

7. What pesticide sales are subject to reporting and mill assessment?

Sales of registered pesticides sold for use in California unless exempted by FAC section 12841(d)(2) or 3 CCR section 6384 (Exemptions).

Manufacturing Use Products

FAC section 12841(d) (2) exempts manufacturing use only products from the mill assessment. A product is not for manufacturing use if the label contains directions for end use. It must also state the product can be used only for the manufacture or formulation of another pesticide. The mill assessment is collected on the sale of the new end-use product.

3 CCR Section 6384

When a pesticide (active ingredient) is sold to a purchaser for a non-pesticidal use and the invoice clearly identifies its specific intended (non-pesticidal) use, then that sale is not subject to the mill assessment. A statement such as, "Not For Use as a Pesticide" does not clearly identify a specific intended use and does not qualify for an exemption from the mill assessment. A pesticide may only be sold or used in accordance with the registered label.

8. Do raw materials being formulated into a Manufacturing Use Product (MUP) within the state of California require registration?

If the raw material is registered at U.S. EPA as a pesticide, then it must be registered in California before being delivered or sold into California for use in the formulation of any pesticide (MUP or End Use) within the state.

9. If a U.S. EPA registered MUP is manufactured from raw materials within the state of California, does it require registration?

Yes, unless the MUP is being manufactured solely for export outside of the state. However, whether the MUP is sold in California or exported outside of California for formulation into an end use product, no mill assessment is required.

10. Can a registrant pass on the responsibility of reporting and paying the mill assessment to a broker or dealer if the registrant ships the pesticide to a California location?

No. The registrant is required to report and pay on pesticides shipped into California.

11. Does a registrant ever have to pay mill assessment for sales to a broker or dealer shipped to a location outside of California?

Yes, but only if the registrant knows at the time of sale that the pesticide is going to be sold in California. FAC section 12841(d)(1) provides that in cases where a registrant did not have actual knowledge, at the time of the sale, that the pesticide would be sold for use in California, the assessment shall be paid by the licensed pesticide broker, licensed pest control dealer, or other person who first sold the pesticide for use in the state.

12. Who pays the mill assessment if a registrant ships pesticides on consignment to a pesticide broker or pest control dealer?

If the broker/dealer is located in California and receives the pesticide in California from the registrant, the registrant is responsible for the mill assessment. If the broker/dealer is located outside the state and receives the pesticide from the registrant (or other source) at their facility outside the state, the broker/dealer must report the sale and pay mill assessment for the pesticide it sells into or within the state.

As stated in Question #4 above, in general, the registrant is always responsible for reporting sales and paying mill assessment when they have knowledge, at the time of sales; the pesticide is being sold in California. However, if the registrant does not have knowledge at the time of sale, the party that is the first to sell the pesticide in California is responsible for reporting and paying the mill assessment.

Situations involving consignment of pesticides generally have to be addressed individually as there are many variations in how pesticides are marketed. Please contact the Mill Assessment Unit for further assistance.

13. If a registrant delivers/sells another company's (registrant's) pesticide into California, do these sales need to be reported?

Yes. The mill assessment applies to all sales of pesticide first sold into or within the state. This includes sales of other registrant's pesticides. The sales are reported on a form entitled, "Report of Sales of Other Registrant's Pesticide Products."

However, if a registrant has actual knowledge, at the time of sale, that their pesticide is being delivered/sold into California, the registrant is responsible for reporting and paying mill. This includes contract-manufacturing situations where one firm is producing pesticides for another registrant. For example, a firm located outside of California manufactures a California-registered pesticide for the registrant, and ships the pesticide into California on behalf of the registrant (drop shipment), the

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registrant has knowledge that the pesticide is being delivered into California and therefore is responsible for reporting the sales and paying the mill assessment.

14. If a registered pesticide with complete label directions for end-use is repackaged or sub-packaged into another end-use pesticide by another registrant, who is responsible for reporting and paying the mill assessment?

