

**ITEM 15**

**FINAL REVISED STAFF ANALYSIS  
PROPOSED AMENDMENTS TO  
PARAMETERS AND GUIDELINES**

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

Department of Pesticide Regulation, Requestor

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**ITEM 15**  
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**PARAMETERS AND GUIDELINES**

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

California Code of Regulations, Title 3, Sections 6000, 6393 (c),  
6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628  
(Register 90, No. 1)

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

Department of Pesticide Regulation, Requestor

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Note: This item was originally scheduled for the May 29, 2009 hearing and was postponed at the request of Claimant, County of San Bernardino.

**Executive Summary**

This is a request filed by the Department of Pesticide Regulation (DPR) pursuant to Government Code section 17557, subdivision (d) to amend the original parameters and guidelines for the *Pesticide Use Reports* Program (CSM-4420). If the Commission on State Mandates (Commission) approves DPR's request, the amendments would be effective for costs incurred beginning July 1, 2005.

DPR requests that the parameters and guidelines be amended so mandate reimbursement guidelines will be conformed to current law and implementing regulations. The Department of Finance (DOF), the County of San Bernardino, and the State Controller's Office (SCO) filed comments on DPR's original proposal and subsequent modifications.

In the original proposal, the DPR proposed to update the existing parameters and guidelines with "current" Commission "boilerplate" language and to clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. DPR also proposed to include mill disbursement, and unclaimed gas tax funds received by the claimant as offsetting revenues and other reimbursements, and to notify claimants that DPR developed an Offsetting Revenue Worksheet to help the counties identify the appropriate amounts to apply as an offset to a reimbursement claim. DPR also proposed adding a new Section VIII on Payment of Claims.

The parties have had full and fair opportunity to discuss and brief the issues of the original proposal. The request to amend the parameters and guidelines was issued for comment and comments were filed by the DOF. The DPR modified the Proposed Amendment on March 22, 2007, and on May 9, 2008, DPR clarified the proposed amendments to address audit

issues. The County of San Bernardino and DOF filed comments on the modified proposal, and DPR filed rebuttal comments.

Finally, the SCO filed comments, and DPR filed rebuttal comments. During the course of the review and comment period, Commission staff convened two pre-hearing conferences to assist staff and the parties in understanding each party's position, including staff's position reflected in the draft staff analysis. The draft staff analysis identified 10 proposed amendments to the parameters and guidelines. Comments on the draft staff analysis were filed by the DPR, DOF, and the County of San Bernardino.

There is only one issue that remains in dispute for the County of San Bernardino:

- Should the Offsetting Revenues and Reimbursements section be amended to add language requiring the deduction of unclaimed gas tax revenues as an offset?

Staff finds that unclaimed gas tax revenues received by claimant pursuant to Food and Agricultural Code section 224 are not required to be used toward paying the cost for reimbursable activities mandated by Food and Agricultural Code section 12979. However, to the extent that unclaimed gas tax revenues are used by a claimant toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset.

Therefore, staff recommends approval of the following language to replace DPR's proposal:

**If unclaimed gas tax funds are used for any of the reimbursable activities in Section IV of the parameters and guidelines, that amount must be deducted from any costs claimed.**<sup>1</sup>

### **Conclusion and Staff Recommendation**

Staff recommends that the Commission approve the proposed amendments to the parameters and guidelines, as modified by staff, beginning on page 25.

Staff further recommends that the Commission authorize staff to make technical non-substantive changes or corrections upon adoption.

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<sup>1</sup> Added on June 12, 2009.



## **Chronology**

01/21/1993 Commission adopts Statement of Decision

02/23/1995 Commission adopts parameters and guidelines

01/12/2007 Department of Pesticide Regulations (DPR) files proposed amendment to parameters and guidelines

02/20/2007 Department of Finance (DOF) files comments

03/22/2007 DPR modifies proposed amendment to parameters and guidelines

04/22/2008 Commission requests comments from the County of San Bernardino, original claimant

05/09/2008 DPR clarifies proposed amendments to address audit issues

06/23/2008 DOF files comments on proposed amendments

06/23/2008 County of San Bernardino requests extension of time to submit response

06/25/2008 Commission staff approves request for extension of time

07/11/2008 County of San Bernardino files comments on proposed amendments

08/01/2008 DPR files rebuttal comments

09/18/2008 State Controller's Office (SCO) files comments

09/26/2008 Pre-hearing conference held and new schedule established

10/31/2008 DOF files comments

01/15/2009 DPR files rebuttal comments

02/24/2009 Commission staff issues draft staff analysis

03/26/2009 Pre-hearing conference held

04/09/2009 DOF files comments on draft staff analysis

04/15/2009 County of San Bernardino and DPR file comments on draft staff analysis

05/14/2009 Final staff analysis issued

5/20/3009 County of San Bernardino requests postponement of hearing

5/21/2009 Commission staff approves request and postpones hearing to May 31, 2009

## STAFF ANALYSIS

### Background

This is a request filed by the Department of Pesticide Regulation (DPR) to amend the original parameters and guidelines for the *Pesticide Use Reports* Program (CSM-4420).

If the Commission on State Mandates (Commission) approves DPR's request, the amendments would be effective for costs incurred beginning July 1, 2005.

### Test Claim Decision

Statutes 1989, chapter 1200 added Food and Agricultural Code section 12979, which states:

A pesticide use report shall be submitted to the commissioner or director on a form and in a manner prescribed by the director. The data from the pesticide use reports shall be considered in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest control research, public health monitoring and research, and similar activities by the department, or by the department in cooperation with other state, regional, or local agencies with appropriate authority.

In 1991, the County of San Bernardino filed a test claim on this statute. In 1993, the Commission adopted a Statement of Decision on this test claim, finding that the provisions of Food and Agriculture Code section 12979, and its related regulations in Title 3 of the California Code of Regulations, increased the level of service to be provided by the county agricultural commissioners.<sup>2</sup>

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Food and Agriculture Fund in section 12846 of the Food and Agricultural Code which specified that it be used, upon appropriation, for the purposes of a number of sections, including 12979. Moreover, the Commission found that the Food Safety Account was created and an existing mill assessment that is imposed on counties was increased to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.

Former section 6393, subdivision (c) of Title 3, California Code of Regulations, which addressed the mill assessments, was amended to include new criteria for reimbursing counties for additional work related to the expansion of pesticide use reporting requirements for all agricultural uses. However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission found that to the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17556, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.

The Commission further found that any costs incurred as a result of the increased pesticide reporting requirements, that are not reimbursed by the Food Safety Account, and the increased mill assessment, are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provisions of Government Code section 17556, subdivision (e).

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<sup>2</sup> See Exhibit A, Statement of Decision.

## Parameters and Guidelines

The parameters and guidelines include the following limiting language under “Scope of Mandate:”

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979 of Chapter 1200 Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

And, specify the following reimbursable activities:

1. Issuing operator identification numbers pursuant to 3 CCR section 6622.
2. Issuing site identification numbers pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in V.A. above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

### **Department of Pesticide Regulation’s Request to Amend Parameters and Guidelines**

DPR requests that the parameters and guidelines be amended so mandate reimbursement guidelines will be conformed to current law and implementing regulations.<sup>3</sup> The Department of Finance (DOF), the County of San Bernardino, and the State Controller’s Office (SCO) filed comments on DPR’s original proposal and subsequent modifications.

In the original proposal, the Department of Pesticide Regulation proposed to update the existing parameters and guidelines with “current” Commission “boilerplate” language and to clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. DPR also proposed to include mill disbursement, and unclaimed gas tax funds received by the claimant as offsetting revenues and other reimbursements, and to notify claimants that DPR developed an Offsetting Revenue Worksheet to help the counties identify the appropriate amounts to apply as an offset to a reimbursement claim. DPR also proposed adding a new Section VIII on Payment of Claims and later withdrew this request.

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<sup>3</sup> See Exhibit B, Department of Pesticide Regulation’s Original Request and Comments, dated January 12, 2007, March 22, 2007, May 9, 2009, August 1, 2008, and January 15, 2009.

On January 16, 2009, DPR filed rebuttal comments and modified its last proposed amendments by accepting many of the SCO recommendations.

On April 15, 2009, DPR commented on the draft staff analysis. DPR's suggested technical corrections are reflected in the final staff analysis. One substantive comment regarding Issue 8, Offsetting Revenue Worksheet, is addressed in the analysis below. With these changes, DPR accepts all other staff recommendations in the draft staff analysis.

### **County of San Bernardino's Comments**

The County of San Bernardino, test claimant, concurred with all of DPR's proposed amendments except for the specific identification of offsetting revenues.<sup>4</sup> The County disagreed with the inclusion of unclaimed gas taxes that were established as a funding mechanism to reimburse counties for the costs of performing Food and Agricultural Code programs prior to the enactment of the mandated duties related to pesticide use reports. The County also argued that DPR should clarify that the offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the test claim statutes (Stats. 1989, ch. 1200). As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

The test claimant filed comments dated April 14, 2009, on the draft staff analysis which raised arguments similar to those raised in the test claimant's comments to DPR's proposed amendments. The substantive comments are discussed below.

### **State Agency Comments**

The DOF agreed with DPR's original proposed amendments to identify the specific revenues available to offset claims; concurred with the technical amendments clarifying the mandated activities and technical changes to the boilerplate to be consistent with current law; and found that the requested amendment to use current Commission boilerplate language is unnecessary as some of the provisions may not be applicable to the program.<sup>5</sup>

DOF also concurred with the SCO's comments and continued to recommend listing all state funds available to offset the cost of the mandate.

The SCO provided several comments to the proposed amendments and recommended making clarifying technical changes to conform to the boilerplate and format of current parameters and guidelines; making clarifying edits to one reimbursable activity; adding a new section for non-reimbursable activities; and deleting a new Section VIII, Payment of Claims.<sup>6</sup> The substantive comments are discussed below.

### **Discussion**

The proposed parameters and guidelines amendments and comments raise the following issues for determination by the Commission:

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<sup>4</sup> See Exhibit B, County of San Bernardino's Comments dated July 11, 2008.

<sup>5</sup> See Exhibit B, DOF Comments dated February 20, 2007, June 23, 2008, and October 31, 2008.

<sup>6</sup> See Exhibit B, State Controller's Office Comments dated September 18, 2008.

Should the parameters and guidelines be amended to:

1. Update the format and add the Commission's current "boilerplate" language?
2. Clarify that the mandate refers to *use reports for pesticides that are not classified by the state as restricted materials*?
3. Add a separate section identifying Non-Reimbursable Activities?
4. Update citation to OMB Circular A-87 for calculation of indirect costs?
5. Add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
6. Update the language regarding reimbursements that are based on the DPR contract for electronic submission of pesticide use reports?
7. Add *unclaimed gas tax funds* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
8. Add language informing claimants that the DPR has developed an Offsetting Revenue Worksheet to help counties identify appropriate amounts to apply as an offset to a county's reimbursement claim?
9. Add language to clarify documentation requirement to support pro-rata offsets?
10. Add new section on "Payment of Claims"?

**Issue 1      Should the parameters and guidelines be amended to update the format and add the Commission's current "boilerplate" language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI?**

The current parameters and guidelines for this program were adopted on February 23, 1995. Since that date, there have been many changes made to the format and the boilerplate language used in the parameters and guidelines. Except for one comment from the DOF, that the requested amendment to use current boilerplate is unnecessary as some provisions may not apply to the program, there is no disagreement among the other parties to update the format of, or the boilerplate language in the parameters and guidelines. Therefore, staff has modified the proposed amendments to the parameters and guidelines to conform with the format and current boilerplate language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI.

**Issue 2      Should Section IV, Reimbursable Activities, Paragraphs 1, 2, 3, and 6 be amended to clarify that the reimbursable activities include pesticides that are not classified by the state as restricted materials"?**

The Commission's Statement of Decision denied reimbursement for "... pesticides that are classified by the state as restricted materials." Prior to the enactment of the test claim statute and adoption of the implementing regulations, reports on pesticides classified by the state as restricted materials were filed with counties. The current parameters and guidelines include limiting language in Section IV Reimbursable Activities that is being moved to Section I.

DPR proposes amendments to paragraphs 1, 2, and 6 to add language specifying that reimbursement is limited to activities related to the use of pesticides that are not classified by the state as restricted materials. Also, the SCO proposes an amendment to paragraph 3, to clarify the

reimbursable activity of reviewing and filing pesticide use reports with the DPR. There is no opposition to these proposed amendments.

Staff finds that the DPR's proposed language is consistent with the Statement of Decision and recommends approval of the following proposed language in Section IV, Reimbursable Activities, Paragraphs 1, 2, and 6:

1. Issuing operator identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6622.
2. Issuing site identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6623.
- ...
6. Audit the sales records of pesticide dealers as specified in 3 CCR section 6352, for the sale of pesticides that are not classified by the state as restricted materials which are prepared and maintained by pesticide dealers who are licensed by the state.

Staff also finds that the SCO's proposed language to modify Section IV Reimbursable Activities, Paragraph 3 is also consistent with the Statement of Decision. Therefore, staff recommends approval of the following proposed language with technical modifications proposed by staff:

3. Reviewing and filing with the Department of Pesticide Regulation (~~Department of Food and Agriculture until July 17, 1991~~) or the use of pesticides that are classified by the state as restricted materials pesticide use reports other than those specified in V A ~~above~~ below. Note: Only costs incurred to review and file with the Department of Pesticide Regulation pesticide use reports other than those specified in V below may have components (e.g., data entry) which may be performed by unlicensed staff.

### **Issue 3      Should a new Section V. Non-Reimbursable Activities be added?**

The existing parameters and guidelines include a description of non-reimbursable activities in Section V Reimbursable Activities, A. Scope of the Mandate. However, this language is being moved to Section I. Summary of the Mandate to be consistent with the current format.

The State Controller's Office proposes that existing text description of non-reimbursable activities and language originally proposed by DPR regarding reimbursement of travel costs, be moved to a new Non-Reimbursable Activities section. Staff finds that this is a non-substantive, clarifying change. Therefore, staff recommends approval of the following proposed language:

#### **V.      Non-Reimbursable Activities**

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

If travel costs are incurred and the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion may be claimed.

**Issue 4            Should Section VII, Claim Preparation and Submission, B. Indirect Costs be amended to update a citation?**

The current boilerplate language allows claimants to utilize the procedure provided in “Office of Management and Budget (OMB) Circular A-87 Attachments A and B” for the calculation of indirect costs.

In comments filed by the County of San Bernardino,<sup>7</sup> we learned that this document is now cited as 2 CFR Part 225, Appendix A and B (OMB Circular A-87). The CFR citation has been verified and staff recommends updating this citation throughout Section VII, Claim Preparation and Submission, B. Indirect costs. The SCO’s agrees with DPR’s comments.

**Issues 5-8            Should Section VIII, Offsetting Revenues and Reimbursements be amended?**

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Agriculture Fund (Food & Agr. Code, § 12846) and changed the pesticide mill assessment from .008 mills per dollar to .009 mills per dollar (amendment to Food & Agr. Code, § 12841). However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission made the following findings in the Statement of Decision:

- The reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.<sup>8</sup>
- To the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17557, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.
- Any costs incurred as a result of the increased pesticide reporting requirements that are not reimbursed by the Food Safety Account and the increased mill assessment are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provisions of Government Code section 17556, subdivision (e).

The existing parameters and guidelines do not specifically identify the mill assessments in Section VIII, which was then named “Offsetting Savings and Other Reimbursements.”

This section of the parameters and guidelines currently includes the following language:

VIII.    Offsetting Savings and Other Reimbursements

Any offsetting savings the claimant experiences as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

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<sup>7</sup> See Exhibit B, letter from County of San Bernardino, Department of Agriculture/Weights and Measures, dated July 9, 2008.

<sup>8</sup> See Exhibit A, Statement of Decision.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR and the DOF<sup>9</sup> propose updating this section to make substantive and technical amendments that specifically add language describing mill disbursements and gas taxes as offsets, and language to assist claimants in applying offsets.

The current proposal would replace Section VIII as follows:<sup>10</sup>

#### VIII. Offsetting Revenues, Savings and Other Reimbursements

Any offsetting revenues or reimbursements the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim. [First Paragraph]

Specifically, the following reimbursements must be deducted from any cost claim:[Second Paragraph]

1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations;
2. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines; and
3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines.

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/> htm. [Third Paragraph]

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata

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<sup>9</sup> See Exhibit B, DOF letter dated February 20, 2007.

<sup>10</sup> See Exhibit B, DPR's Response to California State Controller Comments – proposed amendment to parameters and guidelines, dated January 9, 2009, pages 10-11.



portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval. [Fourth Paragraph]

The SCO proposes an alternative Fourth Paragraph, as follows:

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified in Section V.C.), etc. that show evidence of validity of claimed costs. If source documents do not specifically identify 100% use reporting, mandated records or activities vs. previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years<sup>11</sup> based on actual data submitted or collected during that interval. [SCO proposed language on September 18, 2009.]

The proposed language is reviewed below under Issues 5-8.

**Issue 5      Should the Offsetting Revenues and Reimbursements Section be amended to add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require claimants to report and deduct them?**

The Statement of Decision includes a Commission finding that “[t]he reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.” Although the Commission made this finding, the parameters and guidelines do not include a specific reference to deduction of mill assessments as offsetting reimbursements.

DPR proposes an amendment to specifically identify “the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations.”<sup>12</sup> The applicable regulations specify the criteria used by the Department of Pesticide Regulation in allocating pesticide mill assessment funds to counties based on each county’s costs, pesticide regulatory activities, workload, and performance, pursuant to section 12844 of the Food and Agriculture Code.

The Department of Pesticide Regulation/Mill Assessment Branch defines the pesticide “mill assessment” as a fee assessed on all pesticide sales, levied at the point of first sale into the state. A “mill” is equal to one-tenth of a cent. In 2004, this “mill assessment” was 21 mills, or 2.1 cents per dollar of sales. The mill rate is set in regulation by DPR at a level adequate to support the Department’s annual expenditures authorized by the Legislature and to provide a prudent reserve.<sup>13</sup> “Mill assessment revenues are placed in a special fund used to pay for the State’s

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<sup>11</sup> SCO’s comment is based on and responds to an earlier DPR proposal.

<sup>12</sup> This refers to Title 3, Division 6, Chapter 2, Subchapter 3, Article 2, section 6390, et seq. of the Department of Pesticide Regulation’s regulations.

<sup>13</sup> In 1997, Statutes 1997, chapter 695 changed the amount of funds disbursed to the counties and required DPR and the county agricultural commissioners to jointly develop regulations specifying the criteria to be used in allocating the mill assessment funds to the counties based

pesticide regulatory program. DPR's programs are funded primarily from fees and from the mill assessment.<sup>14</sup>

According to DPR, California Code of Regulations, Title 3, section 6393, Criteria Items and Apportionments, was amended in 2004 to establish a more appropriate and equitable method for reimbursing the counties for all Pesticide Use Enforcement activities they perform.

Each month, counties report to the Department of Pesticide Regulation all their pesticide use enforcement activities on the Pesticide Regulatory Activities Monthly Report (PRMAR). The amount of apportionment of each criteria item is a percentage of the total mill assessment funds available for reimbursement to counties [less the amount specified in section 6395 (b) of the regulations].

DPR concludes that mill assessment funds received by the counties for six of nine apportionment activities need to be reported as reimbursement, thus offsetting the costs for these activities. (The six apportionment activities are in bold text below.) California Code of Regulations, title 3, section 6393, subdivision (b), Criteria Items and Apportionments follows with DPR's comments in italicized text<sup>15</sup> and staff's findings:

- (1) **Apportionment, 3 percent:** The total number of Pesticide Use Enforcement Program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans.<sup>16</sup> (Emphasis added by DPR.)

*DPR: This apportionment addresses reimbursable component number 3 from the SCO's claim form (PUR-1) allowing reimbursement for inspecting pesticide use records of growers, auditing pest use records of growers, and auditing pesticide dealer sales records.*

Based on the Commission's Statement of Decision, staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activities 4, 5, and 6. Therefore, staff finds that the apportionment must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(1).)

- (2) **Apportionment, 3 percent:** The total number of: licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control

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upon each county's pest control activities, cost, workload, and performance. In 2001, California Code of Regulations sections 6391 and 6393 were amended and section 6397 was adopted establishing the disbursement criteria to be used to allocate mill assessment funds to the counties. The revised CCR 6393 criteria ultimately established specific apportionments to address the increased cost associated with full pesticide use report activities. Again in 2004, section 6393 was again amended.

<sup>14</sup> See Exhibit E, Department of Pesticide Regulation/Mill Assessment Branch, "Information for Retailers About Selling Pesticides and Paying Mill Assessment."

<sup>15</sup> See Exhibit B, Department of Pesticide Regulation Request to Amend Parameters and Guidelines, "Historical Background," dated January 12, 2007.

<sup>16</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(1).

operators providing notice of work in each county; active operator identification numbers in each county; and additional similar workload activities approved jointly by the Director and the commissioners.<sup>17</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 1 from the SCO's claim form PUR-1 allowing reimbursement for issuing operator IDs.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 1. Therefore, it must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(2).)

- (3) **Apportionment, 3 percent:** The total number of private applicator certificate holders certified in each county.<sup>18</sup>

*DPR: This apportionment does not pertain to pesticide use report activities.*

Based on the Commission's Statement of Decision, staff agrees with DPR that this apportionment does not pertain to pesticide use report activities and is not an offset.

- (4) **Apportionment, 3 percent:** Work hours expended on pesticide related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license.<sup>19</sup> (Emphasis added by DPR.)

*DPR: The apportionment directly pertains to pesticide use reports activities.*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(4).)

- (5) **Apportionment, 3 percent:** Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners.<sup>20</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to pesticide use report activities, but does have some indirect linkages (e.g. increased expenditures reported results in an increased share of the mill assessment revenues).*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-

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<sup>17</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(2).

<sup>18</sup> California Code of Regulations, title 3, section 6383, subdivision (c)(3).

<sup>19</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(4).

<sup>20</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(5).

mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal.Code Regs., tit. 3, § 6393, subd. (b)(5).)

- (6) **Apportionment, 3 percent:** The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979. (Cal.Code Regs., tit. 3, § 6394, subd. (b)(6).)<sup>21</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to PUR [pesticide use report] activities but does have some indirect linkages (e.g. an increase in total pounds of pesticides reported results in an increased share of the mill assessment revenues).*

Staff finds that to the extent that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(6) is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset.

- (7) Apportionment 21 percent: The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and notices of intent reviewed by each county.<sup>22</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision which denied reimbursement for activities related to restricted materials, staff finds that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(7) is not an offset.

- (8) Apportionment, 21 percent: Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information. Counties receiving funding under the provisions of section 8698.5 of the Business and Professions Code for structural fumigation enforcement shall only receive funds from this apportionment after deducting the amount of funds received pursuant to section 8698.5 of the Business and Professions Code.<sup>23</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision, staff finds that the requirements related to non-agricultural labeled pesticides and structural fumigation enforcement are not reimbursable, so the apportionment established by California Code of Regulations, title 3, subdivision (b) (8) is not an offset.

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<sup>21</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(6).

<sup>22</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(7).

<sup>23</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (8).

(9) **Apportionment, 40 percent:** Based on each county’s pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties.<sup>24</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 2 from the SCO’s claim form PUR-1, allowing reimbursement for reviewing and filing with the DPR pesticide use reports.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 3 and must be deducted as an offset. However, since the calculation of this apportionment includes non-reimbursable pesticide use report data records, staff concludes that only the portion of this apportionment that is based on Reimbursable Activity 3 must be deducted as an offset . (Cal. Code Regs., tit. 3, § 6393, subd. (b)(9).)

There is no opposition to the proposed amendment to specify the offset of “the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations.” The County of San Bernardino finds that mill assessments qualify for the offset of local agencies’ mandated costs.<sup>25</sup>

Staff finds that the mill disbursements received by claimants that are based on the reimbursable activities identified in Section IV of the parameters and guidelines in accordance with current applicable regulations (Cal. Code of Regs., tit. 3, § 6393, subdivision (b), (1), (2), and (9)) must be identified and deducted from any costs claimed.

Staff further finds that the mill disbursements received by claimants in accordance with California Code of Regulations, title 3, section 6393, subdivisions (b) (4), (5) and (6) that are used to offset the reimbursable activities identified in Section IV of the parameters and guidelines must be identified and deducted from any costs claimed.

Therefore, staff recommends the Commission approve the following language:

Specifically, the following revenues and reimbursements must be deducted from any costs claimed:

1. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (1), (2), and (9) that are based on the reimbursable activities in Section IV of the parameters and guidelines.
2. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (4), (5) and (6) that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

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<sup>24</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (9).

<sup>25</sup> See Exhibit B, County of San Bernardino’s letter dated July 9, 2008.

**Issue 6      Should the Offsetting Revenue and Reimbursements Section be amended to update the language regarding reimbursements that are based on the DPR contract for electronic submission of pesticide use reports?**

Section VIII of the Parameters and Guidelines currently addresses offsetting revenue from the contract for electronic submission of *Pesticide Use Reports*:

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR's proposed amendment would update and replace the original paragraph with the following language:<sup>26</sup>

Specifically, the following reimbursements must be deducted from any cost claim:

...

funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines, and ....

The County of San Bernardino finds that contract revenue funds qualify for the offset of local agencies' mandated costs.<sup>27</sup> However, the County argues that DPR should clarify that offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the mandates of Chapter 1200, Statutes of 1989. As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

DPR's proposed amendment is limited to revenue received for "activities identified as reimbursable in Section IV of the parameters and guidelines." Section IV of the parameters and guidelines sets forth the reimbursable activities resulting from the test claim statute. Thus, the scope of the increased costs for reimbursable activities and any offsetting revenues resulting from the contract for the electronic submittal of pesticide use reports between the county and DPR are already limited by the identified reimbursable activities imposed by Statutes 1989, chapter 1200.

However, staff finds that clarifying language is necessary. DPR's proposed amendment does not track the language of the reimbursable activity – "reviewing and filing with the Department of Pesticide Regulation pesticide use reports." Therefore, staff recommends modifying DPR's proposed amendment to clarify this description of the reimbursable activity by inserting the words "reviewing and filing" and making other clarifying edits, as follows:

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<sup>26</sup> See Exhibit B, Department of Pesticide Regulation Memoranda, dated January 9, 2009.

<sup>27</sup> See Exhibit B, County of San Bernardino's letter dated July 9, 2008.

Specifically, the following revenues and reimbursements must be deducted from any ~~cost-claim~~ costs claimed:

...

The payments received under each county's contract with DPR for the review and filing of pesticide use reports (electronic submittal to DPR) that are identified as reimbursable in Section IV of the parameters and guidelines.

**Issue 7      Should the Offsetting Revenues and Reimbursements section be amended to add language requiring the deduction of unclaimed gas tax revenues as an offset?**

The Commission's Statement of Decision and parameters and guidelines do not mention the application of unclaimed gas tax revenues received by counties as an offset.

