

TEXT OF PROPOSED REGULATIONS

Current wording is indicated by regular type.
Proposed deletions are indicated by ~~strikeout~~.
Proposed additions are indicated by underline.

DIVISION 6. PESTICIDES AND PEST CONTROL OPERATIONS
CHAPTER 1. PESTICIDE REGULATORY PROGRAM
SUBCHAPTER 3. AGRICULTURAL COMMISSIONER PENALTIES
ARTICLE 1. GUIDELINES

Amend section 6128 to read:

6128. Enforcement Response to Violations.

(a) The commissioner shall comply with the provisions of this section each time an incident or violation of law or regulation occurs, related to agricultural or structural use of pesticides or any use of a fumigant, to determine the appropriate enforcement response.

(b) For the purposes of this section, and sections 6130 and 6131, the following terms are defined as follows:

“Compliance action” is an action that documents that certain behavior or an act is in violation of the law or regulations. The documentation may or may not allege the recipient committed the violation at issue. Compliance actions do not directly impose a monetary penalty. Compliance actions include violation notice; warning letter; documented compliance interview; or noncompliance noted on an inspection form. Compliance actions also include public protection actions such as cease and desist orders; seize or hold product or produce orders; and prohibit harvest orders.

“Decision report” is a written record of the basis for a commissioner’s decision to not take an enforcement action.

“Enforcement action” is an action with the potential to impose a monetary penalty or loss of right or privilege initiated by a Notice of Proposed Action. Enforcement actions include administrative civil penalty; or disciplinary action (refuse, suspend, or revoke) against a country registration, certificate, or permit.

“Incident” is an occurrence in which one or more violations are discovered. An incident may be a single inspection or audit, a set of two or more inspections or audits related to the occurrence, or a pesticide episode investigation.

“Same violative conduct” refers to repeated instances of the same type of action or omission that violates a legal requirement arising under Division 6 or 7 of the California Food and

Agricultural Code, or any regulation issued pursuant to Division 6 or 7 of the California Food and Agricultural Code.

(c) After determining the violation class specified in Title 3, California Code of Regulations section 6130 or Title 16, California Code of Regulations section 1922, the commissioner shall respond to each incident with one or more of the enforcement responses listed below.

(1) Class A(1), Class A(2) or Serious Violation

(A) A formal referral to one or more of the following: the District Attorney, City Attorney, Circuit Prosecutor, ~~or the Director,~~ or Structural Pest Control Board Registrar, ~~for a statewide licensing action.~~

(B) An enforcement action. If the enforcement response initially selected by the commissioner was a formal referral but the referral was declined, then the commissioner shall proceed with this enforcement response.

(2) Class B or Moderate Violation

(A) A formal referral to one or more of the following: the District Attorney, City Attorney, Circuit Prosecutor, or the Director or Structural Pest Control Board Registrar, ~~for a statewide licensing action.~~

(B) An enforcement action. If the enforcement response initially selected by the commissioner was a formal referral but the referral was declined, then the commissioner shall proceed with this enforcement response.

(C) A compliance action with a decision report, provided there has not been ~~a violation in Class A or B within two years of the current violation~~ any Class A violation or a Class B violation of the same violative conduct covering the following time periods:

1. For violations occurring on or before 12/31/2027 within the past two years from the current violation.

2. For violations occurring from 1/1/2028 to 12/31/2028 within the past three years from the current violation.

3. For violations occurring on or before 1/1/2029 to 12/31/2029 within the past four years from the current violation.

4. For violations occurring on or after 1/1/2030 within the past five years from the current violation.

In some instances, a compliance action may be taken in addition to the enforcement response in (2)(A) or (B), in which case a decision report is not required.

(3) Class C or Minor Violation

(A) An enforcement action; or

(B) A compliance action.

(d) If a decision report is required, the commissioner shall submit the decision report to the Director, within ~~60~~150 days of the date of the initial compliance action, ~~for concurrence.~~ The Director has 30 days from the date of submission to review and discuss the decision report with the commissioner. The decision report shall be finalized and approved or denied by the Director no later than 180 days from the initial compliance action. ~~If the Director does not concur with the~~

~~commissioner's decision, the Director shall notify the commissioner within 30 days of the receipt of the decision report with specific reasons for denial, and an enforcement action shall be taken by the commissioner. The commissioner shall retain a copy of the decision report for ~~two~~five years.~~

~~(e)~~ A decision report shall contain:

- ~~(1)~~ The identification of the respondent or case;
- ~~(2)~~ A summary of the incident or act;
- ~~(3)~~ The section(s) violated;
- ~~(4)~~ The class of each violation pursuant to Title 3, California Code of Regulations section 6130 or Title 16, California Code of Regulations section 1922;
- ~~(5)~~ An explanation of the circumstances that justify not taking an enforcement action, including but not limited to, when and how the violation(s) was corrected; the employer's inspection history and violation history, the toxicity and/or hazard(s) of the pesticide(s);
- ~~(6)~~ The date of decision; and
- ~~(7)~~ The name of the Agency official responsible for the decision.