In this case, each registrant is responsible for reporting and paying the mill assessment on the pesticide it sells. The first registrant, having shipped the pesticide into California, is the first seller into the state, and therefore owes mill assessment on its sales. The other registrant, at its U.S. EPA registered producing establishment, repackages or sub-packages the pesticide into containers with its own brand name and with its own EPA Registration Number is then responsible for reporting sales and paying mill assessment when this pesticide is first sold into or within California.

A product must be registered and labeled only for the manufacturing or formulation of another pesticide in order to be exempt from the mill assessment.

15. Is the mill assessment due on a registrant's pesticides when they are used in conjunction with its own service contracts?

Yes. An example of this could be a registrant that also has a swimming pool service business. Place a reasonable value (what the pesticide would sell for in like-size containers in like quantities) on the registered pesticide used in the service contract and pay the mill assessment on that value.

16. Are direct sales made and delivered into or within California to a federal agency (including the military), or to property under Tribal control, subject to the mill assessment?

No.

17. What if a registrant sells a pesticide to a retailer's distribution center in California and the pesticide is subsequently sold out of the state? Does the registrant still need to pay the mill assessment on the pesticide shipped out of California?

Yes. The registrant needs to pay mill on all sales that the firm knows will be delivered into California. This is true unless the registrant knew at the time of sale and could document at the time of sale that the pesticide would be resold for use outside of California.

18. Are there any provisions for shipping pesticides not registered by DPR into the state?

FAC section 12993 states that it is unlawful to manufacture, deliver, or sell in California a pesticide that is not registered. There are exceptions as provided in regulation for use under a research authorization (3 CCR section 6260-6272) and for pesticides manufactured in the state solely for export outside the state (FAC 12993). However, there is no "legal" provision that allows a registrant to deliver to another party, located in California, an unregistered pesticide. Once control of the unregistered pesticide is transferred, a violation of FAC section 12993 has occurred.

To ensure all pesticides offered for sale in this state are registered, it has and continues to be, DPR's practice to perform marketplace inspections at locations where pesticides are offered for sale to the public.

DPR understands there are situations where registrants have no intention of selling a particular pesticide in California. Due to complex delivery/distribution infrastructures, registrants occasionally transport pesticides through this state for eventual sale and use outside the state. In these situations the question that must be addressed is, "**Can the registrant maintain sufficient control to ensure the unregistered pesticide will not enter the marketplace where it would be available for sale to users in this state?**" In most situations this means that while the unregistered pesticide is in this state the registrant will store the pesticide in a facility under its control. A consignment situation where someone other than the registrant has control over the sales of the pesticide may not constitute the necessary control.

19. If I discover that I have sold an unregistered pesticide into California, do I need to report it?

DPR encourages you to come forward with this information. It shows a desire to bring your business into compliance with California law. Given this positive demonstration of your company's business practices, DPR would be inclined to work with you to mitigate possible fines, and to give your firm the opportunity to propose and carry out a plan to prevent future violations.

20. What sale price must be reported and used as the basis to pay the mill assessment?

The assessment is based on the price as shown on the sales invoice to the customer.

21. What record keeping requirements pertain to California pesticide sales?

FAC section 12842 requires that every person who sells for use in California any pesticide shall maintain accurate records of all transactions subject to assessment for four years. This includes registrants, pesticide brokers, pest control dealers, and retailers such as hardware and grocery stores. These records are subject to audit.

22. How would a pest control dealer, retailer, distributor, or broker know the mill assessment was paid on pesticides they receive?

On the first sale of pesticides into or within California, the law (FAC section 12847) requires the sales invoice show the party (registrant, broker, dealer, or person) who will pay the mill assessment. On subsequent sales, the invoice must show as a comment on the invoice the assessment was paid, and it may show an amount or rate that represents the assessment. Retail sales of nonagricultural pesticides labeled only for home, industrial, or institutional use are exempt from this requirement. Invoices for the first sale of these pesticides will need mill assessment payment information on them, but a person subsequently buying, for example, a home-use pesticide at a local retailer would not receive a sales invoice with mill assessment information on it.