However, DPR has proposed to include unclaimed gas tax revenues received by counties, pursuant to Food and Agricultural Code section 224, as offsetting revenues and other reimbursements, stating:

[S]ince unclaimed gas tax allotment revenues are allocated by the California Department of Food and Agriculture based on total agricultural program costs reported by counties statewide, the [State Controller's Office] has determined that when a county reports its mandated costs within total agricultural program costs, it increases its share of statewide revenue allocations.<sup>28</sup>

DPR asserts that the inclusion of unclaimed gas tax revenues as offsetting revenues ensures that counties account for the receipt of all offsetting funds. According to DPR, between 1989-90 and 1993-94, the gas tax refund rate doubled (from 9 cents to 18 cents), and the amount of unclaimed gas tax distributed to fund Food and Agricultural Code (FAC) section 224, subdivision (c) programs (which included all pesticide use report activities, including those under the state mandate) nearly tripled. In October 1996, the California Department of Food and Agriculture (CDFA) updated its County Agricultural Commissioners Annual Financial Statement Procedures Manual to specifically include review of pesticide use reports (PUR) and issuance of operator identification numbers as reportable Pesticide Use Enforcement Program activities. Because unclaimed gas tax funds are distributed based on these financial statements, a portion of these funds are for the mandated activities. DPR explains:<sup>29</sup>

Several times since 1989-90, CDFA has also successfully negotiated with the Department of Transportation to increase the formula to determine the amount transferred to CDFA and available for all FAC section 224(c) programs. For example, in 2003-04, the unclaimed gas tax distributed to the counties reflected an increase of about 38 percent over the previous year. CDFA's March 30, 2004 letters to the counties that accompanied the disbursement stated that "the additional unrefunded gas tax your county receives is intended to augment your existing agriculture programs." Those existing agriculture programs include all PUR activities.

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<sup>28</sup> See Exhibit B, Department of Pesticide Regulation proposed amendment to Parameters and Guidelines, dated January 12, 2007, p. 2.

<sup>29</sup> See Exhibit B, Department of Pesticide Regulation Memorandum, dated August 1, 2008.

DPR fully supports the idea that only a small portion of the unclaimed gas tax relates to the mandated PUR activities. DPR further suggests that “when submitting a claim, a county should document the ratio of mandated PUR activities to total pesticide use enforcement activities and apply this ratio to the total unclaimed gas tax they receive for pesticide use enforcement to determine the amount to include as offsetting reimbursement on the claim.”<sup>30</sup>

The SCO and DOF agree with DPR’s proposed amendment.

The County of San Bernardino disagrees with the inclusion of unclaimed gas tax revenues as offsetting revenues. The County argues: (1) a pre-existing revenue stream is inappropriate to use as a funding mechanism unless there was some specific increase to the revenue source to fund the mandate and that there has been no specific increase in unclaimed gas tax to fund this mandate; (2) if the state fully funds the costs incurred for the mandates of Statutes 1989, chapter 1200, there is no local cost and therefore no unclaimed gas tax revenue associated with the performance of these mandated activities; and (3) use of unclaimed gas tax revenue as a funding source for this mandate decreases the available funding for all other pre-existing Food and Agricultural Code programs resulting in additional local costs to the counties related to these programs, effectively shifting the costs of a new mandate to pre-existing programs.<sup>31</sup>

Revenue and Tax Code section 8101, allows individuals who have paid a tax for motor vehicle fuel and have used that fuel for particular purposes to be reimbursed and repaid the amount of the tax. The remaining money from the vehicle fuel tax, including unclaimed amounts available for reimbursement, are deposited into the Motor Vehicle Fuel Account. Revenue and Tax Code section 8352.5 provides that the Director of Transportation and the Director of Food and Agriculture shall jointly prepare a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel subject to refund pursuant to section 8101 less the gross refunds paid by the Controller. An amount equal to this estimate shall be transferred from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund.

Food and Agricultural Code section 224 (as added by Stats.2001, ch. 145) provided that money transferred to the Food and Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Revenue and Tax Code section 8352.5, less specified amounts for state use (Food & Agr. Code § 224 subds. (a) and(b)), is appropriated to be paid to counties as partial reimbursement for county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code that are supervised by the Department of Food and Agriculture. Payments to counties are apportioned to counties in relation to each county’s expenditure to the total amount expended by all counties for the preceding fiscal year for agricultural programs authorized by the Food and Agricultural Code.<sup>32</sup>

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<sup>30</sup> Ibid.

<sup>31</sup> See Exhibit B, Claimant response to Department of Pesticide Regulation proposed amendment to parameters and guidelines, dated July 9, 2008.

<sup>32</sup> Food and Agricultural Code section 224 was amended by Statutes 2007, chapter 421, operative July 1, 2008, to reflect changes that occurred in 1991 when then-Governor Wilson created the California Environmental Protection Agency and moved DPR into it from the Department of Food and Agriculture. Since the relocation of CDR, the Department of Food and Agriculture has



When analyzing statutory language, the rules of statutory construction provide:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. . . . If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.<sup>33</sup>

Also, in *People v. Knowles* the California Supreme Court held:

If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.<sup>34</sup>

Here, the statute in question is Food and Agricultural Code section 224, which apportions unclaimed gas tax funds to county agricultural commissioners. The plain language of section 224 does not require county agricultural commissioners to use any apportionments received pursuant to section 224 for the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). Rather, the stated purpose of apportionments received by county agricultural commissioners pursuant to section 224 is to reimburse county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code, including the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200).<sup>35</sup> As a result, although a county may have reported mandated costs within total agricultural program costs resulting in an increase of a county's share of statewide revenues allocated pursuant to section 224, the increased revenue attributable to the mandated activities is not required to be spent on the mandated activities. Therefore, if the claimant does not spend any of the revenue allocated pursuant to section 224 on the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the revenue cannot be counted as offsetting revenue. If, however, claimant uses unclaimed gas tax revenue to cover the costs of the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the amount used must be counted as offsetting revenues.

Staff finds that unclaimed gas tax revenues received by claimant pursuant to Food and Agricultural Code section 224 do not constitute state-mandated offsetting revenues that must be deducted from any cost claimed for reimbursement if the revenue is not used toward paying the

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continued to reimburse county agricultural commissioners for activities that are under DPR. The amendment authorized \$ 9 million in funding of DPR for the purpose of reimbursing county agricultural commissioners activities that are under the purview of DPR. Reimbursement is apportioned to counties in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for pesticide use enforcement programs "or with the collective agreement of the agricultural commissioners, disbursement to counties for a current fiscal year according to criteria developed in work plans, or any combination of reimbursement and disbursement as agreed upon by the director and the commissioners."

<sup>33</sup> *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

<sup>34</sup> *People v. Knowles* (1950) 35 Cal.2d 175, 183.

<sup>35</sup> Food and Agricultural Code section 224, subdivision (c) (Stats. 2001, ch. 145). See footnote 1 regarding amendment by Statutes 2007, chapter 421.

cost for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). However, to the extent that unclaimed gas tax revenues are used toward reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), then that amount must be deducted from any cost claimed for reimbursement as an offset.

In comments filed on the Draft Staff Analysis, the County of San Bernardino cites to the Commission's regulations, California Code of Regulations, title 2, section 1183.1, Content of Parameters and Guidelines, lists in (7) Offsetting Revenues and Reimbursements (if applicable), the identification of (i) Dedicated state and federal funds appropriated for this program; (ii) Non-local agency funds dedicated for this program; (iii) Local agency's general purpose funds for this program; and (iv) Fee authority to offset partial costs of this program. The County argues, "Unclaimed gas tax is an apportionment that reimburses counties for carrying out programs authorized by the Food and Agricultural Code. Funding received is not required to be spent on the Pesticide Use mandate. The funding does not fall in the identified items as listed in 2 CCR § 1183.1 (7) and as such, should not be singled out in the amended P&Gs."

The language of California Code of Regulations., title 2, section 1183.1 provides what the parameters and guidelines must contain. It does not create a limitation as to what it can contain. Thus, because the stated purpose of (unclaimed gas tax) apportionments received by county agricultural commissioners pursuant to section 224 is to reimburse county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code, including the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), staff finds that the Commission may include a specific reference to the gas tax funds in the Offsetting Revenues and Reimbursements section of the parameters and guidelines.

Therefore, staff recommends approval of the following language to replace DPR's proposal:

And, if unclaimed gas tax funds are used for any of the reimbursable activities in Section IV of the parameters and guidelines, that amount must be deducted from any costs claimed.<sup>36</sup>

Staff's proposed language does not identify the unclaimed gas tax fund as a mandatory offset, as it does for the offsetting revenues and reimbursements discussed in Issues 5 and 6 above.

**Issue 8                    Should the Offsetting Revenues and Reimbursements Section be amended to add language informing claimants that the DPR has developed an Offsetting Revenue Worksheet that may be used to calculate offsetting revenues and reimbursements?**

The existing parameters and guidelines do not identify any worksheets or forms that may be used to calculate offsetting savings [revenues] and other reimbursements.

DPR proposed that the following language be added to Section V, Offsetting Revenues and Reimbursements":

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at [http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/\\_\\_\\_\\_.htm](http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/____.htm).

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<sup>36</sup> Added on June 12, 2009.

DPR developed the Offsetting Revenue Worksheet to “assist” counties in identifying all reimbursement for the costs of the mandated activities.<sup>37</sup> However, the plain language of the parameters and guidelines does not require the use of the Offsetting Revenue Worksheet to make a claim for reimbursement for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200).

Claimant has not commented on the inclusion of the above language or the use of the Offsetting Revenue Worksheet.

DOF believes that this worksheet will assist claimants in preparing accurate claims for reimbursement. The SCO does not object to the inclusion of the proposed language.

Staff notes that the use of Offsetting Revenue Worksheet is one approach to calculating offsetting revenues and reimbursements to deduct from claimed costs.

There is no requirement for claimants to use this worksheet. However, as originally proposed, this worksheet was inconsistent with the draft staff analysis. DPR has revised this worksheet to be consistent with Section VIII of the parameters and guidelines as reflected in the draft staff analysis. In addition DPR met with SCO staff to discuss this issue. According to DPR, SCO has indicated that Claiming Instructions can be revised to advise counties that they may contact DPR (via website) if they want assistance in calculating offsetting revenues and reimbursements. Based on this information, DPR is now willing to remove the reference to the Offsetting Revenue Worksheet from the parameters and guidelines, as originally proposed.<sup>38</sup>

Therefore, staff recommends denial of the proposed language described above.

**Issue 9            Should the Offsetting Revenues and Reimbursements Section be amended to add language to clarify documentation requirement to support pro-rata offsets?**

The existing parameters and guidelines do not provide any guidance as to how pro-rata portions of offsetting revenues and other reimbursements can be supported by source documents.

DPR proposes the addition of the following language in Section VIII:

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted.<sup>39</sup>

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<sup>37</sup> See Exhibit B, DPR’s proposed amendment to parameters and guidelines, dated March 22, 2007.

<sup>38</sup> See Exhibit B, DPR’s memorandum, “Comments on Draft Staff Analysis,” dated April 13, 2009.

<sup>39</sup> See Exhibit B, DPR’s Response to SCO Comments – proposed amendment to parameters and guidelines, dated January 9, 2009. In this letter, DPR changed the last phrase in the original proposed language from “is updated at least every five years” to “... three years.”

SCO proposes the inclusion of the following language in Section VIII:

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified above in Section V.C.), etc. that show evidence of validity of claimed costs.

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval.

It appears that the purpose of both proposals is to assist claimants in applying a pro-rata portion or default ratio to the calculation of offsets and to describe acceptable documentation. However, staff finds both proposals difficult to understand. Although there is no opposition from the County of San Bernardino, staff recommends denial of both the DPR proposal and the SCO proposal until either version is clarified and proposed. Otherwise, inclusion of either proposal will not help claimants in calculating pro-rata offsets for deduction based on inadequate source documents; nor will staff understand how to apply this provision in reviewing incorrect reduction claims that may be filed on this program.

Therefore, staff recommends denial of the proposed language described above.

**Issue 10: Should a new Section VIII – Payment of Claims be added to the parameters and guidelines?**

The Department of Pesticide Regulation proposed adding new Section VIII. Payment of Claims to the Parameters and Guidelines. This section, as proposed, would state:

All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.

After this proposed amendment was opposed by the SCO and DOF, DPR deleted the proposed language in its January 2009 comments.

Staff agrees with the SCO and DPR for the following reasons:

The Legislature adopted the 2005-2006 Budget Act<sup>40</sup> and appropriated funds from the Department of Pesticide Regulation Fund for payment of the *Pesticide Use Reports* program. The decision to pay mandate reimbursement claims from this special fund was made by the Legislature and enacted into law through this and subsequent budget acts. In future years, the Legislature could appropriate funds for this program from the General Fund or another special fund. The power to make appropriations is reserved for the Legislature. Executive power over appropriations is limited and is set out in the state Constitution which provides that each year the Governor shall submit a proposed budget to the Legislature (Cal. Const. art. IV, 12) and that each bill, including the budget bill shall be presented to the Governor for his or her signature or veto (Cal. Const., art. IV, 10). Legislative determinations relating to expenditures in other respects are binding upon the executive who, in expending public funds may not disregard legislatively prescribed directives and limits pertaining to the use of such funds.

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<sup>40</sup> See Statutes 2005, chapter 38; Statutes 2006, chapter 47; Statutes 2007, chapter 171.

The budget language (Provision 1) adopted by the Legislature recognized the authority and constitutional duty of the State Controller to audit, verify, and pay mandate reimbursement claims and exercised the power to appropriate funds.

Schedule 1 identifies the program, *Pesticide Use Reports* (Ch. 1200, Stats. 1989) (CSM-4420). Provision 1 states:

Allocations of funds provided in this item to the appropriate local entities shall be made by the State Controller in accordance with the provisions of each statute or executive order that mandates the reimbursement of the costs, and shall be audited to verify the actual amount of the mandated costs in accordance with subdivision (d) of Section 17561 of the Government Code. Audit adjustments to prior year claims may be paid from this item. Funds appropriated in this item may be used to provide reimbursement pursuant to Article 5 (commencing with Section 17615) of Chapter 4 of Part 7 of Division 4 of Title 2 of the Government Code.

The 2006 Budget Act, Item 8885-295-0106, adopted the same language as 2005 and appropriated \$162,000; likewise, the 2007 Budget Act in Item 8885-295-0106 appropriated \$666,000 for costs incurred in fiscal years 2001-2002 through 2004-2005, inclusive, and the 2008 Budget Act in Item 8885-295-0106, appropriated \$160,000 for costs incurred in fiscal years 2005-2006 and 2006-2007.

Staff finds that adoption of the proposed amendment is inconsistent with existing law, including prior state budgets and laws governing mandate reimbursement. Therefore, staff recommends denial of this proposed amendment.

### **Conclusion and Recommendation**

Staff recommends that the Commission approve the proposed amendments to the parameters and guidelines, as modified by staff, beginning on page 25.

Staff further recommends that the Commission authorize staff to make technical non-substantive changes or corrections upon adoption.



## PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

California Code of Regulations, Title 3, Sections 6000, 6393 (c),  
6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628  
(Register 90, No. 1)

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

### I. SUMMARY OF THE MANDATE

On January 21, 1993 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Food and Agricultural Code section 12979, as added by Statutes 1989, Chapter 1200, and its implementing regulations in Title 3 of the California Code of Regulations, required county agricultural commissioners to implement a new program or higher level of service in an existing program within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution.

The enactment of the test claim statute and adoption of implementing regulations resulted in county agricultural commissioners receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission found that the funding was not sufficient to cover all of the increase in costs experienced by counties. Costs related to activities required by Food and Agricultural Code section 12979, and its implementing regulations in Title 3 of the California Code of Regulations that are not otherwise reimbursed by the Food Safety Account and increased mill assessment, were therefore found to be reimbursable costs mandated by the state.

Counties shall be reimbursed for the costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989 and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393(c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased record keeping requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly-required pesticide use reports with the state.

Activities related to reports from the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of

Food and Agricultural Code section 12979, of Chapter 1200, Statutes 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

## II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to file a reimbursement claim for those costs.

## III. PERIOD OF REIMBURSEMENT

This parameters and guidelines amendment is effective for the period of reimbursement beginning on July 1, 2005.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A county or city and county may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
2. In the event that revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts, and Pesticide Regulatory Activity Monthly Reports (PRAMR).

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.



The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6622.
2. Issuing site identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (~~Department of Food and Agriculture until July 17, 1994~~) pesticide use reports other than those specified in IV A above below. This activity may be performed by unlicensed persons.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had and reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Audit the sales records of pesticide dealers as specified in 3 CCR section 6352, for the sale of pesticides that are not classified by the state as restricted materials which are prepared and maintained by pesticide dealers who are licensed by the state.

## **V. Non-Reimbursable Activities**

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (~~3 CCR~~).

If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.

## **VI. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

## 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

Claimants may use time studies to support salary and benefit costs when an activity is task repetitive in nature. Time study usage is subject to the time study guidelines included in the State Controller's annual claiming instructions.

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

## 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

~~If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.~~

## 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the

reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1. Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

## B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (the Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should

be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

#### ~~VIII. PAYMENT OF CLAIMS~~

~~All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.~~

#### VII. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a county or city and county pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, and offsetting revenues and reimbursements, as described in Section VIII, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

#### VIII. OFFSETTING REVENUES SAVINGS AND OTHER REIMBURSEMENTS (Revised on June 11, 2009)

~~Any offsetting revenues or reimbursements offsets the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from the costs claimed ~~cost of this claim~~. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from the costs claimed.~~

Specifically, the following revenues and reimbursements must be deducted from any costs claimed ~~cost claim~~:

- ~~1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations.~~
1. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (1), (2), and (9) that are based on the reimbursable activities in Section IV of the parameters and guidelines.
2. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (4), (5) and (6)

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

3. The payments received under each county's contract with DPR for the review and filing of pesticide use reports (electronic submittal to DPR) that are identified as reimbursable in Section IV of the parameters and guidelines.

~~3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.~~

4. The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.<sup>2</sup>

**And, if unclaimed gas tax funds are used for any of the reimbursable activities in Section IV of the parameters and guidelines, that amount must be deducted from any costs claimed.<sup>3</sup>**

#### Option A

~~An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.edpr.ca.gov/docs/enfeompli/prenffirm/.htm>.~~

#### Option B

~~An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.edpr.ca.gov/docs/enfeompli/prenffirm/.htm>.~~

~~Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified above in Section V.C.), etc. that show evidence of validity of claimed costs.~~

~~If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro rata portion or default ratio may be applied provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval.~~

## **IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS**

~~Pursuant to Government Code section 17558, subdivision (e), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.~~

<sup>2</sup> Deleted on June 12, 2009.

<sup>3</sup> Added on June 12, 2009.

~~Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon revised parameters and guidelines adopted by the Commission.~~

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement established by Commission action pursuant to Government Code section 17557, section 17557.2, or any decision or order of the Commission pursuant to section 17559. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

#### **X. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

#### **XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision (CSM-4220) is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

Claim of:

County of San Bernardino,

Claimant

No. CSM-4420  
Food and Agriculture Code  
Section 12979  
Chapter 1200, Statutes of 1989  
Pesticide Use Reports

STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on November 19, 1992, in Sacramento, California, during a regularly scheduled hearing.

ms\* Marcia Faulkner, Mr. John Gardener and Mr. Allan Burdick appeared on behalf of the County of San Bernardino. Mr. James Apps appeared on behalf of the State Department of Finance. Ms. Sharon Dobbins, and Mr. Doug Okumura appeared on behalf of the State Department of Pesticide Regulation.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

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ISSUES

1  
2  
3 Da Food and Agriculture Code section 12979, as added by  
4 Chapter 1200, Statutes of 1989 (Chapter 1200/89), and its  
5 implementing regulations in Title 3 of the California Code of  
6 Regulations, require local agencies to implement a new program or  
7 provide a higher level of service in an existing program, within  
8 the meaning of Government Code section 17514, and section 6 of  
9 article XIII B of the California Constitution?

10  
11 If so, are local agencies entitled to reimbursement under the  
12 provisions of section 6 of article XIII B?

BACKGROUND AND FINDINGS OF FACT

13  
14  
15  
16 The test claim was filed with the Commission on December 20, 1991,  
17 by the County of San Bernardino (claimant).

18  
19 The elements for filing a test claim, as specified in section 1183  
20 of Title 2 of the California Code of Regulations, were satisfied.

21  
22 Chapter 1200/89 added section 12979 to the Food and Agriculture  
23 Code to require the following:

24  
25 "A pesticide use report shall be submitted to the  
26 commissioner or director on a form and in a manner  
27 prescribed by the director. The data from the pesticide  
28 use reports shall be considered in setting priorities for

1 food monitoring, pesticide use enforcement, farm worker  
2 safety programs, environmental monitoring, pest control  
3 research, public health monitoring and research, and  
4 similar activities by the department, or by the  
5 department in cooperation with other state, regional, or  
6 local agencies with appropriate authority."

7  
8 The claimant stated that the addition of Food and Agriculture Code  
9 section 12979, and its implementing regulations in Title 3 of the  
10 California Code of Regulations, results in a greatly expanded  
11 number of reports received by the county agricultural commissioner  
12 from the users of pesticides, and has increased the monitoring  
13 responsibilities as specified by the State Department of Pesticide  
14 Regulation. The reporting requirements require the county  
15 agricultural staff to perform reporting and monitoring activities  
16 at a higher service level, in addition to completely new activities  
17 not previously required.

18  
19 The Department of Pesticide Regulation stated that prior to the  
20 enactment of section 12979, the state's pesticide program only  
21 required that (1) holders of use permits for restricted pesticide  
22 materials, and (2) agricultural pest control operators, to submit  
23 pesticide use reports to the county agricultural commissioner or  
24 the director of the Department of Food and Agriculture. In  
25 addition, the holder of the restricted materials permit did not  
26 have to submit a pesticide use report if the material was applied  
27 by a agricultural pest control operator and included in the  
28 operator's report.

1 The Department of Pesticide Regulation stated that with the  
2 enactment of section 12979, the state adopted a new pesticide  
3 program which requires that all agricultural pesticide use be  
4 reported monthly to the county agricultural commissioner, who, in  
5 turn, reports the data to the Department of Pesticide Regulation.  
6 The Department of Pesticide Regulation stated that the new  
7 regulatory program under Food and Agriculture Code section 12979  
8 results a higher level of service in an existing program.

9  
10 The Commission acknowledged that under the old regulatory program  
11 (Title 3, California Code of Regulations, section 6440), only two  
12 classes of individuals, i.e., holders of restricted materials  
13 permits, and agricultural pest control operators, were required to  
14 submit use reports. However, the Commission observed that the  
15 regulatory program established under Food and Agriculture Code  
16 section 12979 expands the number of people who must now maintain  
17 pesticide use records and submit monthly reports to the county  
18 agricultural commissioner, who, in turn, report the data to the  
19 Department of Pesticide Regulation. (Title 3, California Code of  
20 Regulations, section 6624 through 6627)

21  
22 Thus, the Commission found that the provisions of Food and  
23 Agriculture section 12979, and its related regulations in Title 3  
24 of the California Code of Regulations, increased the level of  
25 service to be provided by the county agricultural commissioners.

26  
27 However, the Department of Finance, and the Department of Pesticide  
28 Regulation, noted that Chapter 1200/89 created the Food Safety

Account, as well as increased the mill assessment from .008 mills per dollar to .009 mills per dollar, to fund the pesticide program created by that legislation.

Food and Agriculture Code section 12846, as added by Chapter 1200/89, provides:

"The Food Safety Account is hereby created in the Department of Food and Agriculture Fund to be used, upon appropriation, for the purposes of Sections 12535, 12797, 12798, 12979, 13060, and 13062 of this code, and Section 26509 of the Health and Safety Code." (emphasis added)

With respect to the mill assessment increase, the Department of Pesticide Regulation stated that as a result of the .001 mill assessment increase, section 6393, subdivision (c), of Title 3, California Code of Regulations, was amended to include new criteria for reimbursing counties for additional work related to the expansion of pesticide use reporting requirements for all agricultural uses. However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

Government Code section 17556, subdivision (e), provides:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim

1 submitted by a local agency or school district, if, after  
2 a hearing, the commission finds:

3  
4 "....."

6 "(e) The statute or executive order provides for  
7 offsetting savings to local agencies or school districts  
8 which result in no net costs to the local agencies or  
9 school districts, or includes additional revenue that was  
10 specifically intended to fund the costs of the state  
11 mandate in an amount sufficient to fund the cost of the  
12 state mandate."

13  
14 Based on the provisions of Government Code section 17556,  
15 subdivision (e), the Department of Finance, and the Department of  
16 Pesticide Regulation, stated that Food and Agriculture Code  
17 section 12979, and its implementing regulations in Title 3 of the  
18 California Code of Regulations, do not result in "costs mandated by  
19 the state" as defined by Government Code section 17514.

20  
21 The claimant acknowledged that it currently has a memorandum of  
22 understanding with the Department of Pesticide Regulation, and  
23 thereby receives state funds for the increased reporting  
24 requirements. However, the claimant also alleged that the current  
25 funding is insufficient. Thus, the claimant further alleged that  
26 the unreimbursed costs it has incurred are "costs mandated by the  
27 state" as defined by Government Code section 17514.

28 //

1 The Commission recognized that Chapter 1200/89 created the Food  
 2 Safety Account in section 12846 of the Food and Agriculture Code  
 3 and amended Food and Agriculture Code section 12841, to change the  
 4 pesticide mill assessment from .008 mills per dollar to .009 mills  
 5 per dollar. Moreover, the Commission found that the reason for  
 6 creating the Food Safety Account and increasing the mill assessment  
 7 was to provide funding for the new pesticide program contained in  
 8 Chapter 1200/89, part of which pertains to the pesticide use  
 9 reports that are the subject of this claim,

10

11 The Commission found that to the extent that costs incurred by the  
 12 claimant are reimbursed by the Food Safety Account and the  
 13 increased mill assessment, Government Code section 17556,  
 14 subdivision (e), precludes such costs from being costs mandated by  
 15 the state, as defined in Government Code section 17514.

16

17 The Commission further found that any costs incurred as a result of  
 18 the increased pesticide reporting requirements, that are not  
 19 reimbursed by the Food Safety- Account, and the increased mill  
 20 assessment, are costs mandated by the state, as defined in  
 21 Government Code section 17514, and are not subject to the  
 22 provisions of Government Code section 17556, subdivision (e).