~~(f)~~ The Director shall deny the decision report when:

- ~~(1)~~ The decision report is not submitted to Director within 150 days of the initial compliance action;
- ~~(2)~~ The decision report does not contain the requirements in Title 3, California Code of Regulation section 6128 subsections (e)(1) – (e)(7); or
- ~~(3)~~ The Director evaluated the justification for not taking an enforcement action and found the circumstances of the incident to warrant an enforcement action to protect human health and the environment.

The Director shall notify the commissioner within the 30-day review period with the specific reason for denial, and an enforcement action shall be taken by the commissioner.

~~(e)(g)~~ In case of a “reportable investigation,” as defined in the “Three Party Memorandum of Understanding on Pesticide Episodic Reporting, Investigation, and Enforcement in the State of California,” issued December 13, 2024, (Three Party MOU) which is hereby incorporated by reference, except for “multijurisdictional priority investigations” subject to subdivision (h) and, priority investigation, as defined in the 2005 Corporative Agreement, dated April 2005, between the California Department of Pesticide Regulation, the California Agricultural Commissioners and Sealers Association, and the U.S. Environmental Protection Agency, Region IX, except in cases of intentional ingestion, the commissioner shall, consistent with the timing requirements in Section X of the Three Party MOU: provide an opportunity to the District Attorney, City Attorney, or Circuit Prosecutor to participate in the investigation and/or pursue a civil or criminal action when a violation may have occurred.

- (1) Notify and provide an opportunity to the District Attorney, City Attorney, or Circuit Prosecutor to participate at the start of a reportable investigation when a violation may have occurred.

(2) Formally refer and provide an opportunity to the District Attorney, City Attorney, or Circuit Prosecutor to pursue a civil or criminal action for any violation identified by the commissioner once U.S. EPA is notified of the completed investigation. If the referral is accepted or rejected by the District Attorney, City Attorney, or Circuit Prosecutor, the commissioner shall notify the Director, in writing.

(h) The commissioner shall refer to the Director violations found in a “multijurisdictional priority investigation” as defined by section 12999.6(a) of the Food and Agricultural Code. The Director may pursue enforcement action for violations identified by the commissioner.

(i) The commissioner shall complete an investigation even in cases in which a prosecuting authority has initiated or may initiate a parallel investigation.

NOTE: Authority cited: Sections 2281, 11456, 12781, 12976 and 15203, Food and Agricultural Code. Reference: Sections 11892, 12996, 12997, 12999.5, 12999.6 and 15202, Food and Agricultural Code; and Section 8617, Business and Professions Code.

Amend section 6130 to read:

6130. Civil Penalty Actions by Commissioners.

(a) When taking civil penalty action on incidents or violations related to agricultural or structural use of a pesticide and all uses of fumigants pursuant to section 12999.5 of the Food and Agricultural Code, county agricultural commissioners shall use the provisions of this section to determine the violation class and the fine amount. The civil penalty action must be taken on one or more of the violations with the highest violation class in the incident. This section may also be used to determine the violation class and fine amount for violations involving other uses of pesticides.

(b) County agricultural commissioner shall designate violations as “Class A(1),” “Class A(2),” “Class B,” or “Class C” using the following definitions:

(1) A Class A(1) violation is ~~one or more of the following:~~

~~(A) A violation that caused a health, property, or environmental hazard.~~

(2) A Class A(2) violation is one of the following:

(A) A violation of a law or regulation that caused a property or environmental hazard.

(B) A violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects, and the commissioner determines that one of the following aggravating circumstances support elevation to Class A(2).

1. The respondent has a history of violations;
2. The respondent failed to cooperate in the investigation of the incident or allow a lawful inspection; or,

3. The respondent demonstrated a disregard for specific hazards of the pesticide used;

(C) A violation of a lawful order of the commissioner issued pursuant to sections 11737, 11737.5, 11896, 11897, or 13102 of the Food and Agricultural Code.

~~(2)~~(3) A Class B violation is a violation of a law or regulation that mitigates the risk of adverse health, property, or environmental effects that is not designated as a Class A(1), Class A(2), or Class C.