23. What records must the registrant, pesticide broker, or pest control dealer keep for proof that a pesticide shipped into California was not sold for use in California?

They must have reasonable proof that the pesticide was not sold for use in California; for example, invoices with an out-of-state "ship to" address, a bill of lading, shipping documents, destination receipts, etc.

24. Can the mill assessment be itemized as a separate item on the invoice?

Yes. However, only the person who actually pays the assessment to DPR may show the amount or rate of the assessment as a line item on the sales invoice (FAC section 12847).

25. Would freight charges be included in the amount that is subject to the mill assessment?

The mill assessment is based on the price of the pesticide as shown on the invoice. If the freight charges were listed separately on the sales invoice, they would not be included in the amount that is subject to the mill assessment. However, if the freight charges were included in the price of the pesticide and not itemized separately, then they are subject to the mill assessment.

26. Would the state sales tax on the pesticides be included in the amount that is subject to the mill assessment?

If the state sales tax were listed separately on the invoice, it would not be included in the amount that is subject to the mill assessment. However, if the sales tax is included in the price of the pesticide and not itemized separately, then it is subject to the mill assessment.

27. If a registrant, pesticide broker, or pest control dealer gives rebates to its distributors on the basis of gross volume sales for the year, is the mill assessment based on the original invoice price or on the new adjusted price at the end of the year?

The mill assessment is based on the price as shown on the invoice at the time of sale, delivery, or contract for sale. Volume sales discounts given at the time of sale and shown on the original invoice are part of the final price and may be considered in the mill assessment.

28. When the registrant, pesticide broker, or pest control dealer indicates a discount for a quick payment (such as discount 2 percent, 10 days, net 30 days) what price is used for the mill assessment?

The extended price as shown in the invoice, unless the invoice clearly shows what was paid for the registered pesticides, i.e., the discount price actually paid.

29. Is the mill assessment charged against the full price of pesticide-fertilizer combination products?

Yes, unless the registrant has applied for and been granted by DPR a percentage of the sales value for each product to be used in calculating the mill assessment as allowed for in FAC section 12841(c)(1).

30. How does the registrant, pesticide broker, or pest control dealer request a refund for an overpayment?

If the overpayment was for returned pesticide that the registrant, pesticide broker, or pest control dealer is still selling, then the over-reported sales can be deducted from the sales of the same pesticide for the next quarter. However, a credit memo is needed to substantiate this in the accounting records and for DPR auditors. If the overpayment was for a product that is not a pesticide, a returned pesticide that is no longer registered, or due to a math error, then the registrant, pesticide broker, or pest control dealer can request a refund from DPR and provide a letter of explanation, invoices, labels, etc. FAC sections 11481/11482 cover refunds of fees and assessments. Contact the Mill Assessment Unit for assistance.

31. Is there a list of pesticide registered in California?

Yes. Go to DPR's Web site, <www.cdpr.ca.gov>, click on "Look up pesticide products" on the right side of the page. Under the heading, "Lists," click on the link, "Download a list of California's registered pesticide products." It is a ZIP file that lists the approximately 12,000 pesticide products registered in California, along with their registration number. The file can be inserted into a spreadsheet or database. (Instructions on how to break the list into database fields are also posted online.)

The list is updated every business day, but does have limitations. It does not include pesticides whose registrations have expired. Important note, if a pesticide came into California before the registration

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expired, and is in the possession of anyone other than the registrant, the pesticide may be legally sold in California for up to two years after the expiration date. This extension on sales is only meant to clear the channels of trade; it does not apply to sales of pesticides whose registrations have been cancelled, or to sales of pesticides with expired registrations made by registrants.

DPR's Web site also provides for product-specific inquiries with searches by product name, registration number, site and chemical codes, and other variables.

32. More questions?

Visit DPR's Web site, <www.cdpr.ca.gov>, and click on Programs to access the "Mill Assessment" web page. Or contact the Mill Assessment Unit at 916-445-4159. You can also e-mail questions to <millassessment@cdpr.ca.gov>.

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