23 //

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1                   APPLICABLE LAW RELEVANT TO THE DETERMINATION  
2                   OF A REIMBURSABLE STATE MANDATED PROGRAM  
3

4 Government Code section 17500 and following, and section 6,  
5 article XIIIB of the California Constitution and related case law.  
6

7  
8                   CONCLUSION  
9

10 The Commission determines that it has the authority to decide this  
11 claim under the provisions of Government Code sections 17500  
12 and 17551, subdivision (a) .  
13

14 The Commission concludes that Food and Agriculture Code  
15 section 12979, and its implementing regulations in Title 3 of the  
16 California Code of Regulations, require counties to implement a new  
17 program or higher level of service in an existing program, within  
18 the meaning of Government Code section 17514 and section 6,  
19 article XIIIB of the California Constitution.  
20

21 Accordingly, such costs related to Food and Agriculture Code  
22 section 12979, and its implementing regulations in Title 3 of the  
23 California Code of Regulations, that are not otherwise reimbursed  
24 by the Food Safety Account and increased mill assessment, are costs  
25 mandated by the state and are subject to reimbursement within the  
26 meaning of section 6, article XIIIB of the California Constitution.  
27 Therefore, the claimant is directed to submit parameters and  
28 guidelines, pursuant to Government Code section 17557 and Title 2,

1 California Code of Regulations, section 1183.1, to the Commission  
2 for its consideration.

3

4 The foregoing determination is subject to the following conditions:

5

6 The determination of a reimbursable state mandated  
7 program does not mean that all increased costs claimed  
8 will be reimbursed. Reimbursement, if any, is subject to  
9 Commission approval of parameters and guidelines for  
10 reimbursement of the mandated program; approval of a  
11 statewide cost estimate; a specific legislative  
12 appropriation for such purpose; a timely-filed claim for  
13 reimbursement; and subsequent review of the claim by the  
14 State Controller's Office,

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## Parameters and Guidelines

Food and Agricultural Code Section 12979  
Chapter 1200, Statutes of 1989

### *Pesticide Use Reports*

#### I. Summary of Mandate

Chapter 1200, Statutes of 1989, added Food and Agricultural Code section 12979, and its implementing regulations in Title 3 of the California Code of Regulations. The addition of this section and its implementing regulations resulted in county agricultural commissioners receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission found that the funding was not sufficient to cover all of the increase in costs experienced by counties. Costs related to activities required by Food and Agricultural Code section 12979, and its implementing regulations in Title 3 of the California Code of Regulations that are not otherwise reimbursed by the Food Safety Account and increased mill assessment, were therefore found to be reimbursable costs mandated by the state.

#### II. Commission on State Mandates' Decision

The Commission on State Mandates determined a reimbursable state mandated program pertaining to Food and Agricultural Code section 12979 and its implementing regulations at its hearing of November 19, 1992, and adopted the Statement of Decision for this test claim at its hearing of January 21, 1993.

#### III. Eligible Claimants

Counties.

#### IV. Period of Reimbursement

Chapter 1200, Statutes of 1989, became operative October 1, 1989. Government Code section 17557 states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed by the County of San Bernardino on December 20, 1991, returned incomplete on January 21, 1992, and completed May 19, 1992. Therefore, reimbursement claims may be filed for costs incurred on or after July 1, 1990.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent fiscal year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), subpart (3), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

#### V. Reimbursable Activities and Related Costs

##### A. Scope of Mandate

Counties shall be reimbursed for the costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393(c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, and 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased record keeping requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly-required pesticide use reports with the state.

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

##### B. Reimbursable Activities

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers pursuant to 3 CCR section 6622.
2. Issuing site identification numbers pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in V. A. above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.

5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

## VI. Claim Preparation

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

### A. Description of Reimbursable Activity

### B. Supporting Documentation

#### 1. Employee Salaries and Benefits

Show the name of the employee(s) involved, and/or the classification(s) of the employee(s) involved, mandated functions performed, number of hours devoted to the function, productive hourly rate and benefits. The average number of hours devoted to each mandated activity may be claimed if supported by a documented time study.

#### 2. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.

#### 3. Allowable Overhead Costs

Indirect costs may be claimed only in the manner described by the State Controller in the claiming instructions. Indirect costs may be claimed either by using ten percent of direct labor as an indirect cost rate or by preparing a departmental indirect cost rate proposal to determine the rate.

## VII. Supporting Data

For auditing purposes, all costs claimed shall be traceable to source documents (i.e., employee time records, invoices, receipts, purchase orders, contracts, time studies, worksheets, etc.) that show evidence of and validity of claimed costs. All documentation supporting such costs shall be made available to the State Controller or his agent, as may be requested, during the record retention period specified in Government Code section 17558.5, subdivision (a).

Government Code section 17558.5, subdivision (a), requires that all supporting source documents and worksheets must be kept on file not less than four years after the end of the calendar year in which the reimbursement claim is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in which case, the four year retention period shall commence to run from the date of initial payment of the claim.

#### VIII. Offsetting Savings and Other Reimbursements

Any offsetting savings the claimant experiences as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

#### IX. State Controller's Office Required Certification

An authorized representative of the claimant will be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the statute for which reimbursement is requested.



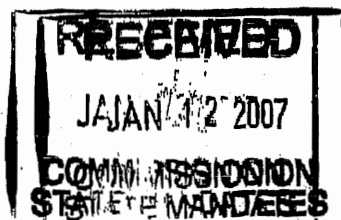
Mary-Ann Warmerdam  
Director

MEMORANDUM

Arnold Schwarzenegger  
Governor

TO: Paula Higashi, Executive Director  
Commission on State Mandates  
980 9<sup>th</sup> Street  
Sacramento, CA 95814

FROM: JoAnne Payan, Assistant Director  
Administrative Services Division  
(916) 445-4140



DATE: January 12, 2007

SUBJECT: PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

In keeping with Section 1183.2 of the California Code of Regulations (CCR), the Department of Pesticide Regulation (DPR) requests the Commission on State Mandates (CSM) review and amend the Parameters and Guidelines (P&Gs), adopted February 23, 1995, for Pesticide Use Reports (PUR) to conform the mandate reimbursement guidelines to current law and implementing regulations.

Chapter 1200, Statutes of 1989, imposed a State-mandated local program by implementing regulations resulting in County Agricultural Commissioners (CACs) receiving a greatly expanded number of Pesticide Use Reports. Subsequent to CSM's decision, Chapter 695, Statutes of 1997, amended Section 12844 of the Food and Agricultural Code and required DPR and the CACs to jointly develop regulations specifying the criteria to be used in allocating mill assessment funds to the counties based upon each county's pest control activities, cost, workload, and performance. As a result, the CCR Sections 6391 and 6393 were amended (filed June 1, 2002; operative July 1, 2002) to establish disbursement criteria to be used to allocate mill assessment funds to the counties. The most recent revision to the CCR 6393 (filed January 12, 2006; operative February 11, 2006) established specific apportionments to further address increased costs associated with full PUR activities. A historical background on the regulation development and how the disbursement regulations now address PUR activity costs, is provided for your convenience. Please see Mill Assessment Disbursement Criteria relative to Pesticide Use Reports Activities attachment.

Under the direction of DPR, the CACs serve as the primary enforcement agents for State pesticide laws and regulations. The following briefly describes how DPR reimburses the counties for each specific pesticide regulatory activity they perform.

Based on monthly reports provided by the counties, DPR prepares a detailed annual summary of all county pesticide regulatory activities. The summary data is then entered into a disbursement formula that applies the apportionment identified in CCR 6393 and then calculates a "per activity" or "per hour" value based on each county's activity in proportion to all counties. The disbursement formula encompasses large volumes of



detailed data and specifics are available; however, the output provided to the Counties is simply the total sum of reimbursement funds for their combined pesticide regulatory activities.

The current P&Gs provide for reimbursement for the following six specific activities:

- 1) Issuing operator identification numbers pursuant to 3 CCR section 662.
- 2) Issuing site identification numbers pursuant to 3 CR section 6623.
- 3) Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified.
- 4) Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner have reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
- 5) Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticide that are not classified by the state as restricted materials.
- 6) Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

These six activities are grouped into three reimbursable components in the State Controller's Office (SCO's) claiming instructions incorporated into the Mandated Cost Manual:

- 1) Issuing Identification Numbers
- 2) Reviewing and Filing PUR Data
- 3) Inspecting and Auditing Records

To reiterate, the output provided to the counties is simply the total sum of reimbursement funds for their combined pesticide regulatory activities. Without first consulting with DPR, a county would have no means to know the amount of mill assessment funds they receive for each specific reimbursable component. Therefore, the offsetting funds counties receive from DPR are not being accurately reflected in the claims for reimbursement they submit to SCO. To ensure offsetting funds are accounted for, the P&Gs need to be amended to require that counties contact DPR prior to filing a claim to obtain the fund figures for each reimbursable component.

Another cogent factor for your consideration is the SCO findings from recent audit activity. Three out of five prior SCO county audits (2000-2003) resulted in a consistent finding that the counties did not offset their claims with unclaimed gas tax allotment revenues. However, since unclaimed gas tax allotment revenues are allocated by the California Department of Food and Agriculture based on total agricultural program costs reported by counties statewide, the SCO has determined that when a county reports its mandated costs within total agricultural program costs, it increases its share of statewide revenue allocations.



Paula Higashi  
January 12, 2007  
Page 3

In summary, to ensure Counties submit accurate and consistent claims for reimbursement and specifically account for receipt of all offsetting funds, as provided for in current law and implementing regulations, DPR requests CSM adopt the attached amended P&Gs.

If you have any questions, please contact Maria Bueb, Budget Analyst, of my staff at 322-6170 or George Farnsworth, Product Compliance Branch Chief, at 445-4163. DPR looks forward to your favorable consideration of this request and proposal.

#### Attachments

cc: Mary-Ann Warmerdam, Director (w/ Attachment)  
Paul Gosselin, Chief Deputy Director (w/ Attachment)  
Christopher Reardon, Legislative Director (w/ Attachment)  
Jerry Campbell, Assistant Director, Pesticide Programs Division (w/ Attachment)  
Scott Paulsen, Chief, Enforcement Branch (w/ Attachment)  
George Farnsworth, Chief, Product Compliance Branch (w/ Attachment)  
Anise Severns, Chief, Fiscal Services and Business Operations Branch (w/ Attachment)  
Maria Bueb, Associate Budget Analyst, DPR (w/ Attachment)  
Matt Almy, Principal Program Budget Analyst, Department of Finance (w/ Attachment)  
Sue Montoya, Budget Analyst, Department of Finance (w/ Attachment)  
Gabe Tiffany, Staff Finance Budget Analyst, Department of Finance (w/ Attachment)



## Historical Background

### Mill Assessment Disbursement Criteria relative to Pesticide Use Reports (PUR) Activities

The Parameters and Guidelines (P&Gs), established for filing unfunded mandate claims as part of implementing Food and Agriculture Code (FAC) Section 12979, were adopted February 23, 1995. These P&Gs were approved by the Commission on State Mandates based on the test claim that was filed by the County of San Bernardino on December 20, 1991.

- 1989 – When FAC 12979 (Chapter 1200, Statutes of 1989) and the implementing regulations were adopted, the Department of Pesticide Regulation (DPR) allocated funding in the amount of \$1,294,000 to the County Agricultural Commissioner (CACs) to perform the additional PUR activities mandated by FAC 12979. The PUR activities were performed via memoranda of understanding with the CACs and payment was made based on invoices submitted and approved by DPR's Director.
- 1991 – Based on a test claim that was submitted by San Bernardino County for performing the additional PUR activities, the first year the mandate became effective, the Commission on States Mandates approved the reimbursement request and adopted the P&Gs.
- 1997 – Legislation (SB 1161, Chapter 695, Statutes of 1997) was adopted that changed the amount of funds disbursed to the counties from five-eighths of the mill assessment collected by DPR to an amount equal to the revenue derived from six mills. The assumption was that, as the value of the mill increased, the overall funding available to the CACs would continue to increase. This legislation resulted in "rolling in" of the contractual county funding (\$1,294,000) to the annual April 1 mill disbursement and eliminated the need for the CACs to invoice DPR for their PUR activities. In addition, this legislation amended FAC 12844 (mill disbursement to CACs) and required DPR and the CACs to jointly develop regulations specifying the criteria to be used in allocating the mill assessment funds to the counties based upon each county's pest control activities, cost, workload, and performance.
- 2001 – California Code of Regulations (CCR) Sections 6391 and 6393 were amended and section 6397 was adopted establishing the disbursement criteria to be used to allocate mill assessment funds to the counties. The revised CCR 6393 criteria ultimately (this was completed in two phases) established specific apportionments to address the increased cost associated with full PUR activities.
- 2004 – CCR Section 6393 Criteria Items and Apportionments were again amended to establish a more appropriate and equitable method for reimbursing the counties for all Pesticide Use Enforcement (PUE) activities they perform. Each month, counties

report to DPR all their PUE activities on the Pesticide Regulatory Activities Monthly Report (PRAMR). The apportionment for each criteria item is a percentage of the total mill assessment funds available for reimbursement to all counties. The amount of funds allocated to each county for each criteria item is based on each county's reported activities, costs, workload, and performance in proportion to all counties.

The following illustrates how the current apportionments provide reimbursement funds for the subject PUR activities. The six apportionments that relate to PUR activities are highlighted (bold) and need to be reported as reimbursement thus offsetting the costs for these PUR activities.

**(1) Apportionment, 3 percent:** The total number of PUE program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans. This apportionment addresses reimbursable component number 3 from the SCO's claim form (PUR-1) allowing reimbursement for; inspecting pesticide use records of growers, auditing pest use records of growers, and auditing pesticide dealer sales records.

- Mill assessment is disbursed for the total personnel hours expended performing this activity and are reported on line 72 of PRMAR.
- Mill assessment is disbursed for reimbursement for each inspection activity performed. The number of reimbursable inspections relative to this item are reported on lines 52, 55, 58, and 61 of PRMAR.

**(2) Apportionment, 3 percent:** The total number of licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control operators providing notice of work in each county; active operator identification numbers in each county; and any additional similar workload activities approved jointly by the Director and the commissioners. This apportionment directly addresses reimbursable component number 1 from the SCO's claim form PUR-1 allowing reimbursement for issuing operator IDs.

- Mill assessment is disbursed for the total personnel hours expended performing this activity and are reported on line 172 of PRMAR.
- The total number of Operator IDs issued by each county is reported on line 152 of PRMAR.

**(3) Apportionment, 3 percent:** The total number of private applicator certificate holders certified in each county. This apportionment does not pertain to PUR activities

**(4) Apportionment, 3 percent:** Work hours expended on pesticide related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or

Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license. The apportionment directly pertains to PUR activities.

- In general, for each reported activity, the counties report the total number of work hours expended performing the activity.

- (5) **Apportionment, 3 percent:** Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners. This apportionment does not directly pertain to PUR activities, but does have some indirect linkages (e.g. increased expenditures reported results in an increased share of the mill assessment revenues).
- (6) **Apportionment, 3 percent:** The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979. This apportionment does not directly pertain to PUR activities but does have some indirect linkages (e.g. an increase in total pounds of pesticides reported results in an increased share of the mill assessment revenues).
- (7) **Apportionment, 21 percent:** The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and notices of intent reviewed by each county. This apportionment does not pertain to the subject PUR activities.
- (8) **Apportionment, 21 percent:** Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information. Counties receiving funding under the provisions of section 8698.5 of the Business and Professions Code for structural fumigation enforcement shall only receive funds from this apportionment after deducting the amount of funds received pursuant to section 8698.5 of the Business and Professions Code. This apportionment does not pertain to the subject PUR activities.
- (9) **Apportionment, 40 percent:** Based on each county's pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties. This apportionment directly addresses reimbursable component number 2 from the SCO's claim form PUR-1, allowing reimbursement for reviewing and filing with the DPR pesticide use reports.

- Mill assessment is disbursed for the total personnel hours expended performing this activity and are reported on line 225 of PRMAR.
- The total lines of pesticide use being reported being submitted to DPR.

In conclusion, mill assessment funds received by the counties for these six highlighted apportionment activities need to be reported as reimbursement thus offsetting the costs for these PUR activities.

**Proposed Amendments to  
Parameters and Guidelines**

Food and Agricultural Code Section 12979  
Statutes of 1989, Chapter 1200

Pesticide Use Reports

I. Summary of the Mandate

On January 21, 1993 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Chapter 1200, Statutes 1989, and implementing regulations developed pursuant thereto, resulted in county agricultural commissioners receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission has newly determined that the funding should be sufficient to cover all of the increase in costs experienced by counties.

II. Commission on State Mandates' Decision

The Commission on State Mandates determined a reimbursable state mandated program pertaining to Food and Agricultural Code section 12979 and its implementing regulations at its hearing of November 19, 1992, and adopted the Statement of Decision for this test claim at its hearing of January 21, 1993.

III. Eligible Claimants

Any county that incurs cost as a result of this mandate that exceed the amounts received as reimbursement for the specific mandated items, is eligible to file a claim for reimbursement.

IV. Period of Reimbursement

This parameters and guidelines amendment is effective \_\_\_\_\_.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

A county may, by January 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

Actual costs for one fiscal year should be included in each claim. Estimated costs of the subsequent fiscal year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), subpart (3), all claims

for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

## V. Reimbursable Activities and Related Costs

### A. Scope of Mandate

Counties shall be reimbursed for the uncovered costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393 (c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, and 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased record keeping requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly-required pesticide use reports with the state.

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, States of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

### B. Reimbursable Activities

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers pursuant to 3 CCR section 6622.
2. Issuing site identification numbers pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (DPR) pesticide use reports other than those specified in V.A. above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner and reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.



5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

## VI. Claim Preparation

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

### A. Description of Reimbursable Activity

### B. Supporting Documentation

#### 1. Employee Salaries and Benefits

Show the name of the employee(s) involved, and/or the classifications(s) of the employees(s) involved, mandated functions performed, number of hours devoted to the function, productive hourly rate and benefits. The average number of hours devoted to each mandated activity may be claimed if supported by a documented time study.

#### 2. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List of cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.

#### 3. Allowable Overhead Costs

Indirect costs may be claimed only in the manner described by the State Controller in the claiming instructions. Indirect costs may be claimed either by using ten percent of direct labor as an indirect cost rate or by preparing a departmental indirect cost rate proposal to determine the rate.

## VII. Supporting Data

For auditing purposes, all costs claimed shall be traceable to source documents (i.e., employee time records, invoices, receipts, purchase orders, contracts, time studies, worksheets, Pesticide Regulatory Activity Monthly Reports, etc.) that show evidence of and validity of claimed costs--specifically, a statement (i.e., an actual accounting), verified by DPR, of mill assessment disbursement revenues received

per hour or activity that support the claim. All documentation supporting such costs shall be made available to the State Controller or his agent, as may be requested, during the record retention period specified in Government Code section 17558.5, subdivision (a).

Government Code section 17558.5, subdivision (a), requires that all supporting source documents and worksheets must be kept on file not less than four years after the end of the calendar year in which the reimbursement claim is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in which case, the four-year retention period shall commence to run from the date of initial payment of the claim.

#### VIII. Offset Savings and Other Reimbursements

Any offsetting savings the claimant receives as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

Prior to filing, claimant must obtain a statement (i.e., actual accounting) from the DPR depicting the actual mill reimbursement received for each of the reimbursable components of the associated PUR activities as reported in its Pesticide Regulatory Monthly Activity Reports.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. Specifically, the following reimbursements must be deducted from any cost claim, a) the mill disbursement in accordance with current applicable regulations, b) the contract for the electronic submittal of pesticide use reports between the county and the DPR, and c) unclaimed gas tax funds as determined appropriate.

#### IX. State Controller's Office Required Certification

An authorized representative of the claimant will be required to provide a certification of the claim as specified in the State Controller's claiming instructions, for those costs mandated by the statute for which reimbursement is requested.

Commission on State Mandates

Original List Date: 1/17/2007  
Last Updated:  
Last Print Date: 01/18/2007  
Claim Number: 06-PGA-02  
Issue: Pesticide Use Reports

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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February 20, 2007



Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of January 18, 2007, the Department of Finance has reviewed the request to amend parameters and guidelines submitted by the Department of Pesticide Regulation (Pesticide Regulation) for Claim No. CSM-06-PGA-02 "Pesticide Use Reports".

This proposal would require claimants to obtain documentation regarding offsetting revenues received by counties for pesticide use reporting activities. Specifically, the proposal identifies three fund sources that must offset any reimbursement granted to counties under this mandate: 1) mill assessments (taxes on pesticides paid to the state and disbursed to the counties); 2) unclaimed gas tax (unclaimed refunds for taxes paid on gas for off-road purposes, such as farm equipment); and 3) funding allocated by Pesticide Regulation to counties pursuant to a contract for electronic submittal of pesticide use reports.

Claimants would have to obtain verification from Pesticide Regulation that the appropriate amount of mill assessment revenue is applied as an offset to a county's reimbursement claim. Currently, unclaimed gas tax disbursements to counties are allocated by the Department of Food and Agriculture. The proposal does not outline a process for obtaining the verification of revenues from these sources. In addition, it is not clear that Pesticide Regulation would have access to the information necessary to verify the appropriate amount of offsetting unclaimed gas tax funding, and the proposal would not require the Department of Food and Agriculture to provide this verification.

To clarify that funding received by counties for certain activities is applied to the reimbursement sought for those activities, Finance proposes the following amendment to Section VIII of the proposal submitted by Pesticide Regulation (proposed new language in *italics*, proposed deletions in ~~strikeouts~~):

#### VIII. Offset Savings and Other Reimbursements

Any offsetting savings the claimant receives as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

Prior to filing, claimant must obtain a statement (i.e., an actual accounting) from the DPR depicting the actual mill reimbursement received for each of the

reimbursable components of the associated ~~PUR~~ activities as reported in its Pesticide Regulatory Monthly Activity Reports.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g. federal, state, etc., shall be identified and deducted from this claim. Specifically, the following reimbursements must be deducted from any cost claim, a) the mill disbursement *received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines*, in accordance with current applicable regulations, b) *funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the DPR for those activities identified as reimbursable in Section V (B) of the parameters and guidelines*, and c) unclaimed gas tax funds *received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines.* ~~as determined appropriate.~~

A technical correction should be inserted in Section IV – Period of Reimbursement regarding the threshold for submitting a claim. The threshold should be changed from \$200 to \$1,000 to be consistent with current law.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 18, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



Thomas E. Dithridge  
Program Budget Manager

Attachments

Attachment A

DECLARATION OF CARLA CASTAÑEDA  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-06-PGA-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

February 20, 2007  
at Sacramento, CA

Carla Castañeda  
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Pesticide Use Reports  
Test Claim Number: CSM-06-PGA-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On February 20, 2007, I served the attached recommendation of the Department of Finance in said cause; by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
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Facsimile No. 445-0278

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Public Resource Management Group  
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B-08

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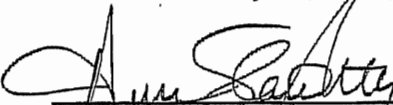
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Ms. Susan Geanacou  
Department of Finance  
915 L Street, Suite 1190  
Sacramento, CA 95814



Ms. Carla Castaneda  
Department of Finance  
915 L Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 20, 2007, at Sacramento, California.

  
Arn Slaughter





# Department of Pesticide Regulation

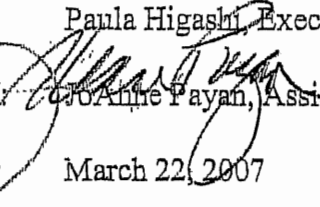


Mary-Ann Warmerdam  
Director

## MEMORANDUM

Arnold Schwarzenegger  
Governor

TO: Paula Higashi, Executive Director, Commission on State Mandates

FROM:  Anne Pavan, Assistant Director, Administrative Services Division

DATE: March 22, 2007

SUBJECT: Proposed Amendment to *Parameters and Guidelines*  
Pesticide Use Reports (CSM 4410)  
Food and Agricultural Code Section 12797  
Chapter 1200, Statutes of 1989

**RECEIVED**  
MAR 22 2007  
COMMISSION ON  
STATE MANDATES

After considering comments from interested parties, the Department of Pesticide Regulation (DPR) has made changes to Sections IV, VI, and VIII. The requirement to have claimants obtain revenue verification from DPR has been deleted, and Section X, "Payment of Claims," and an offsetting revenue worksheet have been added. The offsetting revenue worksheet will ensure uniform methodology among claimants. A sample of this worksheet is attached.

Before authorizing payment of Pesticide Use Report (PUR) state mandates claims, DPR will examine the offsetting revenue worksheet to verify offsetting revenues against the actual mill assessment disbursed for each of the reimbursable components of the associated PUR activities as reported by the claimant in its Pesticide Regulatory Monthly Activity Reports and against the contract for electronic submittal of PURs between the claimant and DPR. In addition, DPR will confirm the claimant's unclaimed gas tax revenue with the Department of Food and Agriculture.

DPR is very concerned about the offsetting revenue listed on the PUR claims. In years 2001-2002 to 2004-05, one county submitted claims totaling \$418,000 against the DPR Fund without listing any offsetting revenue. These claims were approved for payment without DPR review. Of this total, \$97,000 is no longer recoverable by audit.

As administrator of the DPR Fund, DPR has a fiduciary responsibility to its stakeholders, and it is imperative that DPR secure a proactive role in examining any claims against this fund.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions, please contact Maria Bueb of my staff at 322-6170 or George Farnsworth, Product Compliance Branch Chief, at 445-4163.

Attachments



Paula Higashi  
March 22, 2007  
Page 2

cc: Mary-Ann Warmerdam, Director  
Paul Gosselin, Chief Deputy Director  
Christopher Reardon, Legislative Director  
Jerry Campbell, Assistant Director, Pesticide Programs Division  
Roy Rutz, Acting Branch Chief, Enforcement Branch  
George Farnsworth, Branch Chief, Product Compliance Branch  
Anise Severns, Chief, Fiscal Services and Business Operations Branch  
Maria Bueb, Associate Budget Analyst, DPR  
Dave Harper, Department of Finance  
Sue Montoya, Department of Finance  
Gabe Tiffany, Department of Finance

Department of Pesticide Regulation  
Offsetting Revenue Worksheet

COUNTY:

Funding for Pesticide Use Reporting  
Work Load Year 05/06 - Fiscal Year 06/07

Reimbursable Component		County Activity Reported	Information Source (Foot-notes)	Mill Disbursed per activity	Amount Reimbursed by DPR
<b>Reimbursable Component 1</b>					
1	<b>Reimbursable Component 1</b>				
2	<b>Issuing I.D. Numbers</b>				
3	Hours Licensed Personnel Performed Activity	hrs / OID	a	\$0.74	\$0
4	Number of Operator ID (OID)		b	\$11.84	\$0
5					
<b>Reimbursable Component 2</b>					
7	<b>Review and Filing with DPR</b>				
8	Hours Licensed Personnel Performed Activity		c	\$0.74	\$0
9	PUR Contract with DPR for Data Entry				
10	Lines of PUR Records		d	\$2.00	\$0
11					
<b>Reimbursable Component 3</b>					
13	<b>Inspecting and Auditing Records</b>				
14	Hours Licensed Personnel Performed Activity		e	\$0.74	\$0
15	Pest Control Records Inspected		f	\$0.00	\$0
16					
17	Total DPR Funding				
18	<b>Proposed Method for Determining the Amount of Gas Tax Funds to be Applied Towards PUR Activities</b>				
19	1. Using Licensed Hours as the Measurement - Determine the Percentage PUR Activities Represents of the Total PUE Activities				
20	Total PUR license hours	0	a,c,e		
21	Total PUE license hours		g		
22	Percent PUR is of Total PUE	#DIV/0!			
23					
24	<b>Using CDFR Gas Tax Disbursement Data and Calculations - Determine the Amount of Gas Tax Disbursed Specifically for PUE Activities</b>				
25	<b>County Financial Report Information for FY 2005-06 Used for Reimbursement from the FY 2006-07 Gas Tax Allocation</b>				
26	Program	Expenditures	Revenues /1	Net	Percent
27	Total Gas Tax Funds Disbursed to Merced County				
28	Pest Detection			0	#DIV/0!
29	Pest Eradication			0	#DIV/0!
30	Pest Mgt.-Control			0	#DIV/0!
31	Pest Exclusion			0	#DIV/0!
32	Pesticide Use Enforcement			0	#DIV/0!
33	Seed Inspection			0	#DIV/0!
34	Nursery Inspection			0	#DIV/0!
35	Fruit & Veg. Quality Control			0	#DIV/0!
36	Egg Quality Control			0	#DIV/0!
37	Apiary Inspection			0	#DIV/0!
38	Crop Statistics			0	#DIV/0!
39	Totals	0	0	0	#DIV/0!
40					
41	3. Using the Percentage PUR is of PUE, and the Amount of Gas Tax Funds Disbursed for PUE Activities - Calculate the Gas Tax Funds for PUR				
42	Percent PUR	#DIV/0!			
43	Total Gas Tax Funds Received for PUE	#DIV/0!			
44	Total Gas Tax Funds For PUR Activities				#DIV/0!
45	Other Funds Received for PUR Activities				
46	Total Funds Received For PUR Activities				#DIV/0!