~~(3)~~(4) A Class C violation is a violation of a law or regulation that does not mitigate the risk of an adverse health, property or environmental effect, ~~including, but not~~ limited to, Title 3, California Code of Regulations, sections 6624 through 6628, and 6692, and Food and Agricultural Code sections 11732, 11733, 11920, 11921, 11922, 12002, 12031, 12033, 12052, 15204, and 15204.5 subsections (a)-(c)~~11761.~~

(c) The fine range for each class of violation is:

(1) Class A(1): ~~\$700~~\$3,000 to \$15,000.

(2) Class A(2): \$1,200 to \$15,000.

~~(2)~~(3) Class B: ~~\$250~~\$300 to \$3,000.

~~(3)~~(4) Class C: \$50 to \$400.

(d) When determining the fine amount within the fine range, the commissioner shall use relevant facts, including severity of actual or potential effects and the respondent’s compliance history, and include those relevant facts in the notice of proposed action.

If the respondent has prior enforcement action history, the commissioner must first follow the enforcement action guidelines below when setting the fine range. “Prior enforcement action history” means any prior Class A violation found in the state arising under Division 6 or 7 of the California Food and Agricultural Code, or any regulation issued pursuant to Division 6 or 7 of the California Food and Agricultural Code, in any action brought by a commissioner that occurs in any county within California and for which a final determination has been made within the same time periods specified in subsection (e). For the purposes of this section, a final determination occurs either as a result of an uncontested notice of proposed action, including payment of an administrative civil penalty by the respondent, whether or not the respondent admits to the allegations of the notice of proposed action, or as a result of a contested notice of proposed action where the respondent was found liable and the time for appeal has passed.

The commissioner shall use the table below to determine the minimum fine amount where there is a prior enforcement action history for any Class A violation:

When a violation is classified as a Class A(1)

<u>Prior Enforcement Action History</u>	<u>Current Penalty Amount</u>
<u>Class A(1)</u>	<u>A minimum 20% increase from prior violation penalty up to the Class A(1) penalty maximum.</u>
<u>Class A(2)</u>	<u>A minimum 20% increase from the minimum of Class A(1) or a minimum 20% increase from the prior violation, whichever is higher, up to the Class A(1) penalty maximum.</u>

<u>Class A prior to the effective date, [insert date]</u>	<u>A minimum 20% increase from the minimum of Class A(1) or a minimum 20% increase from the prior violation, whichever is higher, up to the Class A(1) penalty maximum.</u>
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When a violation is classified as a Class A(2)

<u>Prior Enforcement Action History</u>	<u>Current Penalty Amount</u>
<u>Class A(1)</u>	<u>Minimum penalty starts at least at \$3,000 up to the Class A(2) penalty maximum.</u>
<u>Class A(2)</u>	<u>A minimum 20% increase from the prior violation penalty up to Class A(2) penalty maximum.</u>
<u>Class A prior to the effective date, [insert date]</u>	<u>A minimum 20% increase from the prior violation penalty up to Class A(2) penalty maximum.</u>

(e) For the purposes of determining prior enforcement history, the following time periods shall apply:

(1) For violations occurring on or before 12/31/2027 within the past two years from the current violation.

(2) For violations occurring from 1/1/2028 to 12/31/2028 within the past three years from the current violation.

(3) For violations occurring on or before 1/1/2029 to 12/31/2029 within the past four years from the current violation.

(4) For violations occurring on or after 1/1/2030 within the past five years from the current violation.

(f) The commissioner shall send each notice of proposed action meeting the criteria for human health incidents that meet Reportable Incident Criteria as identified in the Three-Party Memorandum of Understanding on Pesticide Episodic Reporting, Investigation, and Enforcement in the State of California, issued December 2024, which is hereby incorporated by reference all supporting documentation to the Director for review no later than 90 days prior to the expiration of the applicable statute of limitations and prior to issuance of the notice of proposed action to the respondent. The Director must respond to the commissioner within 45 days of receipt, or by a later date agreed upon by the Director and commissioner.

(e)(g) The commissioner shall send a copy of the signed notice of proposed action to the Director no later than the time the notice is provided to the respondent.

~~(f)~~(h) If the respondent requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the decision to the Director.

~~(g)~~(i) The commissioner shall send a copy of the notice of final action to the Director no later than the time the notice is provided to the respondent.

NOTE: Authority cited: Sections 12781, 12976 and 15203, Food and Agricultural Code.
Reference: Sections 11892, 12973, 12997, 12999.5 and 15202, Food and Agricultural Code; and Section 8617, Business and Professions Code.

Adopt section 6132 to read:

6132. Annual Enforcement Report.

The Director shall annually publish an enforcement report describing any enforcement actions taken by the department pursuant to Food and Agricultural Code section 12999.6(c).

NOTE: Authority cited: Sections 11456 and 12791, Food and Agricultural Code. Reference: Sections 2281, 11501 and 12999.6, Food and Agricultural Code.