SAMPLE

**Foot-note Guide**

- a County Activity Report Section VI (License/Cert/Operator ID No. line 172)
- b County Activity Report Section VI (License/Cert/Operator ID No. line 152)
- c County Activity Report Section XIII (Use Report Review & Follow-Up line 225)
- d Lines of PUR Reported (DPR source)
- e County Activity Report Section II (Pest Control Records Inspection line 72)
- f County Activity Report Section II (Pest Control Records Inspection line 70)
- g County Activity Report Section XIV (Licensed Hours line 229)
- h CDFR Summary of Ag Expenditures and Revenues and Gas Tax Allocation to Cou: 71
- /1 Does not include the amounts received by the county for unclaimed gas

**Proposed Amendments to  
Parameters and Guidelines**

Food and Agricultural Code Section 12979  
Statutes of 1989, Chapter 1200

Pesticide Use Reports

I. Summary of the Mandate

On January 21, 1993 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Chapter 1200, Statutes 1989, and implementing regulations developed pursuant thereto, resulted in county agricultural commissioners receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission found that the funding was not sufficient to cover all of the increase in costs experienced by counties.

II. Commission on State Mandates' Decision

The Commission on State Mandates determined a reimbursable state mandated program pertaining to Food and Agricultural Code section 12979 and its implementing regulations at its hearing of November 19, 1992, and adopted the Statement of Decision for this test claim at its hearing of January 21, 1993.

III. Eligible Claimants

Any county that incurs cost as a result of this mandate that exceed the amounts received as reimbursement for the specific mandated items, is eligible to file a claim for reimbursement.

IV. Period of Reimbursement

This parameters and guidelines amendment is effective \_\_\_\_\_.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

A county may, by January 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

Actual costs for one fiscal year should be included in each claim. Estimated costs of the subsequent fiscal year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), subpart (3), all claims

for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

## V. Reimbursable Activities and Related Costs

### A. Scope of Mandate

Counties shall be reimbursed for the uncovered costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393 (c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, and 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased record keeping requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly-required pesticide use reports with the state.

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, States of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

### B. Reimbursable Activities

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers pursuant to 3 CCR section 6622.
2. Issuing site identification numbers pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in V.A. above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner and reason to believe failed to

report to the commissioner the use of pesticides that are not classified by the state as restricted materials.

5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

## VI. Claim Preparation

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.

### A. Description of Reimbursable Activity

### B. Supporting Documentation

#### 1. Employee Salaries and Benefits

Show the name of the employee(s) involved, and/or the classifications(s) of the employees(s) involved, mandated functions performed, number of hours devoted to the function, productive hourly rate and benefits. The average number of hours devoted to each mandated activity may be claimed if the data is consistent with the claimant's Pesticide Regulatory Activity Monthly Reports (PRAMR) and supported by a documented time study.

#### 2. Services and Supplies

Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List of cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.

#### 3. Allowable Overhead Costs

Indirect costs may be claimed only in the manner described by the State Controller in the claiming instructions. Indirect costs may be claimed either by using ten percent of direct labor as an indirect cost rate or by preparing a departmental indirect cost rate proposal to determine the rate.



#### 4. Offsetting Revenue Worksheet

Complete the offsetting revenue worksheet to calculate offsetting revenues. This worksheet can be accessed at [http://www.cdpr.ca.gov/docs/enfcompli/preiffim/\\_\\_\\_\\_\\_.htm](http://www.cdpr.ca.gov/docs/enfcompli/preiffim/_____.htm).

#### VII. Supporting Data

For auditing purposes, all costs claimed shall be traceable to source documents (i.e., employee time records, invoices, receipts, purchase orders, contracts, time studies, worksheets, PRAMR, offsetting revenue worksheet, etc.) that show evidence of and validity of claimed costs. All documentation supporting such costs shall be made available to the State Controller or his agent, as may be requested, during the record retention period specified in Government Code section 17558.5, subdivision (a).

Government Code section 17558.5, subdivision (a), requires that all supporting source documents and worksheets must be kept on file not less than four years after the end of the calendar year in which the reimbursement claim is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in which case, the four-year retention period shall commence to run from the date of initial payment of the claim.

#### VIII. Offset Savings and Other Reimbursements

Any offsetting savings the claimant receives as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. Specifically, the following reimbursements must be deducted from any cost claim.

- A. the mill disbursement received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines, in accordance with current applicable regulations,
- B. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section V (B) of the parameters and guidelines, and
- C. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines.

#### IX. State Controller's Office Required Certification

An authorized representative of the claimant will be required to provide a certification of the claim as specified in the State Controller's claiming instructions, for those costs mandated by the statute for which reimbursement is requested.

X. Payment of Claims

All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.

PROOF OF SERVICE

Test Claim Name: Pesticide Use Reports  
Test Claim Number: CSM-06-PGA-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California. I am 18 years of age or older and not a party to the within entitled cause. My business address is 1001 I Street, Sacramento, CA 95814.

On March 22, 2007, I hand delivered the attached response to the recommendation of the Department of Finance in said cause to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepared in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1001 I Street, for Interagency Mail Service, addressed as follows:

Ms. Paula Higashi, Executive Director (A-16)  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

J. J. Bradley Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite 106  
Roseville, CA 95814

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
1101 C Street, Suite 500  
Sacramento, CA 95816

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

Ms. JoAnne Payan  
Department of Pesticide Regulation (B-13)  
1001 I Street  
PO Box 4015  
Sacramento, CA 95812-4015

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Boulevard  
PO Box 1768  
Newport Beach, CA 92659-1768


Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Mr. Allen Burdick  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 22, 2007, at Sacramento, California.

  
\_\_\_\_\_  
Kim Bateman

Attachment A

DECLARATION OF JOANNE PAYAN  
DEPARTMENT OF PESTICIDE REGULATION  
CLAIM NO. CSM-06-PGA-02

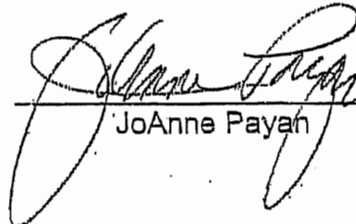
1. I am currently employed by the State of California, Department of Pesticide Regulation (DPR), am familiar with the duties of DPR, and am authorized to make this declaration on behalf of DPR.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief, and as to those matters, I believe them to be true.

3/22/07

---

at Sacramento, CA



JoAnne Payan



# Department of Pesticide Regulation



Mary-Ann Warmerdam  
Director

## MEMORANDUM

Arnold Schwarzenegger  
Governor

RECEIVED

MAY 11 2008

COMMISSION ON  
STATE MANDATES

TO: Paula Higashi, Executive Director, Commission on State Mandates

FROM: *[Signature]*  
JoAnne Payan, Assistant Director, Administrative Services Division

DATE: May 9, 2008

SUBJECT: Proposed Amendment to *Parameters and Guidelines*  
Pesticide Use Reports (CSM 4410)  
Food and Agricultural Code Section 12797  
Chapter 1200, Statutes of 1989

Since submitting our Proposed Amendments to Pesticide Use Report Parameters and Guidelines (Ps&Gs) fourteen months ago, two audits of Pesticide Use Report (PUR) state mandate claims were performed by the State Controller's Office. Several issues arose during those audits, and the Department of Pesticide Regulation (DPR) wishes to take this opportunity to make clarifications to our proposed amendments to address these issues. In addition to the clarifications as a result of the audits, DPR also seeks to incorporate CSM's boilerplate language in its proposed amendments to the Ps&Gs. The boilerplate language has been added in italics, and the clarification language has been added in bold and underline.

If you have any questions, please contact Maria Bueb of my staff at 322-6170 or Lynn Owen, Acting Product Compliance Branch Chief, at 445-3851.

### Attachments

cc: Mary-Ann Warmerdam, Director  
Christopher Reardon, Chief Deputy Director  
Chuck Andrews, Acting Assistant Director, Pesticide Programs Division  
Nan Gorder, Branch Chief, Enforcement Branch  
Lynn Owen, Acting Branch Chief, Product Compliance Branch  
Anise Severns, Chief, Fiscal Services and Business Operations Branch  
Maria Bueb, Associate Budget Analyst, DPR  
Dave Harper, Department of Finance  
Sue Montoya, Department of Finance  
Gabe Tiffany, Department of Finance



Proposed Amendments to  
Parameters and Guidelines

Food and Agricultural Code Section 12979  
Statutes of 1989, Chapter 1200

Pesticide Use Reports  
Program No. 121

*Claimant: County of San Bernardino*

I. Summary of the Mandate

On January 21, 1993 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that *the test claim legislation imposes a reimbursable state-mandated program upon Chapter 1200, Statutes 1989, and implementing regulations developed pursuant thereto, resulted in county agricultural commissioners within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission found that the funding was not sufficient to cover all of the increase in costs experienced by counties.*

~~II. Commission on State Mandates' Decision~~

~~The Commission on State Mandates determined a reimbursable state mandated program pertaining to Food and Agricultural Code section 12979 and its implementing regulations at its hearing of November 19, 1992, and adopted the Statement of Decision for this test claim at its hearing of January 21, 1993.~~

III. Eligible Claimants

Any county that incurs cost as a result of this mandate that exceed the amounts received as reimbursement for the specific mandated items, is eligible to file a claim for reimbursement.

III.V. Period of Reimbursement

This parameters and guidelines amendment is effective \_\_\_\_\_.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

A county may, by January 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

Actual costs for one fiscal year should be included in each claim. Estimated costs of the subsequent fiscal year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), subpart (3), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

#### IV. Reimbursable Activities and Related Costs

##### A. Scope of Mandate

Counties shall be reimbursed for the uncovered costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393(c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, and 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased record keeping requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly-required pesticide use reports with the state.

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes States of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

##### B. Reimbursable Activities

*To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, ~~and receipts~~, Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified in Section V. C.), etc.)*

that show evidence of and validity of claimed costs. **If source documents do not specifically identify 100% use reporting mandated records or activities vs. previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval.**

*Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.*

*The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.*

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers **for the use of pesticides that are not classified by the state as restricted materials** pursuant to 3 CCR section 6622.
2. Issuing site identification numbers **for the use of pesticides that are not classified by the state as restricted materials** pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in **IV.A.** above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner **had** ~~and~~ reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.



6. Auditing the sales records of pesticide dealers as specified in 3 CCR section 6562, for the sale of pesticides that are not classified by the state as restricted materials ~~which are prepared and maintained by pesticide dealers who are licensed by the state.~~

## VI. Claim Preparation and Submission

*Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.*

~~Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.~~

### A. Description of Reimbursable Activity

### B. Supporting Documentation

#### A. Direct Cost Reporting

*Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.*

#### 1. Employee Salaries and Benefits

*Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed. Show the name of the employee(s) involved, and/or the classifications(s) of the employees(s) involved, mandated functions performed, number of hours devoted to the function, productive hourly rate and benefits. The average number of hours devoted to each mandated activity may be claimed if the data is consistent with the claimant's PRAMR and supported by a documented time study performed within five years of the period for which reimbursement is claimed. Note: Only Activity 3 (review and filing of pesticide use records with the Department of Pesticide Regulation) listed in IV. B. above may have components (e.g., data entry) which may be performed by unlicensed staff.*

#### 2. Materials and Supplies

*Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be*

*claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.*

3. *Contracted Services*

*Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.*

4. *Fixed Assets and Equipment*

*Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.*

5. *Travel*

*Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity. **If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.***

6. *Training*

*Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion*

can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### *B. Indirect Cost Rates*

*Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.*

*Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.*

*If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.*

*The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.*

*In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:*

- 1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or*

2. *The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.*

C. Offsetting Revenues Savings and Other Reimbursements

Any offsetting revenues or reimbursements ~~savings~~ the claimant receives as a direct result of this statute and its implementing regulations must be deducted from the cost claimed.

In addition, reimbursement for the costs of these mandated activities received from any source, *including but not limited to, service fees collected, federal funds, and other state funds, e.g., federal, state, etc.,* shall be identified and deducted from this claim. Specifically, the following reimbursements must be deducted from any cost claim:

1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations,
2. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, and
3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at [http://www.cdpr.ca.gov/docs/enfcompli/preffirm/\\_\\_\\_\\_.htm](http://www.cdpr.ca.gov/docs/enfcompli/preffirm/____.htm).

~~7. Services and Supplies~~

~~—Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List of cost of materials or equipment acquired which have been consumed or expended specifically for the purposes of this mandate.~~

~~8. Allowable Overhead Costs~~

~~Indirect costs may be claimed only in the manner described by the State Controller in the claiming instructions. Indirect costs may be claimed either by using ten percent of direct labor as an indirect cost rate or by preparing a departmental indirect cost rate proposal to determine the rate.~~

#### 9. ~~Offsetting Revenue Worksheet~~

~~Complete the offsetting revenue worksheet to calculate offsetting revenues. This worksheet can be accessed at [http://www.cdpr.ca.gov/docs/enfcompli/prenffim/\\_\\_\\_\\_\\_.htm](http://www.cdpr.ca.gov/docs/enfcompli/prenffim/_____.htm).~~

### VII. ~~Supporting Data~~

~~For auditing purposes, all costs claimed shall be traceable to source documents (i.e., employee time records, invoices, receipts, purchase orders, contracts, time studies, worksheets, PRAMR, offsetting revenue worksheet, etc.) that show evidence of and validity of claimed costs. All documentation supporting such costs shall be made available to the State Controller or his agent, as may be requested, during the record retention period specified in Government Code section 17558.5, subdivision (a).~~

~~Government Code section 17558.5, subdivision (a), requires that all supporting source documents and worksheets must be kept on file not less than four years after the end of the calendar year in which the reimbursement claim is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in which case, the four-year retention period shall commence to run from the date of initial payment of the claim.~~

### VI. *Record Retention*

*Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.*

---

<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

### VIII. Offset Savings and Other Reimbursements

- ~~Any offsetting savings the claimant receives as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.~~
- ~~In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. Specifically, the following reimbursements must be deducted from any cost claim.~~
- VII. ~~the mill disbursement received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines, in accordance with current applicable regulations,~~
- VIII. ~~funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section V (B) of the parameters and guidelines, and~~
- IX. ~~unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines.~~

X.

### IX. State Controller's Office Required Certification

- ~~An authorized representative of the claimant will be required to provide a certification of the claim as specified in the State Controller's claiming instructions, for those costs mandated by the statute for which reimbursement is requested.~~

### VII. State Controller's Claiming Instructions

*Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.*

*Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.*

### VIII. Payment of Claims

All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.

*IX. Remedies Before the Commission*

*Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.*

*In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.*

*X. Legal and Factual Basis for the Parameters and Guidelines*

*The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.*







DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEBGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

June 23, 2008

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RECEIVED**  
JUN 23 2008  
**COMMISSION ON  
STATE MANDATES**

Dear Ms. Higashi:

As requested in your letter of May 22, 2008, the Department of Finance (Finance) has reviewed the proposed amendments to the parameters and guidelines (Ps & Gs) for Claim No. CSM-06-PGA-02 "Pesticide Use Reports," submitted by the Department of Pesticide Regulation (DPR).

DPR proposes to update the existing Ps & Gs with current Commission on State Mandates (Commission) boilerplate language and clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. The proposal also specifies the three revenue sources that are available to offset any reimbursement for the mandated activities: (1) mill assessments (taxes on pesticides paid to the state and disbursed to the counties); (2) unclaimed gas tax (unclaimed refunds for taxes paid on gas for off-road purposes, such as farm equipment); and (3) funding allocated by DPR to counties pursuant to a contract for electronic submittal of pesticide use reports.

DPR has developed an Offsetting Revenue Worksheet to assist counties in identifying the appropriate amounts to apply as an offset to a county's reimbursement claim. If approved by the Commission for inclusion in the Ps & Gs, this worksheet will be available on DPR's website. Finance believes that this worksheet will assist claimants in preparing accurate claims for reimbursement.

Finance concurs with the technical amendments clarifying the mandated activities, and increasing the claiming threshold from \$200 to \$1,000 to be consistent with current law. Finance also agrees with the amendments to identify the specific revenues available to offset claims.

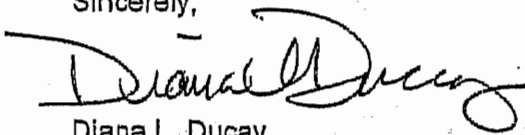
Finance finds that the requested amendment to use current Commission boilerplate language is unnecessary as some of the provisions may not be applicable to the Pesticide Use Reports mandate. Additionally, Finance recommends a correction of the filing date identified on page 1 of the Proposed Amendments to Parameters and Guidelines. Pursuant to Section 17560 of the Government Code, the filing date should be changed from "January 15" to "February 15."

Ms. Paula Higashi  
June 23, 2008  
Page 2

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your May 22, 2008 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



Diana L. Ducay  
Program Budget Manager

Enclosure

Enclosure A

DECLARATION OF CARLA CASTAÑEDA  
DEPARTMENT OF FINANCE  
CLAIM NO. CSM-06-PGA-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

---

June 23, 2008  
at Sacramento, CA

  
Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Pesticide Use Reports  
Test Claim Number: CSM-06-PGA-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On June 23, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

B-12

Ms. JoAnne Payan  
Department of Pesticide Regulation  
1001 I Street, PO Box 4015  
Sacramento, CA 95812-4015

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor-Controller/Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Mr. Bradley J. Burgess  
Public Resource Management Group  
1380 Lead Hill Boulevard, Suite 106  
Roseville, CA 94814

Ms. Donna Ferebee  
Department of Finance  
915 L Street, Suite 1280  
Sacramento, CA 95814

B-08

Ms. Ginny Brummels  
State Controller's Office  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. David Wellhouse  
David Wellhouse and Associates, Inc.  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor - Controller's Office  
500 West Temple Street, Room 603  
Los Angeles, CA 90012

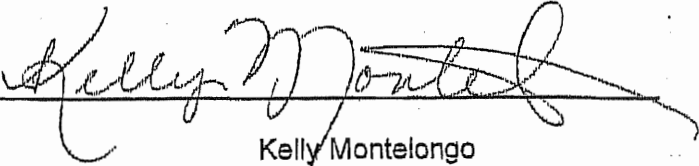
Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Boulevard  
PO Box 1768  
Newport Beach, CA 92659-1768

Ms. Susan Geanacou  
Department of Finance  
915 L Street, Suite 1280  
Sacramento, CA 95814

Ms. Carla Castaneda  
Department of Finance  
915 L Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

On I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 23, 2008 at Sacramento, California.

  
Kelly Montelongo



**AUDITOR/CONTROLLER-RECORDER  
COUNTY CLERK**



COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor  
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER  
Auditor/Controller-Recorder  
County Clerk

ELIZABETH A. STARBUCK  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

July 10, 2008

**RECEIVED**

JUL 11 2008

**COMMISSION ON  
STATE MANDATES**

MS. PAULA HIGASHI  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: **Request to Amend Parameters and Guidelines – Revised Schedule  
Pesticide Use Reports, 06-PGA-02  
Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200  
Department of Pesticide Regulation, Requestor**

Dear Ms. Higashi:

The County of San Bernardino (County) has reviewed the proposed amendments to the parameters and guidelines (Ps & Gs) for the above mandated program, filed by the Department of Pesticide Regulation (DPR) on May 11, 2008.

Upon completion of our review, the County concurs with the DPR proposed amendments in the Ps & Gs except for the specific identification of offsetting revenues stated in *Section V (C.) - Offsetting Revenues and Reimbursement*. Per DPR proposal, three sources of revenues are available to offset any reimbursement for the above mandated program activities, which consist of: (1) mill assessments; (2) funds allocated by DPR to counties pursuant to a contract for electronic submittal of pesticide use reports; and (3) unclaimed gas taxes.

The County finds that mill assessments and contract revenue funds qualify for the offset of local agencies' mandated costs. The County disagrees with the inclusion of unclaimed gas taxes. Attached is the County Department of Agriculture/Weights and Measures' written explanation detailing the basis of the County's disagreement with the DPR proposal. If called for, the County will be available to testify before the Commission on this matter.

As required by the Commission's regulation, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list, which accompanied your June 25, 2008 letter, have been provided with copies of this letter via either Fax or United States Mail.

If you have any questions regarding this letter, please contact me at (909) 386-8850.

Sincerely,

  
Jonnie Ter Keurst

Manager, Reimbursable Projects Section

Enclosure

S:\SB90\SB90 Parameters and Guidelines\Pesticide Use Reports\P's & G's Amendments\97\ACR Cover Letter.doc

# DEPARTMENT OF AGRICULTURE/ WEIGHTS AND MEASURES

COUNTY OF SAN BERNARDINO



PUBLIC AND SUPPORT  
SERVICES GROUP

JOHN G. GARDNER  
Agricultural Commissioner/Sealer  
ROBERTA Y. WILLHITE  
Assistant Agricultural  
Commissioner/Sealer

777 East Rialto Ave., San Bernardino, CA 92415-0720  
(909) 387-2105 • Fax (909) 387-2449  
1-800-734-9459 <http://www.sbcounty.gov/awm/>

July 9, 2008

**MS. PAULA HIGASHI**  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**Subject: Pesticide Use Reports, 06-PGA-02, Statutes 1989, Chapter 1200**

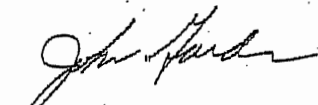
San Bernardino County does not concur with the proposed changes to the parameters and guidelines submitted by the Department of Pesticide Regulation. The proposed amendments to the parameters and guidelines submitted by the Department of Pesticide Regulation are contrary to the direction given by the Commission on State Mandates during the original hearing in regards to the use of unclaimed gas tax to offset the costs incurred in the performance of the mandated duties. The Commission determined during these discussions that a pre-existing revenue stream was inappropriate to use as a funding mechanism unless there was some specific increase to the revenue source to fund the mandate. There has been no specific increase in unclaimed gas tax to fund this mandate.

Unclaimed gas tax revenue reimburses counties for the costs of performing Food and Agricultural Code programs and was established as a funding mechanism for these programs prior to the enactment of the mandated duties related to the Statutes 1989, Chapter 1200. The revenue is distributed to the counties on the basis of their relative local cost. If the State fully funds the costs incurred for the mandates of Statutes 1989, Chapter 1200, there is no local cost and therefore no unclaimed gas tax revenue associated with the performance of these mandated activities. Unclaimed gas tax revenue can only be considered as funding this mandate when the State fails to provide adequate specific funding.

The use of unclaimed gas tax revenue as a funding source for this mandate decreases the available funding for all other pre-existing Food and Agricultural Code programs resulting in additional local costs to the counties related to these programs. Shifting the costs of new mandates to pre-existing programs is not an acceptable way to fund new mandates.

We would like to propose that the Department of Pesticide Regulation revise their proposed amendment to the parameters and guidelines by deleting all reference to the unclaimed gas tax. The Department of Pesticide Regulation should clarify that the offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the mandates of Chapter 1200, Statutes of 1989. As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs. This is clearly inappropriate.

We would also suggest that the Department of Pesticide Regulation replace all references to the Office of Management and Budget Circular A-87 with the proper citation of 2 CFR 225.

  
John Gardner

MARK H. UFFER  
County Administrative Officer

NORMAN A. KANOLD  
Assistant County Administrator  
Public and Support  
Services Group

PAUL BIANE Chair  
BRAD MITZELFELT

Board of Supervisors  
Second District  
First District  
JOG GONZALES

GARY C. OVITT, Vice-Chair  
DENNIS HANSBERGER  
Fifth District

Fourth District  
Third District



# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor  
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER  
Auditor/Controller-Recorder  
County Clerk

ELIZABETH A. STARBUCK  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

## PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On July 11, 2008, I faxed the letter dated July 10, 2008 to the Commission on State Mandates in response to the Pesticide Use Reports. I faxed and/or mailed the documents also to the other parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 11, 2008 at San Bernardino, California.

A handwritten signature in cursive script that reads "Melissa Honold".

Melissa Honold  
Audit Division Secretary

## Commission on State Mandates

Original List Date: 1/17/2007  
Last Updated:  
List Print Date: 06/25/2008  
Claim Number: 06-PGA-02  
Issue: Pesticide Use Reports

Mailing Information: Other

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 11812)

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Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
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---

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---

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---

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Tel: (916) 485-8102  
Fax: (916) 485-0111

---

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Department of Finance (A-15)  
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---

Mr Glen Everroad  
City of Newport Beach  
3300 Newport Blvd  
P. O. Box 1768  
Newport Beach, CA 92659-1768

Tel: (949) 644-3127  
Fax: (949) 644-3339





# Department of Pesticide Regulation

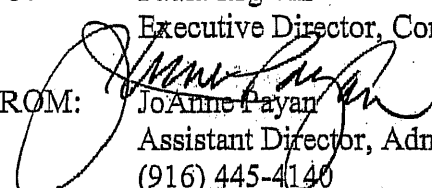


Mary-Ann Warmerdam  
Director

## MEMORANDUM

Arnold Schwarzenegger  
Governor

TO: Paula Higashi  
Executive Director, Commission on State Mandates

FROM:  JoAnne Payan  
Assistant Director, Administrative Services Division  
(916) 445-4140

DATE: August 1, 2008

SUBJECT: Response to Comments by San Bernardino County Regarding  
Proposed Amendment to Parameters and Guidelines Pesticide Use Reports  
Food and Agricultural Code Section 12979  
Chapter 1200, Statutes of 1989

**RECEIVED**  
AUG 01 2008  
COMMISSION ON  
STATE MANDATES

In its July 2008 correspondence regarding proposed amendments to the Parameters and Guidelines for Pesticide Use Reports (PURs), San Bernardino County (July 10, 2008, letter from Bonnie Ter Keurst and July 9, 2008, letter from John Gardner) disagreed with the inclusion of unclaimed gas taxes in Section V (C.) Offsetting Revenues and Reimbursement. After review of these comments, the Department of Pesticide Regulation (DPR) maintains its position that unclaimed gas taxes should be included, based on the following explanation.

DPR has no record of the discussions regarding the unclaimed gas tax during the original hearing on the test claim submitted by San Bernardino County. In addition, the Statement of Decision for test claim No. CSM-4420, issued on January 21, 1993, did not specifically address unclaimed gas tax. Further, there have been specific increases in the unclaimed gas tax revenue source specifically designated to fund PUR activities. The Commission's decision following the original discussion supports inclusion Section V (C.)

Subsequently, the Commission on State Mandates adopted the initial Parameters and Guidelines on February 23, 1995. While these Parameters and Guidelines once again did not specifically address unclaimed gas tax, they did include the statement, "In addition, reimbursement for the costs of these mandated activities received from *any source*, e.g., federal, state, etc., shall be identified and deducted from this claim" (emphasis added).

Between 1989-90 and 1993-94, the gas tax refund rate doubled (from 9 cents to 18 cents), and the amount of unclaimed gas tax distributed to fund Food and Agricultural Code (FAC) section 224(c) programs (which included all PUR activities, including those under the state mandate) nearly tripled.

In October 1996, the California Department of Food and Agriculture (CDFA) updated its County Agricultural Commissioners Annual Financial Statement Procedures Manual to specifically include review of PURs and issuance of operator identification numbers as reportable Pesticide



Paula Higashi  
August 1, 2008  
Page 2

Use Enforcement program activities. Because unclaimed gas tax funds are distributed based on these financial statements, a portion of these funds are for the mandated PUR activities.

Several times since 1989-90, CDFA has also successfully negotiated with the Department of Transportation to increase the formula to determine the amount transferred to CDFA and available for all FAC section 224(c) programs. For example, in 2003-04, the unclaimed gas tax distributed to the counties reflected an increase of about 38 percent over the previous year. CDFA's March 30, 2004, letters to the counties that accompanied the disbursement stated that "the additional unrefunded gas tax your county receives is intended to augment your existing agriculture programs." Those existing agriculture programs include all PUR activities.

DPR fully supports the idea that only a small portion of the unclaimed gas tax relates to the mandated PUR activities. When submitting a claim, a county should document the ratio of mandated PUR activities to total pesticide use enforcement activities and apply this ratio to the total unclaimed gas tax they receive for pesticide use enforcement to determine the amount to include as offsetting reimbursement on the claim.

Mr. Gardner makes two other points not addressed in Ms. Ter Keurst's letter. With regard to the offsetting revenue under the contract for electronic submission of reports, please refer to the Section V (C.) 2 of the proposed amendments to the Parameters and Guidelines which states this offsetting revenue should be deducted "for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines" (e.g., Reimbursable Activities). As to the OMB Circular A-87 reference, DPR used CSM's boilerplate language and would defer to CSM on this point.

If you have any questions, please contact Maria Bueb, of my staff, at 322-6170 or Lynn Owen, Product Compliance Branch Chief, at 445-3851.

cc: Mary-Ann Warmerdam, Director  
Christopher Reardon, Chief Deputy Director  
Chuck Andrews, Acting Assistant Director, Pesticide Programs Division  
Nan Gorder, Branch Chief, Enforcement Branch  
Lynn Owen, Branch Chief, Product Compliance Branch  
Anise Severns, Chief, Fiscal Services and Business Operations Branch  
Maria Bueb, Associate Budget Analyst, DPR  
Ken Da Rosa, Department of Finance  
Sue Montoya, Department of Finance  
Carla Castaneda, Department of Finance

PROOF OF SERVICE

Test Claim Name: Pesticide Use Reports  
Test Claim Number: CSM-06-PGA-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California. I am 18 years of age or older and not a party to the within entitled cause. My business address is 1001 I Street, Sacramento, CA 95814.

On August 1, 2008, I hand delivered the attached response to comments by San Bernardino County in said cause to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepared in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1001 I Street, for Interagency Mail Service, addressed as follows:

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Boulevard  
PO Box 1768  
Newport Beach, CA 92659-1768

Ms. Jolene Tollenaar  
MGT of America  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Ms. Ginny Brummels  
County Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

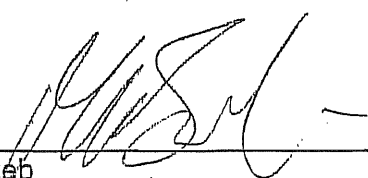
Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Mr. Allen Burdick  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 1, 2008, at Sacramento, California.

  
\_\_\_\_\_  
Maria Bueh

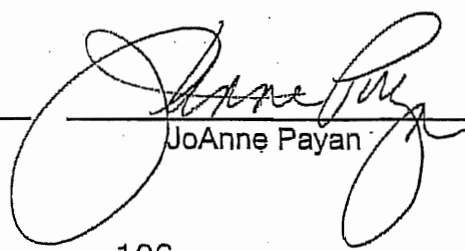
DECLARATION OF JOANNE PAYAN  
DEPARTMENT OF PESTICIDE REGULATION  
CLAIM NO. CSM-06-PGA-02

1. I am currently employed by the State of California, Department of Pesticide Regulation (DPR), am familiar with the duties of DPR, and am authorized to make this declaration on behalf of DPR.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief, and as to those matters, I believe them to be true.

8/11/08

at Sacramento, CA



JoAnne Payan





JOHN CHIANG  
California State Controller  
Division of Accounting and Reporting

RECEIVED

SEP 23 2008

COMMISSION ON  
STATE MANDATES

September 18, 2008

Ms. Paula Higashi  
Assistant Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

Re: Comments on Proposed Amendments to Parameter's & Guideline's (P's & G's)  
Pesticide Use Reports: 06-PGA-02;  
Food and Agricultural Code Section 12979, Statutes 1989, Chapter 1200

Dear Ms. Patton:

We reviewed the proposal to amend the P's & G's for the Pesticide Use Reports program and have several comments to the proposed amendment. Our comments for additions will be underscored and deletions will be indicated by strike-outs. Our comments are as follows:

Section I. Summary and Source of Mandate

We recommend that the following paragraph be moved to Section I. to become paragraph two. This language was moved from Section IV. to provide further clarification of the Summary of the Mandate section.

Counties shall be reimbursed for the uncovered costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393, 6562, 6568, 6622, 6623, 6624, 6626, 6627, 6627.1 and 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased pesticide use reporting requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly required pesticide use reports with the state.

Section II. Eligible Claimants

No changes are recommended for Section II.

### Section III. Period of Reimbursement

Insert the standard language used in the current P's & G's for Section III. Period of Reimbursement as follows:

~~"...A county may, by January 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year."~~

Pursuant to Government Code section 17560, reimbursement for state mandated costs may be claimed as follows:

1. A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim for that fiscal year.
2. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable costs for one fiscal year shall be included in each claim. If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

### Section IV. Reimbursable Activities and Related Costs

B. "To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include but are not limited to, employee time records or time logs, sign-in sheets, invoices, receipts, Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified in Section V. C.), etc that show evidence of validity of claimed costs. If source documents do not specifically identify 100% use reporting mandated records or activities vs. previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval."

The language in B. as noted above by strike-outs needs to move to the Section VII. Offsetting Revenues and Other Reimbursement to provide additional clarification of offsetting revenues.

B.D. Reimbursable Activities

3. "Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991 or the use of pesticides that are classified by the state as restricted materials) pesticide use reports other than those specified in IV. A. above. Note: Only costs incurred to review and file with the Department of Pesticide Regulation pesticide use reports other than those specified in IV. B above may have components (e.g., data entry) which may be performed by unlicensed staff.

The uniform boilerplate language needs to conform to the current agreed upon language. Other clarifying items related to offsetting savings should be stated in VII. Offsetting Revenue Section of these P's & G's.

V. Non-Reimbursable Activities

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations(3 CCR).

If travel costs are incurred and the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.

We have proposed that the Non Reimbursable Activities section above be added to clarify the limitation of the reimbursable costs for this program.

VI. Claim Preparation and Submission

A. Direct Cost Reporting

1. Employee Salaries and Benefits

"Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed. ~~The average number of hours devoted to each mandated activity may be claimed if the data is consistent with the claimant's PRAMR and supported by a documented time study performed within five years of the period for which reimbursement is claimed. Note: Only Activity 3 (review and filing of pesticide use records with the Department of Pesticide Regulation) listed in IV.B. above may have components (e.g., data entry) which may be performed by unlicensed staff."~~

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable

activity requiring travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity. ~~If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.~~

The uniform boilerplate language needs to conform to be consistent and current agreed upon language used in all P's & G's. Other clarifying items related to non reimbursable activities if deemed necessary could be identified in the appropriate section or in the non reimbursable section.

#### VII. Record Retention

"Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the application of a reasonable reimbursement methodology must also be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

#### VIII. Payment of Claims

~~All claims are paid from the Department of Pesticide Regulation Fund. Therefore all claims are required to be authorized for payment by the Department of Pesticide Regulation.~~

This section is deleted since it is inconsistent with the current budget act language.

#### C. VIII. Offsetting Revenues and Other Reimbursements

~~Any offsetting revenues or reimbursements the claimant receives experiences in the same program as a direct result of this the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim, and its implementing regulations must be deducted from the cost claim.~~

~~In addition, reimbursement for the costs of these mandated activities received from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.~~

Specifically, the following reimbursements must be deducted from any cost claim:

1. The mill disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations.
2. Funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.
3. Un-claimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/preffrm/.htm>.

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified in Section V. C.), etc that show evidence of validity of claimed costs. If source documents do not specifically identify 100% use reporting mandated records or activities vs. previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval."

The language is recommended to be added here to further clarify the offsetting revenue worksheet above in the Offsetting Revenues and Reimbursements section.

#### IX. State Controller's Revised Claiming Instructions

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised parameters and guidelines adopted by the Commission.

#### X. Remedies before the Commission

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

Ms. Nancy Patton  
September 18, 2008  
Page 6

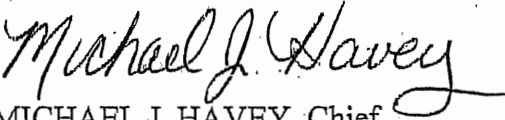
In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

XII. Legal and Factual Basis for the Parameters and Guidelines

The Statement of Decision (CSM4499) and the Statement of Decision on Reconsideration (05-RL-4490-01) are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision and Statement of Decision on Reconsideration, is on file with the Commission.

If you have any questions, please contact Ginny Brummels, Manager of the Local Reimbursements Section, at (916) 324-0256.

Sincerely,

  
MICHAEL J. HAVEY, Chief  
Division of Accounting and Reporting

MJH:glb

## PROOF OF SERVICE BY MAIL

Pesticide Use Reports; 06-PGA-02

I, the undersigned, declare as follows:

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and not a party to the within action. My place of employment and business address is 3301 C Street, Suite 500, Sacramento, California 95816.

On September 22, 2008, I served the attached recommendation of the State Controller's Office by placing a true copy thereof enclosed in a sealed envelope addressed to each of the persons named below at the addresses shown and by depositing said envelopes in the United States mail at Sacramento, California, with postage thereon fully prepaid.

Ms. Esther Martinez  
Sonoma County  
Agricultural Commissioner's Office  
133 Aviation Blvd., Ste 110  
Santa Rosa, CA 95403

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Auditor / Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Ms. JoAnne Payan  
Department of Pesticide Regulation  
1001 I Street (B-13)  
P.O. Box 4015  
Sacramento, CA 95812-4015

Ms. Jolene Tollenaar  
MGT of America  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting and Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Blvd., Suite 121  
Sacramento, CA 95826

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Suite 603  
Los Angeles, CA 90012

Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92659-1768

Mr. Jim Spano  
State Controllers Office (B-08)  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 22, 2008 at Sacramento, California.

Steve Purser



# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

LARRY WALKER  
Auditor/Controller-Recorder  
County Clerk

RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor  
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-9050

ELIZABETH A. STARBUCK, CGFM  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

October 22, 2008

MS. PAULA HIGASHI  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

RECEIVED

OCT 27 2008

COMMISSION ON  
STATE MANDATES

Re: Request to Amend Parameters and Guidelines  
Response to State Controller's Comments  
Pesticide Use Reports, 06-PGA-02  
Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200  
Department of Pesticide Regulation, Requestor

Dear Ms. Higashi:

The County of San Bernardino (County) has reviewed the three versions of proposed amendments to the parameters and guidelines (Ps&Gs) for the above mandated program, filed by the Department of Pesticide Regulation (DPR) on January 12, 2007, March 22, 2007, and May 9, 2008 respectively. The County has also received and reviewed the comments filed by the State Controller's Office (SCO) dated September 18, 2008.

The County's response to the SCO comments follows:

The County continues to disagree with the inclusion of unclaimed gas taxes as an offsetting revenue. The State Controller's response did not address this as a point of discussion. However, the item was listed in the SCO Ps&Gs Version, Section VIII.3 (*as renumbered by the SCO*) as a 'reimbursement that must be deducted from any cost claim.' The County requests that this item be removed.

As required by the Commission's regulation, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list have been provided with copies of this letter via either Fax or United States Mail.

If you have any questions regarding this letter, please contact me at (909) 386-8850.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie Ter Keurst".

Bonnie Ter Keurst  
Manager, Reimbursable Projects Section

Enclosure

# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor  
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-9050

LARRY WALKER  
Auditor/Controller-Recorder  
County Clerk

ELIZABETH A. STARBUCK, CGFM  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

## PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On October 22, 2008, I faxed the letter dated October 22, 2008 to the Commission on State Mandates in response to the Pesticide Use Reports. I faxed and/or mailed it also to the other parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 22, 2008 at San Bernardino, California.

A handwritten signature in cursive script, appearing to read "Melissa Honold".

Melissa Honold  
Audit Division Secretary

## Commission on State Mandates

Original List Date: 1/17/2007  
Last Updated:  
List Print Date: 06/25/2008  
Claim Number: 06-PGA-02  
Issue: Pesticide Use Reports

Mailing Information: Other

### Mailing List

#### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 11812)

---

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Tel: (909) 386-8860  
Fax: (909) 386-8830

---

Ms. JoAnne Payan  
Department of Pesticide Regulation  
1001 I Street (B-13)  
P.O. Box 4015  
Sacramento, CA 95812-4015

Tel: (916) 445-4140  
Fax:

---

Ms. Jolene Tollenaar  
MGT of America  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

Tel: (916) 712-4490  
Fax: (916) 290-0121

---

Ms. Susan Geanacou  
Department of Finance (A-15)  
915 L Street, Suite 1190  
Sacramento, CA 95814

Tel: (916) 445-3274  
Fax: (916) 324-4888

---

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621  
Fax: (866) 481-2682

---

Ms. Ginny Brummels  
State Controller's Office (B-08)  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95818

Tel: (916) 324-0258  
Fax: (916) 323-6527

---

Mr. David Wellhouse  
David Wellhouse & Associates, Inc  
9175 Kiefer Blvd, Suite 121  
Sacramento, CA 95826

Tel: (916) 368-9244  
Fax: (916) 368-5723

---

Mr. Leonard Kays, Esq  
County of Los Angeles  
Auditor-Controller's Office  
500 W. Temple Street, Room 603  
Los Angeles, CA 90012

Tel: (213) 974-8564  
Fax: (213) 617-8106

---

Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Tel: (916) 485-8102  
Fax: (916) 485-0111

---

Ms. Carla Castaneda  
Department of Finance (A-15)  
915 L Street, 11th Floor  
Sacramento, CA 95814

Tel: (916) 445-3274  
Fax: (916) 323-9584

---

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Blvd  
P. O. Box 1768  
Newport Beach, CA 92659-1768

Tel: (949) 644-3127  
Fax: (949) 644-3339



October 31, 2008

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RECEIVED**

NOV 04 2008

**COMMISSION ON  
STATE MANDATES**

Dear Ms. Higashi:

The Department of Finance has reviewed the comments submitted by the State Controller's Office (SCO) on the proposed amendments to the parameters and guidelines for "Pesticide Use Reports", Claim No. 06-PGA-02.

Finance concurs with the additional clarification proposed by the SCO, as follows:

1. Insert standard language used in the current parameters and guidelines where necessary.
2. Add section to detail non-reimbursable activities to provide further clarification of the mandate.
3. Delete the requirement that Department of Pesticide Regulation (DPR) authorize payment of reimbursement claim.
4. Clarify the Offsetting Revenues and Other Reimbursements section.
5. Delete duplicate information.

Finance continues to recommend listing all state funds available to offset the cost of the mandate. The comments submitted by the SCO clarify the availability of fund information prepared by DPR and remove any inconsistencies regarding appropriate authority to verify and authorize payments.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied the SCO's comments dated September 18, 2008, have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay  
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF CARLA CASTANEDA  
DEPARTMENT OF FINANCE

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

10/31/2008

at Sacramento, CA

*Carla Castaneda*

Carla Castaneda

PROOF OF SERVICE

Test Claim Name: Pesticide Use Reports  
Test Claim Number: CSM 06-PGA-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On 10/31/08, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 12 Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

State Controllers Office  
3301 C Street, Suite 500,  
Sacramento, CA 95816

Ms. Esther Martinez  
Sonoma County  
Agricultural Commissioner's Office  
133 Aviation Boulevard, Suite 110  
Santa Rosa, CA 95403

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

B-13

Ms. JoAnne Payan  
Department of Pesticide Regulation  
1001 I Street  
P.O. Box 4015  
Sacramento, CA 95812

Ms. Jolene Tolenaar  
MGT of America  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

A-15

Ms. Susan Geanacou  
Department of Finance  
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Sacramento, CA 95814

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

B-08

Ms. Ginny Brummels  
State Controller's Office  
Division of Accounting & Reporting  
3301 C Street, Suite 500  
Sacramento, CA 95816

Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

Mr. Leonard Kaye, Esq.  
County of Los Angeles  
Auditor – Controller's Office  
500 W. Temple Street, Suite 603  
Los Angeles, CA 90012

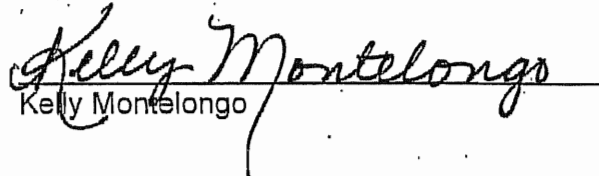
Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

A-15  
Ms. Carla Castaneda  
Department of Finance  
915 L Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92659-1768

B-08  
Mr. Jim Spano  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 10/31/08 at Sacramento, California.

  
Kelly Montelongo





# Department of Pesticide Regulation




Mary-Ann Warmerdam  
Director

## MEMORANDUM

Arnold Schwarzenegger  
Governor

TO: Paula Higashi  
Executive Director, Commission on State Mandates

FROM:  JoAnne Payan  
Assistant Director, Administrative Services Division  
(916) 445-4140

**RECEIVED**  
JAN 15 2009  
**COMMISSION ON  
STATE MANDATES**

DATE: January 9, 2009

SUBJECT: Response California State Controller Comments --  
Proposed Amendment to Parameters and Guidelines Pesticide Use Reports  
Food and Agricultural Code Section 12979  
Chapter 1200, Statutes of 1989

In its September 18, 2008, correspondence, the California State Controller's Office (SCO) submitted comments regarding proposed amendments to the Parameters and Guidelines for Pesticide Use Reports (PUR). For the most part, the comments related to more recent uniform boilerplate language than what had been provided to DPR for use in amending the Parameters and Guidelines, and DPR agrees to SCO's suggested changes, except as discussed below.

#### IV. Reimbursable Activities (as renumbered by SCO)

The Pesticide Regulatory Activity Monthly Reports are integral documents used to track workload data related to the various pesticide related activities performed by the counties, including the mandated activities. Although unique to the PUR state mandate, DPR's position is that this source document should be specifically mentioned in this section.

The language SCO inserted into the paragraph of this section that begins "3. Reviewing and filing with..." is out of context and confuses rather than clarifies this activity. Therefore, DPR does not agree with this change. To be consistent with SCO renumbering, this paragraph should also reference section V. instead of section IV.A. for PUR activities that are not reimbursable. To reiterate, DPR prefers the language to read, "3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in V. below."

#### V. Non-Reimbursable Activities (as renumbered by SCO)

SCO suggests including a second paragraph to address a pro-rata methodology applied to travel costs, when the purpose is broader than mandated activities, because standard boilerplate language in section VI. Claim Preparation and Submission does not currently include such language. Including language about allowable portions of costs in this section seems contradictory to the section heading, V. Non-Reimbursable Activities, and could confuse claimants. In addition, travel is the only cost category under section VI. Claim Preparation and



Submission for which current boilerplate language does not address some type of pro-rata portion of other appropriate costing method to address costs that are broader than the mandated activities. Therefore, DPR prefers to omit the second paragraph in this section and to address allowable, pro-rata portions of travel costs under section VI. Claim Preparation and Submission, as DPR had proposed.

#### VI. Claim Preparation and Submission (as renumbered by SCO)

SCO objected to some of the language in this section, because it did not conform with uniform boilerplate language or standard SCO language regarding time studies. DPR agrees to the deletions related to employee salaries and benefits, if standard SCO language regarding time studies is added in section VI.A.1.

However, to keep language regarding allowable pro-rata costs consistent, DPR still proposes to address allowable pro-rata travel costs in this section rather than in section V. Non-Reimbursable Activities. See discussion above for more detail.

#### VIII. Payment of Claims (deleted by SCO)

DPR agrees to delete this paragraph. However, as the administrating agency of the DPR Fund, DPR needs to be made aware of any state mandate claims against that fund. Therefore, DPR requests that SCO send an informational copy of any claims filed within ten working days of receipt by SCO.

To illustrate the importance of this request, in 2004, the Department of Finance determined that all outstanding and future claims would be paid from the DPR Fund instead of the General Fund. As such, beginning with fiscal year 2005-06, the Budget Act has included an appropriation from the DPR Fund to pay claims. The appropriation has been approximately \$160,000 each year, except the 2007-08 appropriation, which was increased to \$666,000 in order to pay claims for fiscal years 2001-02 through 2004-05, which had been deferred during the budget crisis. Because DPR had not received copies of the claims, DPR had not anticipated this significant obligation to the counties from the DPR Fund.

#### VIII. Offsetting Revenues and Other Reimbursements (as renumbered by SCO)

DPR does not object with the renumbering of this section. However, because numerous audits performed by SCO have found that claimants failed to include any offsetting revenue or reimbursements on their claims, DPR proposes to work with SCO to address any options or procedures that the SCO is authorized to use in this situation (e.g., deny claim or pay claim only if amended to include appropriate offsetting revenue and reimbursements).

Paula Higashi  
January 9, 2009  
Page 3

Also, DPR proposes to clarify some of the language SCO suggested moving to this section and to bring the time frame for data to support a default percentage more in line with the time frame SCO allows for time studies.

For clarification, attached is copy of the proposed amendments to the Parameters and Guidelines, updated to reflect DPR's acceptance or counterpoints to SCO changes.

If you have any questions, please contact Maria Bueb, of my staff, at 322-6170 or Lynn Owen, Product Compliance Branch Chief, at 445-3851.

Attachment

cc: Mary-Ann Warmerdam, Director  
Christopher Reardon, Chief Deputy Director  
Chuck Andrews, Associate Director, Pesticide Programs Division  
Nan Gorder, Branch Chief, Enforcement Branch  
Lynn Owen, Branch Chief, Product Compliance Branch  
Anise Severns, Branch Chief, Fiscal Services and Business Operations Branch  
Adrienne Watson, Budget Officer  
Maria Bueb, Associate Budget Analyst  
Ken Da Rosa, Department of Finance  
Sue Montoya, Department of Finance  
Carla Castaneda, Department of Finance



Proposed Amendments to  
Parameters and Guidelines

Food and Agricultural Code Section 12979  
Statutes of 1989, Chapter 1200

Pesticide Use Reports  
Program No. 121

Claimant: County of San Bernardino

I. Summary and Source of the Mandate

On January 21, 1993 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that *the test claim legislation imposes a reimbursable state-mandated program upon Chapter 1200, Statutes 1989, and implementing regulations developed pursuant thereto, resulted in county agricultural commissioners within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission found that the funding was not sufficient to cover all of the increase in costs experienced by counties.*

~~Counties shall be reimbursed for the uncovered costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979 of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393(c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, and 6628) which increased pesticide use reporting requirements on pesticide users to include all agricultural users, increased record keeping requirements on pesticide dealers that are licensed by the state, and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly required pesticide use reports with the state.~~

II. Commission on State Mandates' Decision

~~The Commission on State Mandates determined a reimbursable state mandated program pertaining to Food and Agricultural Code section 12979 and its implementing regulations at its hearing of November 19, 1992, and adopted the Statement of Decision for this test claim at its hearing of January 21, 1993.~~

III. Eligible Claimants

Any county that incurs cost as a result of this mandate that exceed the amounts received as reimbursement for the specific mandated items, is eligible to file a claim for reimbursement.

#### III.V. Period of Reimbursement

This parameters and guidelines amendment is effective \_\_\_\_\_.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim for that fiscal year.

2. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable costs for one fiscal year shall be included in each claim. If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

A county may, by January 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

Actual costs for one fiscal year should be included in each claim. Estimated costs of the subsequent fiscal year may be included in the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d), subpart (3), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

#### IV. Reimbursable Activities and Related Costs

##### A. Scope of Mandate

Counties shall be reimbursed for the uncovered costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural



Code section 12079, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6293(c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, and 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users, increased record-keeping requirements on pesticide dealers that are licensed by the state, and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly required pesticide use reports with the state.

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12079, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

#### D. Reimbursable Activities

*To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts, and Pesticide Regulatory Activity Monthly Reports (PRAMR) offsetting revenue worksheets (as identified in Section V.(C)), etc., that show evidence of and validity of claimed costs. If source documents do not specifically identify 100% use reporting mandated records or activities as previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval.*

*Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in*

*compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.*

*The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.*

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers **for the use of pesticides that are not classified by the state as restricted materials** pursuant to 3 CCR section 6622.
2. Issuing site identification numbers **for the use of pesticides that are not classified by the state as restricted materials** pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in ~~IV~~ ~~above~~ ~~below~~.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner **had** ~~and~~ reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records of **pesticide dealers as specified in 3 CCR section 6562, for the sale of pesticides that are not classified by the state as restricted materials** which are prepared and maintained by pesticide dealers who are licensed by the state.

#### V. Non-Reimbursable Activities

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of chapter 1200, Statutes of 1939, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).



~~If travel costs are incurred and the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.~~

## VII. Claim Preparation and Submission

*Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.*

~~Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate.~~

### ~~A. Description of Reimbursable Activity~~

### ~~B. Supporting Documentation~~

#### A. Direct Cost Reporting

*Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.*

#### 1. Employee Salaries and Benefits

*Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed. Show the name of the employee(s) involved, and/or the classifications(s) of the employee(s) involved, mandated functions performed, number of hours devoted to the function, productive hourly rate and benefits. ~~The average number of hours devoted to such a mandated activity may be claimed in the claim for costs incurred with the claimant's DIR/AVMP and supported by a documented time study performed within five years of the period for which reimbursement is claimed. Note: Only Activity 3 (review and filing of pesticide use records with the Department of Pesticide Regulation) listed in IV, B. above may have components (e.g. data entry) which may be performed by unlicensed staff. Claimants may use time studies to support salary and benefit costs when an activity is a task repetitive in nature. Time study usage is subject to the time study guidelines included in the State Controller's annual claiming instructions.~~*

#### 2. Materials and Supplies

*Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.*

3. *Contracted Services*

*Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.*

4. *Fixed Assets and Equipment*

*Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.*

5. *Travel*

*Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity. If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.*

6. *Training*

*Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the*

training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The

rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

**C. Offsetting Revenues, Savings and Other Reimbursements**

Any offsetting revenues or reimbursements savings the claimant receives as a direct result of this statute and its implementing regulations must be deducted from the cost claimed.

In addition, reimbursement for the costs of these mandated activities received from any source, including but not limited to service fees collected, federal grants, and other state funds, e.g., federal state, etc., shall be identified and deducted from this claim. Specifically, the following reimbursements must be identified from any cost claim:

1. the full disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations;

2. funding received by the claimant under the contract for the economic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines; and

3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/encomp/propfrm.html>.

**7. Services and Supplies**

— Only expenditures which can be identified as a direct cost as a result of the mandate can be claimed. List of cost of materials or equipment acquired

~~which have been consumed or expended specifically for the purposes of this mandate.~~

#### ~~8. Allowable Overhead Costs~~

~~Indirect costs may be claimed only in the manner described by the State Controller in the claiming instructions. Indirect costs may be claimed either by using ten percent of direct labor as an indirect cost rate or by preparing a departmental indirect cost rate proposal to determine the rate.~~

#### ~~9. Offsetting Revenue Worksheet~~

~~Complete the offsetting revenue worksheet to calculate offsetting revenues. This worksheet can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/prenffirm/> . . . . .htm.~~

### ~~VII. Supporting Data~~

~~For auditing purposes, all costs claimed shall be traceable to source documents (i.e., employee time records, invoices, receipts, purchase orders, contracts, time studies, worksheets, PRAMR, offsetting revenue worksheet, etc.) that show evidence of and validity of claimed costs. All documentation supporting such costs shall be made available to the State Controller or his agent, as may be requested, during the record retention period specified in Government Code section 17558.5, subdivision (a).~~

~~Government Code section 17558.5, subdivision (a), requires that all supporting source documents and worksheets must be kept on file not less than four years after the end of the calendar year in which the reimbursement claim is filed or last amended, unless no funds are appropriated for the program for the fiscal year for which the claim is made, in which case, the four year retention period shall commence to run from the date of initial payment of the claim.~~

### ~~VIII. Record Retention~~

~~Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursement claim shall be maintained in accordance with applicable law.~~

<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.



~~reimbursement methodology must also be retained during the period subject to audit.~~ If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

#### ~~VIII. Offset Savings and Other Reimbursements~~

- ~~— Any offsetting savings the claimant receives as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.~~
- ~~— In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. Specifically, the following reimbursements must be deducted from any cost claim:~~
  - ~~VI. the mill disbursement received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines, in accordance with current applicable regulations;~~
  - ~~VII. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section V (B) of the parameters and guidelines; and~~
  - ~~VIII. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section V (B) of the parameters and guidelines.~~

#### ~~VIII. Offsetting Revenues, Savings and Other Reimbursements~~

~~Any offsetting revenues or reimbursements the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim.~~

~~Specifically, the following reimbursements must be deducted from any cost claim:~~

- ~~1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations;~~
- ~~2. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines; and~~
- ~~3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.~~

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcomp/offset.htm>.

If source documents do not specifically identify 100% use reporting mandated records on activities versus previously required records on activities, a pro-rata portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval.

X.

#### IX. State Controller's Office Required Certification

— An authorized representative of the claimant will be required to provide a certification of the claim as specified in the State Controller's claiming instructions, for those costs mandated by the statute for which reimbursement is requested.

#### ~~VIII~~ State Controller's ~~Revised~~ Claiming Instructions

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue ~~revised~~ claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the ~~revised adopted~~ parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The ~~revised~~ claiming instructions shall be derived from the test claim decision and the ~~revised~~ parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the ~~revised~~ claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon ~~revised~~ parameters and guidelines adopted by the Commission.

#### ~~VIII~~ Payment of Claims

All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.

#### ~~VII~~ Remedies Before the Commission

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section

17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

XV *Legal and Factual Basis for the Parameters and Guidelines*

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4490-01) are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.



PROOF OF SERVICE

Test Claim Name: Pesticide Use Reports  
Test Claim Number: CSM-06-PGA-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California. I am 18 years of age or older and not a party to the within entitled cause. My business address is 1001 I Street, Sacramento, CA 95814.

On January 15, 2009, I hand delivered the attached response to comments by State Controller's Office in said cause to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepared in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1001 I Street, for Interagency Mail Service, addressed as follows:

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

Mr. Glen Everroad  
City of Newport Beach  
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Newport Beach, CA 92659-1768

Ms. Jolene Tollenaar  
MGT of America  
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Sacramento, CA 95814

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Sacramento, CA 95814

Ms. Ginny Brummels  
State Controller's Office (B-08)  
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Sacramento, CA 95826

Susan Geanacou  
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915 L Street, Suite 1190  
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 15, 2009, at Sacramento, California.

  
\_\_\_\_\_  
Maria Bueb



DECLARATION OF JOANNE PAYAN  
DEPARTMENT OF PESTICIDE REGULATION  
AIM NO. CSM-06-PGA-02

1. I am currently employed by the State of California, Department of Pesticide Regulation (DPR), am familiar with the duties of DPR, and am authorized to make this declaration on behalf of DPR.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief, and as to those matters, I believe them to be true.

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at Sacramento, CA

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JoAnne Payan



Hearing: May 29, 2009  
j: mandates/2006/PGA/06pga02/dsa

**ITEM \_\_\_\_\_**  
**DRAFT STAFF ANALYSIS**  
**PROPOSED AMENDMENTS TO**  
**PARAMETERS AND GUIDELINES**

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

California Code of Regulations, Title 3, Sections 6000, 6393 (c),  
6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628  
(Register 90, No. 1)

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

Department of Pesticide Regulation, Requestor

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**Executive Summary**

(The Executive Summary will be included in the Final Staff Analysis)

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## **Chronology**

01/21/1993 Commission adopts Statement of Decision

02/23/1995 Commission adopts Parameters and Guidelines

01/12/2007 Department of Pesticide Regulations files Proposed Amendment to Parameters and Guidelines

02/20/2007 Department of Finance files comments

03/22/2007 Department of Pesticide Regulation modifies Proposed Amendment to Parameters and Guidelines

04/22/2008 Commission requests comments from the County of San Bernardino, original claimant

05/09/2008 Department of Pesticide Regulation makes clarifications to proposed amendments to address audit issues

06/23/2008 Department of Finance files comments on proposed amendments

06/23/2008 County of San Bernardino requests extension of time to submit response

06/25/2008 Commission staff approves request for extension of time

07/11/2008 County of San Bernardino files comments on proposed amendments

08/01/2008 Department of Pesticide Regulation files rebuttal comments

09/18/2008 State Controller's Office files comments

09/26/2008 Pre-hearing conference held and new schedule established

10/31/2008 Department of Finance files comments

01/15/2009 Department of Pesticide Regulation files rebuttal comments

02/24/2009 Commission staff issues draft staff analysis

03/24/2009 Comments due on draft staff analysis

05/14/2009 Final staff analysis will be issued

05/29/2009 Commission hearing

## **STAFF ANALYSIS**

### **Background**

This is a request filed by the Department of Pesticide Regulation (DPR) to amend the original parameters and guidelines for the *Pesticide Use Reports* Program (CSM-4420).

If the Commission on State Mandates (Commission) approves DPR's request, the amendments would be effective for costs incurred beginning July 1, 2005.

### Test Claim Decision

Statutes 1989, chapter 1200 added Food and Agricultural Code section 12979, which states:

A pesticide use report shall be submitted to the commissioner or director on a form and in a manner prescribed by the director. The data from the pesticide use reports shall be considered in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest control research, public health monitoring and research, and similar activities by the department, or by the department in cooperation with other state, regional, or local agencies with appropriate authority.

In 1991, the County of San Bernardino filed a test claim on this statute. In 1993, the Commission adopted a Statement of Decision on this test claim, finding that the provisions of Food and Agriculture Code section 12979, and its related regulations in Title 3 of the California Code of Regulations, increased the level of service to be provided by the county agricultural commissioners.<sup>1</sup>

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Food and Agriculture Fund in section 12846 of the Food and Agricultural Code which specified that it be used, upon appropriation, for the purposes of a number of sections, including 12979. Moreover, the Commission found that the Food Safety Account was created and an existing mill assessment that is imposed on counties was increased to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.

Former section 6393, subdivision (c) of Title 3, California Code of Regulations, which addressed the mill assessments, was amended to include new criteria for reimbursing counties for additional work related to the expansion of pesticide use reporting requirements for all agricultural uses. However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission found that to the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17556, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.

The Commission further found that any costs incurred as a result of the increased pesticide reporting requirements, that are not reimbursed by the Food Safety Account, and the increased mill assessment, are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provision of Government Code section 17556, subdivision (e).

### Parameters and Guidelines

The parameters and guidelines include the following limiting language under "Scope of Mandate":

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979 of Chapter

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<sup>1</sup> See Statement of Decision.



1200 Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

And, specify the following reimbursable activities:

1. Issuing operator identification numbers pursuant to 3 CCR section 6622.
2. Issuing site identification numbers pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in V.A. above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

#### **Department of Pesticide Regulation Request to Amend Parameters and Guidelines**

DPR requests that the parameters and guidelines be amended so mandate reimbursement guidelines will be conformed to current law and implementing regulations.<sup>2</sup> The Department of Finance (DOF), the County of San Bernardino, and the State Controller's Office (SCO) filed comments on DPR's original proposal and subsequent modifications.

In the original proposal, the Department of Pesticide Regulation proposed to update the existing parameters and guidelines with "current" Commission "boilerplate" language and to clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. DPR also proposed to include mill disbursement, and unclaimed gas tax funds received by the claimant as offsetting revenues and other reimbursements, and to notify claimants that DPR developed an Offsetting Revenue Worksheet to help the counties identify the appropriate amounts to apply as an offset to a reimbursement claim. DPR also proposed adding a new Section VIII on Payment of Claims and later withdrew this request.

On January 16, 2009, DPR filed rebuttal comments and modified its last proposed amendments by accepting many of the SCO recommendations.

#### **State Agency Comments**

In its comments, the County of San Bernardino, the original test claimant, concurred with all of DPR's proposed amendments except for the specific identification of offsetting revenues.<sup>3</sup> The County disagreed with the inclusion of unclaimed gas taxes that were established as a funding mechanism to reimburse counties for the costs of performing Food and Agricultural Code

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<sup>2</sup> See Department of Pesticide Regulation's Original Request and Comments, dated January 12, 2007, March 22, 2007, May 9, 2009, August 1, 2008, and January 15, 2009.

<sup>3</sup> See County of San Bernardino's Comments dated July 11, 2008.

programs prior to the enactment of the mandated duties related to pesticide use reports. The County also argued that DPR should clarify that the offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the test claim statutes (Stats. 1989, ch. 1200). As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

In its comments, DOF agreed with DPR's original proposed amendments to identify the specific revenues available to offset claims; concurred with the technical amendments clarifying the mandated activities and technical changes to the boilerplate to be consistent with current law; and found that the requested amendment to use current Commission boilerplate language is unnecessary as some of the provisions may not be applicable to the program.<sup>4</sup>

DOF also concurred with the SCO's comments and continued to recommend listing all state funds available to offset the cost of the mandate.

The SCO provided several comments to the proposed amendments and recommended making clarifying technical changes to conform to the boilerplate and format of current parameters and guidelines; making clarifying edits to one reimbursable activity; adding a new section for non-reimbursable activities; and deleting a new Section VIII. Payment of Claims.<sup>5</sup> The substantive comments are discussed below.

## Discussion

The proposed parameters and guidelines amendments and comments raise the following issues for determination by the Commission:

Should the parameters and guidelines be amended to –

1. Update the format and add the Commission's current "boilerplate" language?
2. Clarify that the mandate refers to *use reports for pesticides that are not classified by the state as restricted materials*?
3. Add a separate section identifying Non-Reimbursable Activities?
4. Update citation to OMB Circular A-87 for calculation of indirect costs?
5. Add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
6. Add *unclaimed gas tax funds* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
7. Reference DPR's Proposed Offsetting Revenue Worksheet to help counties identify appropriate amounts to apply as an offset to a county's reimbursement claim?
8. Add language to clarify documentation requirement to support pro-rata offsets?
9. Add new section on "Payment of Claims"?

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<sup>4</sup> See DOF Comments dated February 20, 2007, June 23, 2008, and October 31, 2008.

<sup>5</sup> See State Controller's Office Comments dated September 18, 2008.

**Issue 1            Should the parameters and guidelines be amended to update the format and add the Commission's current "boilerplate" language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI?**

The current parameters and guidelines for this program were adopted on February 23, 1995. Since that date, there have been many changes made to the format and the boilerplate language used in the parameters and guidelines. Except for one comment from the DOF, that the requested amendment to use current boilerplate is unnecessary as some provisions may not apply to the program, there is no disagreement among the other parties to update the format of, or the boilerplate language in the parameters and guidelines. Therefore, staff has modified the proposed amendments to the parameters and guidelines to conform with the format and current boilerplate language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI.

**Issue 2            Should Section IV, Reimbursable Activities, Paragraphs 1, 2, 3, and 6 be amended to clarify that the reimbursable activities include pesticides that are not classified by the state as restricted materials?"**

The Commission's Statement of Decision denied reimbursement for "... pesticides that are classified by the state as restricted materials." Prior to the enactment of the test claim statute and adoption of the implementing regulations, reports on pesticides classified by the state as restricted materials were filed with counties. The current parameters and guidelines include limiting language in Section IV Reimbursable Activities that is being moved to Section I.

DPR proposes amendments to paragraphs 1, 2, and 6 to add language specifying that reimbursement is limited to activities related to the use of pesticides that are not classified by the state as restricted materials. Also, the SCO proposes an amendment to paragraph 3, to clarify the reimbursable activity of reviewing and filing pesticide use reports with the DPR. There is no opposition to these proposed amendments.

Staff finds that the DPR's proposed language is consistent with the Statement of Decision and recommends approval of the following proposed language in Section IV, Reimbursable Activities, Paragraphs 1, 2, and 6:

1. Issuing operator identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6622.
2. Issuing site identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6623.
- ...
6. Audit the sales records of pesticide dealers as specified in 3 CCR section 6352, for the sale of pesticides that are not classified by the state as restricted materials which are prepared and maintained by pesticide dealers who are licensed by the state.

Staff also finds that the SCO's proposed language to modify Section IV Reimbursable Activities, Paragraph 3 is also consistent with the Statement of Decision. Therefore, staff recommends approval of the following proposed language with technical modifications proposed by staff:

3. Reviewing and filing with the Department of Pesticide Regulation (~~Department of Food and Agriculture until July 17, 1991~~) or the use of pesticides that are classified by the state as restricted materials pesticide use reports other than those specified in V A above below. Note: Only costs incurred to review and file with the Department

of Pesticide Regulation pesticide use reports other than those specified in V below may have components (e.g., data entry) which may be performed by unlicensed staff.

**Issue 3            Should a new Section V. Non-Reimbursable Activities be added?**

The existing parameters and guidelines include a description of non-reimbursable activities in Section V Reimbursable Activities, A. Scope of the Mandate. However, this language is being moved to Section I. Summary of the Mandate to be consistent with the current format.

The State Controller's Office proposes that existing text description of non-reimbursable activities and language originally proposed by DPR regarding reimbursement of travel costs, be moved to a new Non-Reimbursable Activities section. Staff finds that this is a non-substantive, clarifying change. Therefore, staff recommends approval of the following proposed language:

V.    Non-Reimbursable Activities

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

If travel costs are incurred and the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion may be claimed.

**Issue 4            Should Section VII, Claim Preparation and Submission, B. Indirect Costs be amended to update a citation?**

The current boilerplate language allows claimants to utilize the procedure provided in "Office of Management and Budget (OMB) Circular A-87 Attachments A and B" for the calculation of indirect costs.

In comments filed by DPR, we learned that this document is now cited as 2 CFR Part 225, Appendix A and B (OMB Circular A-87). The CFR citation has been verified and staff recommends updating this citation throughout Section VII, Claim Preparation and Submission, B. Indirect costs. The SCO's agrees with DPR's comments.

**Issues 5-7        Should Section VIII, Offsetting Revenues and Reimbursements be amended?**

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Agriculture Fund (Food & Agr. Code, § 12846) and changed the pesticide mill assessment from .008 mills per dollar to .009 mills per dollar (amendment to Food & Agr. Code, § 12841). However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission made the following findings in the Statement of Decision:

- The reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.<sup>6</sup>

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<sup>6</sup> See Statement of Decision, Exhibit A.

- To the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17557, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.
- Any costs incurred as a result of the increased pesticide reporting requirements that are not reimbursed by the Food Safety Account and the increased mill assessment are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provisions of Government Code section 17556, subdivision (e).

The existing parameters and guidelines do not specifically identify the mill assessments in Section VIII, which was then named "Offsetting Savings and Other Reimbursements."

This section of the parameters and guidelines currently includes the following language:

#### VIII. Offsetting Savings and Other Reimbursements

Any offsetting savings the claimant experiences as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR and the DOF<sup>7</sup> propose updating this section to make substantive and technical amendments that specifically add language describing mill disbursements and gas taxes as offsets, and language to assist claimants in applying offsets.

The current proposal would replace Section VIII as follows:<sup>8</sup>

#### VIII. Offsetting Revenues, Savings and Other Reimbursements

Any offsetting revenues or reimbursements the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim. [First Paragraph]

Specifically, the following reimbursements must be deducted from any cost claim:[Second Paragraph]

<sup>7</sup> See DOF letter dated February 20, 2007.

<sup>8</sup> See DPR's Response to California State Controller Comments – proposed amendment to parameters and guidelines, dated January 9, 2009, pages 10-11.

1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations;
2. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines; and
3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines.

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/preffirm/> htm. [Third Paragraph]

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval. [Fourth Paragraph]

The SCO proposes an alternative Fourth Paragraph, as follows:

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified in Section V.C.), etc. that show evidence of validity of claimed costs. If source documents do not specifically identify 100% use reporting, mandated records or activities vs. previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years<sup>9</sup> based on actual data submitted or collected during that interval. [SCO proposed language on September 18, 2009.]

The proposed language is reviewed below under Issues 5-8.

**Issue 5            Should the Offsetting Revenues and Reimbursements Section be amended to add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require claimants to report and deduct them?**

Background

The Statement of Decision includes a Commission finding that “[t]he reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.” Although the Commission made this finding, the parameters and guidelines do not include a specific reference to deduction of mill assessments as offsetting reimbursements.

<sup>9</sup> SCO’s comment is based on and responds to an earlier DPR proposal.

DPR proposes an amendment to specifically identify “the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations.”<sup>10</sup> The applicable regulations specify the criteria used by the Department of Pesticide Regulation in allocating pesticide mill assessment funds to counties based on each county’s costs, pesticide regulatory activities, workload, and performance, pursuant to section 12844 of the Food and Agriculture Code.

The Department of Pesticide Regulation/Mill Assessment Branch defines the pesticide “mill assessment” as a fee assessed on all pesticide sales, levied at the point of first sale into the state. A “mill” is equal to one-tenth of a cent. In 2004, this “mill assessment” was 21 mills, or 2.1 cents per dollar of sales. The mill rate is set in regulation by DPR at a level adequate to support the Department’s annual expenditures authorized by the Legislature and to provide a prudent reserve.<sup>11</sup> “Mill assessment revenues are placed in a special fund used to pay for the State’s pesticide regulatory program. DPR’s programs are funded primarily from fees and from the mill assessment.”<sup>12</sup>

According to DPR, California Code of Regulations, Title 3, section 6393, Criteria Items and Apportionments, was amended in 2004 to establish a more appropriate and equitable method for reimbursing the counties for all Pesticide Use Enforcement activities they perform.

Each month, counties report to the Department of Pesticide Regulation all their pesticide use enforcement activities on the Pesticide Regulatory Activities Monthly Report (PRMAR). The amount of apportionment of each criteria item is a percentage of the total mill assessment funds available for reimbursement to counties [less the amount specified in section 6395 (b) of the regulations].

DPR concludes that mill assessment funds received by the counties for six of nine apportionment activities need to be reported as reimbursement, thus offsetting the costs for these activities. (The six apportionment activities are in bold text below.) California Code of Regulations, title 3, section 6393, subdivision (b), Criteria Items and Apportionments follows with DPR’s comments in italicized text<sup>13</sup> and staff’s findings:

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<sup>10</sup> This refers to Title 3, Division 6, Chapter 2, Subchapter 3, Article 2, section 6390, et seq. of the Department of Pesticide Regulation’s regulations.

<sup>11</sup> In 1997, Statutes 1997, chapter 695 changed the amount of funds disbursed to the counties and required DPR and the county agricultural commissioners to jointly develop regulations specifying the criteria to be used in allocating the mill assessment funds to the counties based upon each county’s pest control activities, cost, workload, and performance. In 2001, California Code of Regulations sections 6391 and 6393 were amended and section 6397 was adopted establishing the disbursement criteria to be used to allocate mill assessment funds to the counties. The revised CCR 6393 criteria ultimately established specific apportionments to address the increased cost associated with full pesticide use report activities. Again in 2004, section 6393 was again amended.

<sup>12</sup> See Department of Pesticide Regulation/Mill Assessment Branch, “Information for Retailers About Selling Pesticides and Paying Mill Assessment.”

<sup>13</sup> See Department of Pesticide Regulation Request to Amend Parameters and Guidelines, “Historical Background,” dated January 12, 2007.



- (1) **Apportionment, 3 percent:** The total number of Pesticide Use Enforcement Program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans.<sup>14</sup> (Emphasis added by DPR.)

*DPR: This apportionment addresses reimbursable component number 3 from the SCO's claim form (PUR-1) allowing reimbursement for inspecting pesticide use records of growers, auditing pest use records of growers, and auditing pesticide dealer sales records.*

Based on the Commission's Statement of Decision, staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activities 4, 5, and 6. Therefore, staff finds that the apportionment must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(1).)

- (2) **Apportionment, 3 percent:** The total number of: licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control operators providing notice of work in each county; active operator identification numbers in each county; and additional similar workload activities approved jointly by the Director and the commissioners.<sup>15</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 1 from the SCO's claim form PUR-1 allowing reimbursement for issuing operator IDs.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 1. Therefore, it must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(2).)

- (3) **Apportionment, 3 percent:** The total number of private applicator certificate holders certified in each county.<sup>16</sup>

*DPR: This apportionment does not pertain to pesticide use report activities.*

Based on the Commission's Statement of Decision, staff agrees with DPR that this apportionment does not pertain to pesticide use report activities and is not an offset.

- (4) **Apportionment, 3 percent:** Work hours expended on pesticide related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license.<sup>17</sup> (Emphasis added by DPR.)

<sup>14</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(1).

<sup>15</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(2).

<sup>16</sup> California Code of Regulations, title 3, section 6383, subdivision (c)(3).

<sup>17</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(4).



*DPR: The apportionment directly pertains to pesticide use reports activities.*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(4).)

- (5) **Apportionment, 3 percent:** Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners.<sup>18</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to pesticide use report activities, but does have some indirect linkages (e.g. increased expenditures reported results in an increased share of the mill assessment revenues).*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(5).)

- (6) **Apportionment, 3 percent:** The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979. (Cal. Code Regs., tit. 3, § 6394, subd. (b)(6).)<sup>19</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to PUR [pesticide use report] activities but does have some indirect linkages (e.g. an increase in total pounds of pesticides reported results in an increased share of the mill assessment revenues).*

Staff finds that to the extent that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(6) is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset.

- (7) **Apportionment 21 percent:** The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and notices of intent reviewed by each county.<sup>20</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision which denied reimbursement for activities related to restricted materials, staff finds that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(7) is not an offset.

<sup>18</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(5).

<sup>19</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(6).

<sup>20</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(7).

- (8) Apportionment, 21 percent: Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information. Counties receiving funding under the provisions of section 8698.5 of the Business and Professions Code for structural fumigation enforcement shall only receive funds from this apportionment after deducting the amount of funds received pursuant to section 8698.5 of the Business and Professions Code.<sup>21</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision, staff finds that the requirements related to non-agricultural labeled pesticides and structural fumigation enforcement are not reimbursable, so the apportionment established by California Code of Regulations, title 3, subdivision (b) (8) is not an offset.

- (9) **Apportionment, 40 percent:** Based on each county's pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties.<sup>22</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 2 from the SCO's claim form PUR-1, allowing reimbursement for reviewing and filing with the DPR pesticide use reports.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 3 and must be deducted as an offset. However, since the calculation of this apportionment includes non-reimbursable pesticide use report data records, staff concludes that only the portion of this apportionment that is based on Reimbursable Activity 3 must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(9).)

There is no opposition to the proposed amendment to specify the offset of "the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations." The County of San Bernardino finds that mill assessments qualify for the offset of local agencies' mandated costs.<sup>23</sup>

Staff finds that the mill disbursements received by claimants that are based on the reimbursable activities identified in Section IV of the parameters and guidelines in accordance with current applicable regulations (Cal. Code of Regs., tit. 3, § 6393, subdivision (b), (1), (2), and (9)) must be identified and deducted from any costs claimed.

Staff further finds that the mill disbursements received by claimants in accordance with California Code of Regulations, title 3, section 6393, subdivisions (b) (4), (5) and (6) that are used to offset the reimbursable activities identified in Section IV of the parameters and guidelines must be identified and deducted from any costs claimed.

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<sup>21</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (8).

<sup>22</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (9).

<sup>23</sup> See County of San Bernardino's letter dated July 10, 2008.

Therefore, staff recommends the Commission approve the following language:

Specifically, the following revenues and reimbursements must be deducted from any costs claimed:

1. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (1), (2), and (9) that are based on the reimbursable activities in Section IV of the parameters and guidelines.
2. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (4), (5) and (6) that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

**Issue 6      Should the Offsetting Revenue and Reimbursements Section be amended to update the language regarding reimbursements that are based on the DPR contract for electronic submission of pesticide use reports?**

Section VIII of the Parameters and Guidelines currently addresses offsetting revenue from the contract for electronic submission of *Pesticide Use Reports*:

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR's proposed amendment would update and replace the original paragraph with the following language:<sup>24</sup>

Specifically, the following reimbursements must be deducted from any cost claim:

...  
funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines, and ...

The County of San Bernardino finds that contract revenue funds qualify for the offset of local agencies' mandated costs.<sup>25</sup> However, the County argues that DPR should clarify that offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the mandates of Chapter 1200, Statutes of 1989. As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

<sup>24</sup> See Department of Pesticide Regulation Memoranda, dated \_\_\_\_\_.

<sup>25</sup> See County of San Bernardino's letter dated July 10, 2008.

DPR's proposed amendment is limited to revenue received for "activities identified as reimbursable in Section IV of the parameters and guidelines." Section IV of the parameters and guidelines sets forth the reimbursable activities resulting from the test claim statute. Thus, the scope of the increased costs for reimbursable activities and any offsetting revenues resulting from the contract for the electronic submittal of pesticide use reports between the county and DPR are already limited by the identified reimbursable activities imposed by Statutes 1989, chapter 1200.

However, staff finds that clarifying language is necessary. DPR's proposed amendment does not track the language of the reimbursable activity – "reviewing and filing with the Department of Pesticide Regulation pesticide use reports." Therefore, staff recommends modifying DPR's proposed amendment to clarify this description of the reimbursable activity by inserting the words "reviewing and filing" and making other clarifying edits, as follows:

Specifically, the following revenues and reimbursements must be deducted from any ~~cost claim~~ costs claimed:

...

The payments received under each county's contract with DPR for the review and filing of pesticide use reports (electronic submittal to DPR) that are identified as reimbursable in Section IV of the parameters and guidelines.

**Issue 7      Should the Offsetting Revenues and Reimbursements section be amended to add language requiring the deduction of unclaimed gas tax revenues as an offset?**

The Commission's Statement of Decision and parameters and guidelines do not mention the application of unclaimed gas tax revenues received by counties as an offset.

However, DPR has proposed to include unclaimed gas tax revenues received by counties, pursuant to Food and Agricultural Code section 224, as offsetting revenues and other reimbursements, stating:

[S]ince unclaimed gas tax allotment revenues are allocated by the California Department of Food and Agriculture based on total agricultural program costs reported by counties statewide, the [State Controller's Office] has determined that when a county reports its mandated costs within total agricultural program costs, it increases its share of statewide revenue allocations.<sup>26</sup>

DPR asserts that the inclusion of unclaimed gas tax revenues as offsetting revenues ensures that counties account for the receipt of all offsetting funds. According to DPR, between 1989-90 and 1993-94, the gas tax refund rate doubled (from 9 cents to 18 cents), and the amount of unclaimed gas tax distributed to fund Food and Agricultural Code (FAC) section 224, subdivision (c) programs (which included all pesticide use report activities, including those under the state mandate) nearly tripled. In October 1996, the California Department of Food and Agriculture (CDFA) updated its County Agricultural Commissioners Annual Financial Statement Procedures Manual to specifically include review of pesticide use reports (PUR) and

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<sup>26</sup> Department of Pesticide Regulation proposed amendment to Parameters and Guidelines, dated January 12, 2007, p. 2.

issuance of operator identification numbers as reportable Pesticide Use Enforcement Program activities. Because unclaimed gas tax funds are distributed based on these financial statements, a portion of these funds are for the mandated activities. DPR explains:<sup>27</sup>

Several times since 1989-90, CDFA has also successfully negotiated with the Department of Transportation to increase the formula to determine the amount transferred to CDFA and available for all FAC section 224(c) programs. For example, in 2003-04, the unclaimed gas tax distributed to the counties reflected an increase of about 38 percent over the previous year. CDFA's March 30, 2004 letters to the counties that accompanied the disbursement stated that "the additional unrefunded gas tax your county receives is intended to augment your existing agriculture programs." Those existing agriculture programs include all PUR activities.

DPR fully supports the idea that only a small portion of the unclaimed gas tax relates to the mandated PUR activities. DPR further suggests that "when submitting a claim, a county should document the ratio of mandated PUR activities to total pesticide use enforcement activities and apply this ratio to the total unclaimed gas tax they receive for pesticide use enforcement to determine the amount to include as offsetting reimbursement on the claim."<sup>28</sup>

The SCO and DOF agree with DPR's proposed amendment.

The County of San Bernardino disagrees with the inclusion of unclaimed gas tax revenues as offsetting revenues. The County argues: (1) a pre-existing revenue stream is inappropriate to use as a funding mechanism unless there was some specific increase to the revenue source to fund the mandate and that there has been no specific increase in unclaimed gas tax to fund this mandate; (2) if the state fully funds the costs incurred for the mandates of Statutes 1989, chapter 1200, there is no local cost and therefore no unclaimed gas tax revenue associated with the performance of these mandated activities; and (3) use of unclaimed gas tax revenue as a funding source for this mandate decreases the available funding for all other pre-existing Food and Agricultural Code programs resulting in additional local costs to the counties related to these programs, effectively shifting the costs of a new mandate to pre-existing programs.<sup>29</sup>

Revenue and Tax Code section 8101, allows individuals who have paid a tax for motor vehicle fuel and have used that fuel for particular purposes to be reimbursed and repaid the amount of the tax. The remaining money from the vehicle fuel tax, including unclaimed amounts available for reimbursement, are deposited into the Motor Vehicle Fuel Account. Revenue and Tax Code section 8352.5 provides that the Director of Transportation and the Director of Food and Agriculture shall jointly prepare a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel subject to refund pursuant to section 8101 less the gross refunds paid by the Controller. An amount equal to this estimate shall be transferred from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund.

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<sup>27</sup> See Department of Pesticide Regulation Memorandum, dated August 1, 2008.

<sup>28</sup> Ibid.

<sup>29</sup> Claimant response to Department of Pesticide Regulation proposed amendment to parameters and guidelines, dated July 9, 2008.

Food and Agricultural Code section 224 (as added by Stats.2001, ch. 145) provided that money transferred to the Food and Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Revenue and Tax Code section 8352.5, less specified amounts for state use (Food & Agr. Code § 224 subds. (a) and(b)), is appropriated to be paid to counties as partial reimbursement for county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code that are supervised by the Department of Food and Agriculture. Payments to counties are apportioned to counties in relation to each county's expenditure to the total amount expended by all counties for the preceding fiscal year for agricultural programs authorized by the Food and Agricultural Code.<sup>30</sup>

When analyzing statutory language, the rules of statutory construction provide:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. ... If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.<sup>31</sup>

Also, in *People v. Knowles* the California Supreme Court held:

If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.<sup>32</sup>

Here, the statute in question is Food and Agricultural Code section 224, which apportions unclaimed gas tax funds to county agricultural commissioners. The plain language of section 224 does not require county agricultural commissioners to use any apportionments received pursuant to section 224 for the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). Rather, the stated purpose of apportionments received by county agricultural commissioners pursuant to section 224 is to reimburse county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code, including the reimbursable activities mandated by Food and Agricultural

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<sup>30</sup> Education Code section 224 was amended by Statutes 2007, chapter 421, operative July 1, 2008, to reflect changes that occurred in 1991 when then-Governor Wilson created the California Environmental Protection Agency and moved DPR into it from the Department of Food and Agriculture. Since the relocation of CDR, the Department of Food and Agriculture has continued to reimburse county agricultural commissioners for activities that are under DPR. The amendment authorized \$ 9 million in funding of DPR for the purpose of reimbursing county agricultural commissioners activities that are under the purview of DPR. Reimbursement is apportioned to counties in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for pesticide use enforcement programs "or with the collective agreement of the agricultural commissioners, disbursement to counties for a current fiscal year according to criteria developed in work plans, or any combination of reimbursement and disbursement as agreed upon by the director and the commissioners."

<sup>31</sup> *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

<sup>32</sup> *People v. Knowles* (1950) 35 Cal.2d 175, 183.



Code section 12979 (Stats. 1989, ch. 1200).<sup>33</sup> As a result, although a county may have reported mandated costs within total agricultural program costs resulting in an increase of a county's share of statewide revenues allocated pursuant to section 224, the increased revenue attributable to the mandated activities is not required to be spent on the mandated activities. Therefore, if the claimant does not spend any of the revenue allocated pursuant to section 224 on the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the revenue cannot be counted as offsetting revenue. If, however, claimant uses unclaimed gas tax revenue to cover the costs of the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the amount used must be counted as offsetting revenues.

Staff finds that unclaimed gas tax revenues received by claimant pursuant to Food and Agricultural Code section 224 do not constitute state-mandated offsetting revenues that must be deducted from any cost claimed for reimbursement if the revenue is not used toward paying the cost for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). However, to the extent that unclaimed gas tax revenues are used toward reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), then that amount must be deducted from any cost claimed for reimbursement as an offset.

Therefore, staff recommends approval of the following language to replace DPR's proposal:

Specifically, the following revenues and reimbursements must be deducted from any cost-claim costs claimed:

The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

**Issue 8      Should the Offsetting Revenues and Reimbursements Section be amended to add language informing claimants that the DPR has developed an Offsetting Revenue Worksheet that may be used to calculate offsetting revenues and reimbursements?**

The existing parameters and guidelines do not identify any worksheets or forms that may be used to calculate offsetting savings [revenues] and other reimbursements;

DPR proposed that the following language be added to Section V, Offsetting Revenues and Reimbursements”:

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at [http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/\\_\\_\\_\\_.htm](http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/____.htm).

DPR developed the Offsetting Revenue Worksheet to “assist” counties in identifying all reimbursement for the costs of the mandated activities.<sup>34</sup> However, the plain language of the parameters and guidelines does not require the use of the Offsetting Revenue Worksheet to make

<sup>33</sup> Food and Agricultural Code section 224, subdivision (c) (Stats. 2001, ch. 145). See footnote 1 regarding amendment by Statutes 2007, chapter 421.

<sup>34</sup> See DPR's proposed amendment to parameters and guidelines, dated March 22, 2007.

a claim for reimbursement for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200).

Claimant has not commented on the inclusion of the above language or the use of the Offsetting Revenue Worksheet.

DOF believes that this worksheet will assist claimants in preparing accurate claims for reimbursement. The SCO does not object to the inclusion of the proposed language.

Staff notes that the use of Offsetting Revenue Worksheet is one approach to calculating offsetting revenues and reimbursements to deduct from claimed costs.

There is no requirement for claimants to use this worksheet. However, as originally proposed, this worksheet is inconsistent with this Draft Staff Analysis. If the Commission adopts staff's analysis on Section VIII, Offsetting Revenues and Reimbursements, then this worksheet must be changed to conform. If the Commission does not adopt staff's analysis, but adopts DPR's original proposed language, then no changes would be necessary. Staff requests that the DPR prepare another version of the worksheet to reflect how offsets would be calculated based on this draft staff analysis.

Staff does not object to inclusion of this form, as long as it is consistent with Section VIII of the parameters and guidelines.

**Issue 9            Should the Offsetting Revenues and Reimbursements Section be amended to add language to clarify documentation requirement to support pro-rata offsets?**

The existing parameters and guidelines do not provide any guidance as to how pro-rata portions of offsetting revenues and other reimbursements can be supported by source documents.

DPR proposes the addition of the following language in Section VIII:

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted.<sup>35</sup>

SCO proposes the inclusion of the following language in Section VIII.

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified above in Section V.C.), etc. that show evidence of validity of claimed costs.

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval.

<sup>35</sup> See DPR's Response to SCO Comments – proposed amendment to parameters and guidelines, dated January 9, 2009. In this letter, DPR changed the last phrase in the original proposed language from “is updated at least every five years” to “... three years.”



It appears that the purpose of both proposals is to assist claimants in applying a pro-rata portion or default ratio to the calculation of offsets and to describe acceptable documentation. However, staff finds both proposals difficult to understand. Although there is no opposition from the County of San Bernardino, staff recommends denial of both the DPR proposal and the SCO proposal until either version is clarified and proposed. Otherwise, inclusion of either proposal will not help claimants in calculating pro-rata offsets for deduction based on inadequate source documents; nor will staff understand how to apply this provision in reviewing incorrect reduction claims that may be filed on this program.

Therefore, staff recommends denial of the proposed language described above.

**Issue 10:       Should a new Section VIII – Payment of Claims be added to the parameters and guidelines?**

The Department of Pesticide Regulation proposed adding new Section VIII. Payment of Claims to the Parameters and Guidelines. This section, as proposed, would state:

All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.

After this proposed amendment was opposed by the SCO and DOF, DPR deleted the proposed language in its January 2009 comments.

Staff agrees with the SCO and DPR for the following reasons:

The Legislature adopted the 2005-2006 Budget Act<sup>36</sup> and appropriated funds from the Department of Pesticide Regulation Fund for payment of the *Pesticide Use Reports* program. The decision to pay mandate reimbursement claims from this special fund was made by the Legislature and enacted into law through this and subsequent budget acts. In future years, the Legislature could appropriate funds for this program from the General Fund or another special fund. The power to make appropriations is reserved for the Legislature. Executive power over appropriations is limited and is set out in the state Constitution which provides that each year the Governor shall submit a proposed budget to the Legislature (Cal. Const. art. IV, 12) and that each bill, including the budget bill shall be presented to the Governor for his or her signature or veto (Cal. Const., art. IV, 10). Legislative determinations relating to expenditures in other respects are binding upon the executive who, in expending public funds may not disregard legislatively prescribed directives and limits pertaining to the use of such funds.

The budget language (Provision 1) adopted by the Legislature recognized the authority and constitutional duty of the State Controller to audit, verify, and pay mandate reimbursement claims and exercised the power to appropriate funds.

Schedule 1 identifies the program, *Pesticide Use Reports* (Ch. 1200, Stats. 1989) (CSM-4420). Provision 1 states:

Allocations of funds provided in this item to the appropriate local entities shall be made by the State Controller in accordance with the provisions of each statute or executive order that mandates the reimbursement of the costs, and shall be audited to verify the actual amount of the mandated costs in accordance with subdivision (d) of Section 17561

<sup>36</sup> See Statutes 2005, chapter 38; Statutes 2006, chapter 47; Statutes 2007, chapter 171.

of the Government Code. Audit adjustments to prior year claims may be paid from this item. Funds appropriated in this item may be used to provide reimbursement pursuant to Article 5 (commencing with Section 17615) of Chapter 4 of Part 7 of Division 4 of Title 2 of the Government Code.

The 2006 Budget Act, Item 8885-295-0106, adopted the same language as 2005 and appropriated \$162,000; likewise, the 2007 Budget Act in Item 8885-295-0106 appropriated \$666,000 for costs incurred in fiscal years 2001-2002 through 2004-2005, inclusive, and the 2008 Budget Act in Item 8885-295-0106, appropriated \$160,000 for costs incurred in fiscal years 2005-2006 and 2006-2007.

Staff finds that adoption of the proposed amendment is inconsistent with existing law, including prior state budgets and laws governing mandate reimbursement. Therefore, staff recommends denial of this proposed amendment.

### **Conclusion and Recommendation**

Staff recommends that the Commission approve the proposed amendments to the parameters and guidelines, as modified by staff, beginning on page 23, as discussed above.

Staff further recommends that the Commission authorize staff to make technical non-substantive changes or corrections upon adoption.

## PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

California Code of Regulations, Title 3, Sections 6000, 6393 (c),  
6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628  
(Register 90, No. 1)

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

### I. SUMMARY OF THE MANDATE

On January 21, 1993 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Food and Agricultural Code section 12979, as added by Statutes 1989, Chapter 1200, and its implementing regulations in Title 3 of the California Code of Regulations, required county agricultural commissioners to implement a new program or higher level of service in an existing program within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution.

The enactment of the test claim statute and adoption of implementing regulations resulted in county agricultural commissioners receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission found that the funding was not sufficient to cover all of the increase in costs experienced by counties. Costs related to activities required by Food and Agricultural Code section 12979, and its implementing regulations in Title 3 of the California Code of Regulations that are not otherwise reimbursed by the Food Safety Account and increased mill assessment, were therefore found to be reimbursable costs mandated by the state.

Counties shall be reimbursed for the costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989 and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393(c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased record keeping requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly-required pesticide use reports with the state.

Activities related to reports from the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control

applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

## II. ELIGIBLE CLAIMANTS

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to file a reimbursement claim for those costs.

## III. PERIOD OF REIMBURSEMENT

This parameters and guidelines amendment is effective for the period of reimbursement beginning on July 1, 2005.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A county or city and county may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
2. In the event that revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts, and Pesticide Regulatory Activity Monthly Reports (PRAMR).

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the

reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6622.
2. Issuing site identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (~~Department of Food and Agriculture until July 17, 1991~~) pesticide use reports other than those specified in IV A above below. This activity may be performed by unlicensed persons.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had and reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Audit the sales records of pesticide dealers as specified in 3 CCR section 6352, for the sale of pesticides that are not classified by the state as restricted materials which are prepared and maintained by pesticide dealers who are licensed by the state.

#### V. Non-Reimbursable Activities

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (~~3 CCR~~).

If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.

#### VI. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

##### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

## 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

Claimants may use time studies to support salary and benefit costs when an activity is task repetitive in nature. Time study usage is subject to the time study guidelines included in the State Controller's annual claiming instructions.

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

## 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

~~If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.~~

## 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the



reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1. Salaries and Benefits, and A.2. Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (the Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should

be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

#### VII. PAYMENT OF CLAIMS

~~All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.~~

#### VII. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a county or city and county pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, and offsetting revenues and reimbursements, as described in Section VIII, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

#### VIII. OFFSETTING REVENUES, SAVINGS AND OTHER REIMBURSEMENTS

~~Any offsetting revenues or reimbursements offsets the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from the costs claimed ~~cost of this claim~~. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from the costs claimed.~~

Specifically, the following revenues and reimbursements must be deducted from any costs claimed ~~cost claim~~:

- ~~1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations;~~
1. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (1), (2), and (9) that are based on the reimbursable activities in Section IV of the parameters and guidelines,
2. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (4), (5) and (6) that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.



3. The payments received under each county's contract with DPR for the review and filing of pesticide use reports (electronic submittal to DPR) that are identified as reimbursable in Section IV of the parameters and guidelines.
- ~~3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.~~
4. The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

#### Option A

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/preffirm/.htm>.

#### Option B

~~An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/preffirm/.htm>.~~

~~Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified above in Section V.C.), etc. that show evidence of validity of claimed costs. If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval.~~

### IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

~~Pursuant to Government Code section 17558, subdivision (e), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.~~

~~Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon revised parameters and guidelines adopted by the Commission.~~

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement established by Commission action pursuant to Government Code section 17557, section 17557.2, or any decision or order of the Commission pursuant to section 17559. The claiming instructions shall

be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

#### **X. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1483.2.

#### **XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision (CSM-4220) is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

# Commission on State Mandates

Original List Date: 1/17/2007

Mailing Information: Draft Staff Analysis

Last Updated:

List Print Date: 02/26/2009

## Mailing List

Claim Number: 06-PGA-02

Issue: Pesticide Use Reports

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Sonoma County Agricultural Commissioner's Office  
133 Aviation Blvd., Ste 110  
Santa Rosa, CA 95403

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Fax:

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Fax: (949) 644-3339

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DEPARTMENT OF  
**FINANCE**  
OFFICE OF THE DIRECTOR

EXHIBIT D

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

April 9, 2009

Ms. Paula Higashi  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

**RECEIVED**

APR 09 2009

**COMMISSION ON  
STATE MANDATES**

Dear Ms. Higashi:

As requested in your letter of February 26, 2009, the Department of Finance (Finance) has reviewed the Commission's draft staff analysis of the proposed parameters and guidelines amendments for Claim No. 06-PGA-02, "Pesticide Use Reports."

As a result of our review, Finance concurs with the staff recommendation to:

- Amend the parameters and guidelines to conform to the current boilerplate language and format.
- Clarify that the reimbursable activities related to the mandate include pesticides that are not classified by the state as restricted material.
- Identify non-reimbursable activities related to restricted material, commercial pest control applicators, and businesses.
- Amend and clarify the offsetting revenues and reimbursements section for mill disbursements, contracts, and unclaimed gas taxes.

Finance continues to recommend listing all known funds available to offset the cost of the mandate with the understanding that all non-local government funds received and used specifically for mandated activities must offset the final costs of reimbursement claims.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your February 26, 2009 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

Diana L. Ducay  
Program Budget Manager

Enclosures

Attachment A

DECLARATION OF CARLA CASTANEDA  
DEPARTMENT OF FINANCE  
CLAIM NO. 06-PGA-02 "Pesticide Use Reports."

1. I am currently employed by the State of California, Department of Finance (Finance); am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

April 9, 2009

at Sacramento, CA

Carla Castaneda

PROOF OF SERVICE

Test Claim Name: Pesticide Use Reports  
Test Claim Number: CSM 06-PGA-02

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California; I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Floor, Sacramento, CA 95814.

On April 9, 2009, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, Floor, for Interagency Mail Service, addressed as follows:

A-16  
Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
Facsimile No. 445-0278

Ms. Esther Martinez  
Sonoma County Agricultural Commissioner's  
Office  
133 Aviation Boulevard, Ste. 110  
Santa Rosa, CA 95403

Ms. Bonnie Ter Keurst  
County of San Bernardino  
Office of the Auditor/Controller-Recorder  
222 West Hospitality Lane  
San Bernardino, CA 92415-0018

B-08  
Mr. Jim Spano  
State Controller's Office  
Division of Audits  
300 Capitol Mall, Suite 518  
Sacramento, CA 95814

B-13  
Ms. JoAnne Payan  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, CA 95812-4015

Ms. Jolene Tollenaar  
MTG of America  
455 Capitol Mall, Suite 600  
Sacramento, CA 95814

A-15  
Ms. Susan Geanaçou  
Department of Finance  
915 L Street, Suite 1280  
Sacramento, CA 95814

Ms. Beth Hunter  
Centration, Inc.  
8570 Utica Avenue, Suite 100  
Rancho Cucamonga, CA 91730

B-08  
Ms. Ginny Brummels  
State Controller's Office  
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3301 C Street, Suite 500  
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Mr. David Wellhouse  
David Wellhouse & Associates, Inc.  
9175 Kiefer Boulevard, Suite 121  
Sacramento, CA 95826

Mr. Leonard Kaye  
County of Los Angeles  
Auditor – Controller's Office  
500 West Temple Street, Room 603  
Los Angeles, CA 90012

Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

A-15  
Ms. Carla Castaneda  
Department of Finance  
915 L Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Mr. Glen Everroad  
City of Newport Beach  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92659-1768

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on 4/09/2009 at Sacramento, California.

Kelly Montelongo





# Department of Pesticide Regulation

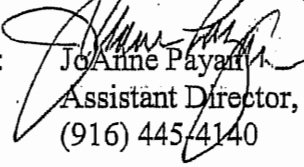


Mary-Ann Warmerdam  
Director

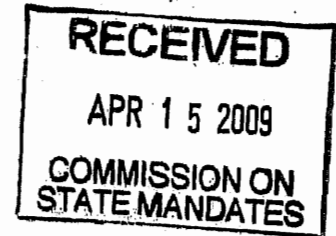
## MEMORANDUM

Arnold Schwarzenegger  
Governor

TO: Paula Higashi  
Executive Director, Commission on State Mandates

FROM:   
JoAnne Payant  
Assistant Director, Administrative Services Division  
(916) 445-4140

DATE: April 13, 2009



SUBJECT: Comments on Draft Staff Analysis --  
Proposed Amendment to Parameters and Guidelines Pesticide Use Reports  
Food and Agricultural Code Section 12979  
Chapter 1200, Statutes of 1989

The Department of Pesticide Regulation (DPR) has reviewed the Draft Staff Analysis and wishes to make known only a few points of clarification.

Issue 8 Offsetting Revenue Worksheet (discussed on pages 19-20 of the Draft Staff Analysis)

DPR has revised the Offsetting Revenue Worksheet to be consistent with Section VIII of the Parameters and Guidelines, as reflected in the Draft Staff Analysis. In addition, DPR has met with State Controller's Office (SCO) staff to discuss this issue. SCO has indicated that Claiming Instructions can be revised to indicate that counties may contact DPR (e.g., via DPR main website) if they want assistance in calculating offsetting revenues and reimbursements. Therefore, DPR is willing to remove the reference to the Offsetting Revenue Worksheet from the Parameters and Guidelines (consistent with Option B on page 29 of the Draft Staff Analysis).

Technical Corrections

In footnote 2 on page 5, correct date to May 9, 2008.

For discussion points on page 6, add DPR contracts for electronic submission of pesticide use reports and renumber issues to match discussion in remainder of the Draft Staff Analysis.

For Issue 4 discussed on page 8, DPR believes this issue was first noted in comments by the County of San Bernardino (see letter from county Department of Agriculture/Weights and Measures dated July 9, 2008). Please give appropriate credit.

In footnote 24 on page 15, the language corresponds to that reflected in DPR's January 9, 2009, memorandum.

In footnote 30 on page 18, the reference should be to Food and Agricultural Code section 224.



Paula Higashi  
April 13, 2009  
Page 2

DPR accepts all other staff recommendations in the Draft Staff Analysis.

If you have any questions, please contact Maria Bueb, of my staff, at (916) 322-6170 or Lynn Owen, Product Compliance Branch Chief, at (916) 445-3851.

cc: Mary Ann Warmerdam, Director

Christopher Reardon, Chief Deputy Director

Chuck Andrews, Associate Director, Pesticide Programs Division

Nan Gorder, Branch Chief, Enforcement Branch

Lynn Owen, Branch Chief, Product Compliance Branch

Anise Severns, Branch Chief, Fiscal Services and Business Operations Branch

Adrienne Watson, Budget Officer

Maria Bueb, Associate Budget Analyst

Ken Da Rosa, Department of Finance

Sue Montoya, Department of Finance

Carla Castaneda, Department of Finance

Commission on State Mandates

Original List Date: 1/17/2007  
Last Updated:  
List Print Date: 03/26/2009  
Claim Number: 06-PGA-02  
Issue: Pesticide Use Reports

Mailing Information: Draft Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

---

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Fax: (949) 644-3339

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# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

AUDITOR/CONTROLLER • 222 West Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

RECORDER • COUNTY CLERK • 222 West Hospitality Lane, First Floor  
San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

LARRY WALKER

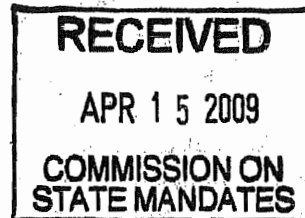
Auditor/Controller-Recorder  
County Clerk

ELIZABETH A. STARBUCK

Assistant Auditor/Controller-Recorder  
Assistant County Clerk

April 14, 2009

MS. PAULA HIGASHI  
Executive Director  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814



Re: Request to Amend Parameters and Guidelines  
Response to the Draft Staff Analysis  
*Pesticide Use Reports*, 06-PGA-02  
Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200  
Department of Pesticide Regulation, Requestor

Dear Ms Higashi:

The County of San Bernardino (County) has reviewed the Draft Staff Analysis, and Proposed Parameters and Guidelines (P&Gs) as submitted by the Commission on State Mandates dated February 26, 2009.

We disagree with the inclusion of "Section VIII. Offsetting Revenues and Reimbursements: #4 - The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines." The reasons follow:

- The unclaimed gas tax was a pre-existing revenue stream. The unclaimed gas tax funds, existing prior to the implementation of Statutes 1989 Chapter 1200, were intended to augment existing agriculture programs. The funds, or any portion of them are not earmarked specifically as state mandated offsetting revenue.
- The Statement of Decision, January 21, 1993, in recognizing the mandate, states: "Accordingly, such costs related to Food and Agriculture Code section 12979, and its implementing regulations in title 3 of the California Code of Regulations, *that are not otherwise reimbursed by the Food Safety Account and increased mill assessment*, are costs mandated by the state and are subject to reimbursement with the meaning of section 6, article XIII B of the California Constitution." (Emphasis added) The Commission determined that costs incurred by this legislation that are reimbursed by the Food Safety Account and/or the increased mill assessment preclude those costs from being costs

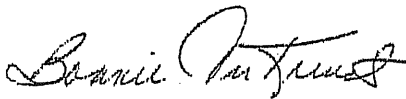
mandated by the State. As such, it is appropriate that those reimbursements be identified in the "Offsetting Revenues and Reimbursements." The Statement of Decision is silent on unclaimed gas tax as a source of offsetting revenue for this mandate

- In 2 CCR §1183 1 Content of Parameters and Guidelines, lists in (7) Offsetting Revenues and Reimbursements (if applicable), the identification of (i) *Dedicated* state and federal funds appropriated *for this program*; (ii) Non-local agency funds *dedicated for this program*; (iii) Local agency's general purpose funds *for this program*; and (iv) Fee authority to offset partial costs of this program (*Emphasis added.*) Unclaimed gas tax is an apportionment that reimburses counties for carrying out programs authorized by the Food and Agricultural Code. Funding received is not required to be spent on the Pesticide Use mandate. The funding does not fall in the identified items as listed in 2 CCR § 1183 1 (7) and as such, should not be singled out in the amended P&Gs.

The Department of Pesticide Regulation (DPR) has requested an Offsetting Revenue Worksheet be added either to the P&Gs or the claiming instructions to "assist" counties in identifying all reimbursement for the costs of the mandated activities. The County would like to respectfully request that any reference to unclaimed gas tax not be included in the P&Gs, but rather be included in the format of the proposed worksheet if the worksheet clarifies that it is optional for a county to include gas tax as offsetting revenue.

If you have any questions regarding this letter, please call me at (909) 386-8850.

Sincerely,



Bonnie Ter Keurst  
Manager, Reimbursable Projects  
Auditor/Controller-Recorder  
San Bernardino County

# AUDITOR/CONTROLLER-RECORDER COUNTY CLERK



COUNTY OF SAN BERNARDINO

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San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830

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San Bernardino, CA 92415-0022 • (909) 387-8306 • Fax (909) 386-8940

**LARRY WALKER**  
Auditor/Controller-Recorder  
County Clerk

**ELIZABETH A. STARBUCK**  
Assistant Auditor/Controller-Recorder  
Assistant County Clerk

## PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed by the County of San Bernardino, State of California. My business address is 222 W. Hospitality Lane, San Bernardino, CA 92415. I am 18 years of age or older.

On April 14, 2009, I faxed the letter dated April 14, 2009 to the Commission on State Mandates in response to the Pesticide Use Reports. I faxed and/or mailed it also to the other parties listed on the attached mailing list

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 14, 2009 at San Bernardino, California.

A handwritten signature in cursive script that reads "Melissa Honold".

Melissa Honold  
Audit Division Secretary





Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

---

CHAPTER 1200

An act to amend Section 12841 of, and to add Sections 12535, 12797, 12798, 12846, 12979, 13060, 13061, 55861.7, and 56571.7 to, the Food and Agricultural Code, and to add Sections 26505.5, 26506.6, and 26509 to the Health and Safety Code, relating to food and agriculture, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1989 Filed with  
Secretary of State October 1, 1989]

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares as follows:

(a) California presently has the safest food in the world as a result of a combination of federal and state programs of pesticide registration; pesticide use controls, licensing persons who recommend and use pesticides, and monitoring food for pesticide residues and other contaminants.

(b) California has continually upgraded the state's pesticide regulatory and food safety programs to ensure that California produced food is in the forefront of food safety.

(c) Additional regulatory efforts will build upon and strengthen California's food safety programs to further ensure that California consumed foods meet our existing rigorous standards for safe consumption.

(d) Recent events have heightened public awareness relative to food safety and led to a desire for additional regulatory practices to advance California's food safety protections even further.

(e) Pest management is vital to the agricultural economy and to continued availability of an adequate, wholesome, and economical food supply.

(f) There is a need to develop additional funding alternatives that will provide a more broad based and equitable approach to the activities required by this act. It is the intent of the Legislature that the Department of Food and Agriculture immediately coordinate a review, with the affected entities, of the funding provisions of this

act. The review shall include recommendations for alternative long-term funding mechanisms and shall identify additional sources of funding for the extension of alternative pest management research under this act. The department shall report its findings to the Legislature by July 1, 1990.

SEC. 2. Section 12535 is added to the Food and Agricultural Code, to read:

12535. (a) Commencing in 1990, the department shall substantially expand and maintain its focused pesticide residue monitoring program beyond the 1988 level. The focused monitoring program shall be prioritized considering pesticides of greatest health concern and contribution to dietary exposure, and for various sensitive subpopulations, including children.

(b) The department shall consider, but not be limited to, the following lists of pesticides in establishing priorities for monitoring:

(1) Pesticides identified by the federal Environmental Protection Agency as known, possible, or probable human carcinogens which are registered for use on food crops.

(2) Pesticides listed as high priority for risk assessment as a result of the evaluation process of the Birth Defect Prevention Act of 1984.

(3) Pesticides listed as known to cause cancer or reproductive toxicity pursuant to Section 25249.9 of the Health and Safety Code.

(4) Class I and II pesticides on the United States Food and Drug Administration's Surveillance Index.

SEC. 3. Section 12797 is added to the Food and Agricultural Code, to read:

12797. (a) The director, on or before March 1, 1990, in consultation with the State Director of Health Services, shall also establish a separate scientific advisory committee with an emphasis on persons with expertise in residue chemistry, analytical chemistry, or food technology from the department, the State Department of Health Services, qualified public and private institutions of higher education, laboratories licensed pursuant to Section 26507 of the Health and Safety Code, consumer interest groups, and the agricultural chemical industry. The committee shall make recommendations on how the state can improve its existing pesticide residue analytical methods and review recent scientific advancements concerning new and revised analytical methods for testing produce and processed foods for the presence of pesticide residues. The director may invite representatives of the federal Environmental Protection Agency and the United States Food and Drug Administration to participate in the committee's review.

(b) The committee shall determine when newly emerging analytical methods are developed to the point that it is feasible to adopt their usage in the residue monitoring programs of the department or the State Department of Health Services.

(c) The committee shall focus its review on analytical methods for pesticide residues not detectable on the existing multiple-residue screens available for use by the department or the State Department

of Health Services, and on pesticide residues which the committee deems are difficult to accurately identify and quantify due to time, equipment, or expense.

SEC. 4. Section 12798 is added to the Food and Agricultural Code, to read:

12798. (a) The department shall make funds available to qualified public and private entities to conduct pest management research projects, with an emphasis on projects that will result in the reduction of pesticide use, the use of safer pesticides, or minimizing pesticide residues.

(b) Research conducted pursuant to this section shall have the further development of alternative pest management practices and methods as a priority. Prior to making research awards, the department shall assess existing research activities and developments in integrated pest management, alternatives to pesticides, and other alternative pest management practices and methods, including, but not limited to, cultural, biological, and biotechnological research.

(c) (1) The director shall appoint a pest management research screening committee, of not to exceed nine persons, the membership of which may be rotated as determined by the director.

(2) The committee shall consist of agriculturalists, including organic farmers, researchers, scientists, academics, representatives of public interest organizations, and other persons who are knowledgeable, technically qualified, and experienced in pest management techniques, with an emphasis on alternative methods, for which projects are being reviewed. The committee shall meet at the call of the director to review and give its advice and recommendations with respect to research projects funded by this section.

(d) In order to facilitate the utilization of pest management practices and methods developed pursuant to this section, the director shall cooperate with qualified public and private entities to provide outreach consultation, information dissemination, and education services to the agricultural community and other interested parties.

SEC. 5. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) Each registrant shall pay to the director an assessment not to exceed nine mills (\$.009) per dollar of sales for all sales of his or her registered and labeled economic poisons for use in this state. A registrant is not required to pay an assessment on his or her products registered and labeled only for use in further manufacturing or formulating of economic poisons. The director may reduce the assessment if he or she determines that a lesser assessment rate, together with other available funds, will provide adequate revenue to administer and enforce Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing

with Section 14101).

(b) Upon application of any registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for economic poison, and is sold in combination, and whether the mill assessment under this section shall be on the economic poison value only, when the product is designed, developed, manufactured, and sold primarily for other than an economic poison use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than an economic poison use, the assessment provided for by this section shall be paid on the equivalent percentage of the sales price of the active ingredients of the economic poison product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the economic poison portion to the total sales price of the combination product.

(c) For purposes of this section, "active ingredient" means any active ingredient which is required to be stated on the label on any registered economic poison under Section 12883.

(d) It has been and continues to be the intent of the Legislature that this division requires the department to register all economic poisons prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control economic poison use in accordance with this division. The department shall continue to collect the mill tax as provided in this section at the same rate on all registered agricultural and registered nonagricultural economic poisons.

SEC. 6. Section 12846 is added to the Food and Agricultural Code, to read:

12846. The Food Safety Account is hereby created in the Department of Food and Agriculture Fund to be used, upon appropriation, for purposes of Sections 12535, 12797, 12798, 12979, 13060, and 13061 of this code and Section 26509 of the Health and Safety Code.

SEC. 7. Section 12979 is added to the Food and Agricultural Code, to read:

12979. A pesticide use report shall be submitted to the commissioner or director on a form and in a manner prescribed by the director. The data from the pesticide use reports shall be considered in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest control research, public health monitoring and research, and similar activities by the department, or by the department in cooperation with other state, regional, or local agencies with appropriate authority.

SEC. 8. Section 13060 is added to the Food and Agricultural Code, to read:

13060 (a) Commencing July 1, 1990, the department, in cooperation with the State Department of Health Services, shall

conduct an assessment of dietary risks associated with the consumption of produce and processed foods treated with pesticides. This assessment shall integrate adequate data on acute effects and the mandatory health effects studies specified in subdivision (c) of Section 13123, appropriate dietary consumption estimates, and relevant residue data based on the department's and the State Department of Health Services' monitoring data and appropriate field experimental and food technology information to quantify consumer risk. Differences in age, sex, ethnic, and regional consumption patterns shall be considered. The department shall submit each risk assessment to the State Department of Health Services, with necessary supporting documentation, for peer review, which shall consider the adequacy of public health protection. The State Department of Health Services may provide comments to the department. The department shall formally respond to all of the comments made by the State Department of Health Services. The department shall modify the risk assessment to incorporate the comments as deemed appropriate by the director. All correspondence between the department and the State Department of Health Services in this matter shall be made available to any person, upon request, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) The department shall consider those pesticides designated for priority food monitoring pursuant to Section 12535 and the results of the department's or the State Department of Health Services' monitoring in establishing priorities for the dietary risk assessments.

(c) (1) If the department lacks adequate data on the acute effects of pesticide active ingredients or mandatory health effects studies specified in subdivision (c) of Section 13123 necessary to accurately estimate dietary risk, the department shall require the appropriate data to be submitted by the registrant of products whose labels include food uses. This subdivision shall not be construed to affect the time frames established pursuant to Section 13127.

(2) No applicant for registration, or current registrant, of a pesticide who proposes to purchase or purchases a registered pesticide from another producer in order to formulate the purchased pesticide into an end use product shall be required to submit or cite data pursuant to this section or offer to pay reasonable compensation for the use of any such data if the producer is engaged in fulfilling the data requirements of this section.

(d) (1) If a registrant fails to submit the data requested by the director pursuant to this section within the time specified by the director, the director shall issue a notice of intent to suspend the registration of that pesticide. The director may include in the notice of intent to suspend any provisions that are deemed appropriate concerning the continued sale and use of existing stocks of that pesticide. Any proposed suspension shall become final and effective 30 days from the receipt by the registrant of the notice of intent to

suspend, unless during that time a request for hearing is made by a person adversely affected by the notice or the registrant has satisfied the director that the registrant has complied fully with the requirements that served as a basis for the notice of intent to suspend. If a hearing is requested, a hearing shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The only matter for resolution at the hearing shall be whether the registrant has failed to take the action that served as the basis for the notice of intent to suspend the registration of the pesticide for which additional data is required and whether the director's determination with respect to the disposition of existing stocks is consistent with this subdivision.

(2) A hearing shall be held and a determination made within 75 days after receipt of a request for a hearing. The decision rendered after completion of the hearing shall be final. Any registration suspended shall be reinstated by the director if the director determines that the registrant has complied fully with the requirements that served as a basis for the suspension of the registration.

(e) If the department finds that any pesticide use represents a dietary risk that is deleterious to the health of humans, the department shall prohibit or take action to modify that use or modify the tolerance pursuant to Section 12561, or both, as necessary to protect the public.

SEC. 9. Section 13061 is added to the Food and Agricultural Code, to read:

13061. The department and the State Department of Health Services shall jointly review the existing federal and state pesticide registration and food safety system and determine if the existing programs adequately protect infants and children from dietary exposure to pesticide residues. The review shall commence as early as possible in 1990, so that any policy or administrative adjustments determined to be necessary as a result of the joint review can be made on a timely basis. The department shall consult with the University of California and other qualified public and private entities in conducting the joint review. The joint review shall continue for a sufficient time in order to evaluate the report of infant exposure to pesticide residues, which is presently being undertaken by the National Academy of Sciences. Within six months of the official release of the National Academy of Sciences' study, the department shall finalize a report describing the evaluation that was conducted pursuant to this section, including any recommendations for modification of the existing regulatory system in order to adequately protect infants and children. A copy of this report shall be submitted to the Governor and the Legislature.

SEC. 10. Section 55861.7 is added to the Food and Agricultural Code, to read:

55861.7. Notwithstanding Section 55861.5, in addition to the fee paid pursuant to Section 55861, each licensee shall pay a 50 percent

surcharge to the director, in a form and manner prescribed by the director. This section shall not apply to those licensees the department determines should not be assessed due to the limited applicability of Sections 12535, 12797, 12798, 13060, and 13061 of this code or Section 26505.5 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual licensees. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Food and Agriculture Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

SEC. 11. Section 56571.7 is added to the Food and Agricultural Code, to read:

56571.7. Notwithstanding Section 56571.5, in addition to the fee paid pursuant to Section 56571, each licensee shall pay a 50 percent surcharge to the director, in a form and manner prescribed by the director. This section shall not apply to those licensees the department determines should not be assessed due to the limited applicability of Sections 12535, 12797, 12798, 13060, and 13061 of this code or Section 26505.5 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual licensees. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Food and Agriculture Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

SEC. 12. Section 26505.5 is added to the Health and Safety Code, to read:

26505.5. (a) On or before July 1, 1990, the department shall commence and maintain a program for monitoring processed foods for pesticide residues, chemicals, microbes, and other contaminants. In designing the program, the department shall take into consideration any information developed pursuant to Section 26505.

(b) The department shall consult with the Department of Food and Agriculture in designing the pesticide residue component of the monitoring program, to facilitate focusing the testing in areas of greatest concern. Among the pesticides to be reviewed for possible monitoring shall be those contained in the lists of pesticides identified in Section 12535 of the Food and Agricultural Code.

(c) In the development and ongoing operation of the department's monitoring program, the department shall consider, in establishing priorities:

(1) Potential concentration effects that may occur during processing.

(2) Targeting foreign and domestic imported processed foods according to their estimated California market share.

(3) The extent to which processed foods are a part of the infant and child diet.

SEC. 13. Section 26506.6 is added to the Health and Safety Code, to read:

26506.6. In addition to the fee paid pursuant to Section 26506.2,

each registrant shall pay a surcharge of one hundred dollars (\$100) to the director, in a form and manner prescribed by the director. This section shall not apply to those registrants the department determines should not be assessed due to limited applicability of Sections 12535, 12797, 12798, 13060, and 13061 of the Food and Agricultural Code or Section 26505.5 of this code to those registrants, or because substantial economic hardship would result to individual registrants. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Food and Agriculture Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

SEC. 14. Section 26509 is added to the Health and Safety Code, to read:

26509. (a) Every laboratory or other person which performs or which brokers or otherwise arranges for the performance of pesticide chemical analysis on food shall report to the appropriate state agency any finding of pesticide chemical residues in a food for which no chemical residue tolerance has been established or that is in excess of federal or state residue tolerances or tolerances for a pesticide suspended, banned, or otherwise not permitted by the Department of Food and Agriculture or the United States Environmental Protection Agency, if the food is in the channels of trade. The report shall be made as soon as possible, and in any event, not later than 24 hours after the analyzing laboratory makes the finding. Findings on raw agricultural commodities and dairy products shall be reported to the Department of Food and Agriculture. Findings on all other foods shall be made to the State Department of Health Services.

(b) For the purpose of reporting findings regarding raw agricultural commodities, "in the channels of trade" means the point at which the raw agricultural commodities leave the farm, including raw agricultural commodities bound for processing up to the point that processing is initiated. For the purpose of reporting findings in processed foods, "in the channels of trade" means at the point the processed food leaves the direct control of the processor, which means either that the product is not located on the premises owned by, or under the control of, the processor or a portion of the product has been released for sale or use.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 16. The sum of three million three hundred twenty-one



thousand six hundred thirty-eight dollars (\$3,321,638) is hereby appropriated as follows:

- |   |             |
|---|-------------|
| (a) From the General Fund to the State Department of Health Services for the purposes of implementing Section 13060 of the Food and Agricultural Code and Section 26505.5 of the Health and Safety Code .....   | \$2,000,000 |
| (b) From the Food Safety Account in the Department of Food and Agriculture Fund to the Department of Food and Agriculture for the purposes of implementing Sections 12535, 12797, 12798, 13060, and 13061 of the Food and Agricultural Code .....         | \$821,638   |
| (c) From the Food Safety Account in the Department of Food and Agriculture Fund to the Department of Food and Agriculture for the purposes of funding pest management research projects pursuant to Section 12798 of the Food and Agricultural Code ..... | \$500,000   |

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to expand and strengthen California's food safety program and to further ensure that foods reaching consumers in California continue to be the safest in the world, it is necessary that this act take effect immediately.

#### CHAPTER 1201

An act to amend Section 14009.5 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor October 1, 1989 Filed with  
Secretary of State October 1, 1989]

*The people of the State of California do enact as follows:*

SECTION 1. Section 14009.5 of the Welfare and Institutions Code is amended to read:

14009.5. (a) Notwithstanding any other provision of this chapter, when a decedent has received health care services under this chapter or Chapter 8 (commencing with Section 14200) the department may claim against the estate of the decedent, or against any recipient of the property of that decedent by distribution or survival an amount equal to the payments for the health care services



Effective: July 1, 2008

West's Annotated California Codes Currentness

Food and Agricultural Code (Formerly Agricultural Code) (Refs & Annos)

Division 1. State Administration (Refs & Annos)

Part 1. The Department of Food and Agriculture (Refs & Annos)

Chapter 2. Fiscal Duties and Powers

Article 2. Department of Food and Agriculture Fund (Refs & Annos)

→ § 224. Transfer of money from Motor Vehicle Fuel Account; expenditure

Moneys transferred by the Controller to the Department of Food and Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Section 8352.5 of the Revenue and Taxation Code shall be expended by the Secretary of Food and Agriculture as follows:

(a) Of the amount transferred each fiscal year, nine million dollars (\$9,000,000) is hereby appropriated to the Department of Food and Agriculture for payment to the counties for pesticide use enforcement programs supervised by the Director of Pesticide Regulation. Reimbursement shall be apportioned to the counties in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for pesticide use enforcement programs, as determined by the director, or with the collective agreement of the agricultural commissioners, disbursement to counties for a current fiscal year according to criteria developed in work plans, or any combination of reimbursement and disbursement as agreed upon by the director and the commissioners. The amount to be transferred to any county for a fiscal year may be increased or decreased by the director to compensate for incorrect previous transfers to that county, or adjusted based on evaluations of annual county Pesticide Enforcement Workplans conducted by the Department of Pesticide Regulation.

(b) Of the amount transferred each fiscal year, two hundred fifty thousand dollars (\$250,000) is hereby appropriated to the Department of Food and Agriculture for state and county liaison activities and for departmental expenses directly related to administration of this section.

(c) Of the amount transferred each fiscal year, one million five hundred thousand dollars (\$1,500,000) is hereby appropriated to the department for divisional and departmental overhead charges to the Department of Food and Agriculture.

(d) Of the amount transferred each fiscal year in excess of the amount transferred in the 2006-07 fiscal year, 7 percent is hereby appropriated to the department for full disbursement to individual counties, in proportion to the distribution each county is to receive pursuant to subdivision (g) to offset expenses associated with programs, personnel, and materials that ensure the uniform application of state agricultural policy or administer programs supervised by the secretary.



(e) Notwithstanding any other provision of law, of the amount transferred each fiscal year, three million dollars (\$3,000,000) is hereby appropriated for distribution to counties in a manner prescribed by the secretary for pest detection or trapping programs. These funds are intended to supplement funds available for pest detection or trapping in the annual Budget Act. As a condition of receiving these funds, counties shall not reduce their level of support from any other funds for pest detection or trapping programs. If a county declines to participate in a pest detection or trapping program, or fails to conduct the program to the state's satisfaction, the secretary shall reduce, by the amount that would otherwise be allocated to the county, funds available pursuant to this subdivision and any state allocations from the annual Budget Act. Those forfeited funds are hereby appropriated to the Department of Food and Agriculture for purposes of operating the pest detection or trapping programs in those counties.

(f)(1) Of the amount transferred each fiscal year, three million dollars (\$3,000,000) is hereby appropriated to the Department of Food and Agriculture to be used for emergency detection, investigation, or eradication of agricultural plant or animal pests or diseases during the fiscal year, upon approval of the Director of Finance. At the end of each fiscal year, any unencumbered balance of these funds shall be carried over to the next fiscal year, or at the discretion of the secretary, may be used for planning and research involving detection, investigation, eradication, and methods of quarantine compliance for agricultural plant or animal pests or diseases.

(2) The department shall develop policies, in consultation with the agricultural commissioners and in compliance with any requirements of the annual Budget Act, to guide the ongoing use of these funds.

(g) The total amount transferred during each fiscal year less the amounts provided in subdivisions (a) to (f), inclusive, is hereby appropriated to be paid to the counties for agricultural programs authorized by this code that are supervised by the department and administered by agricultural commissioners. Reimbursement shall be apportioned to the counties in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for agricultural programs, as determined by the secretary, or with the collective agreement of the agricultural commissioners, disbursement to counties according to criteria developed in work plans for a current fiscal year, or any combination of reimbursement and disbursement as agreed upon by the secretary and the commissioners. The amount to be transferred to any county for a fiscal year may be increased or decreased by the secretary to provide that, insofar as those transferred unclaimed refundable gas tax funds for apportionment to the counties are available, no county shall receive smaller combined apportionments of gas taxes and unclaimed refundable gas taxes than that county would have received had the gas taxes been apportioned without the transfer required by Section 8352.5, as determined by the secretary, except that the amount of unclaimed refundable gas tax funds to be transferred to any county for a fiscal year may be increased or decreased by the secretary to compensate for incorrect previous transfers to that county, and to account for any failure to meet the criteria listed in Section 224.5.

(h) This section shall become operative on July 1, 2008.

CREDIT(S)

(Added by Stats.2007, c. 421 (A.B.1713), § 2, operative July 1, 2008.)

## HISTORICAL AND STATUTORY NOTES

## 2009 Electronic Update

## 1999 Legislation

Former § 224, added by Stats.1970, c. 1571, p. 3231, § 1, amended by Stats.1971, c. 1243, p. 2425, § 1; Stats.1976, c. 1079, p. 4859, § 18; Stats.1978, c. 817, p. 2604, § 1; Stats.1982, c. 454, p. 1837, § 26; Stats.1999, c. 890 (A.B.1228), § 1, relating to transfer of money from motor vehicle fund and expenditures, was repealed by Stats.1999, c. 890 (A.B.1228), § 1, operative July 1, 2001. See this section.

## 2001 Legislation

Former § 224, added by Stats.1999, c. 890 (A.B.1228), § 2, eff. Oct. 10, 1999, operative July 1, 2001, amended by Stats.2001, c. 145 (S.B.942), § 1, relating to transfer of money from Motor Vehicle Fuel account and expenditure, became inoperative on July 1, 2003 and was repealed by its own terms, operative Jan. 1, 2004. See this section.

## 2007 Legislation

Former § 224, added by Stats.2001, c. 145 (S.B.942), § 2, operative July 1, 2003, amended by Stats.2007, c. 421 (A.B.1713), § 1, relating to expenditure of money transferred from Motor Vehicle Fuel Account, became inoperative on July 1, 2008 and was repealed by its own terms, operative Jan. 1, 2009. See this section.

**Derivation:** Former § 224, added by Stats.2001, c. 145 (S.B.942), § 2, operative July 1, 2003, amended by Stats.2007, c. 421 (A.B.1713), § 1.

Former § 224, added by Stats.1999, c. 890 (A.B.1228), § 2, eff. Oct. 10, 1999, operative July 1, 2001, amended by Stats.2001, c. 145 (S.B.942), § 1.

Former § 224, added by Stats.1970, c. 1571, p. 3231, § 1, amended by Stats.1971, c. 1243, p. 2425, § 1; Stats.1976, c. 1079, p. 4859, § 18; Stats.1978, c. 817, p. 2604, § 1; Stats.1982, c. 454, p. 1837, § 26; Stats.1999, c. 890 (A.B.1228), § 1.

## 2001 Main Volume

Section 41 of Stats.1971, c. 1243, as added by Stats.1971, c. 1663, p. 3580, § 3, provided:

"Except as provided in Section 40, this act shall become operative on April 1, 1972, unless the withholding of state personal income taxes is commenced prior to that date, in which case this act shall become operative as follows:

"(a) If such withholding is commenced prior to the effective date of this act, this act shall become operative on the first day of the month following the effective date of this act.

"(b) If such withholding is commenced on or after the effective date of this act, but prior to April 1, 1972, this act shall become operative on the date such withholding is commenced."

CROSS REFERENCES

"Director of **agriculture**" means secretary of **food and agriculture**, see **Food and Agricultural Code § 50**.

Diseased animals and poultry, see **Food and Agricultural Code § 9101 et seq.**

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d **Agriculture § 4, Secretary of Food and Agriculture.**

West's Ann. Cal. **Food & Agric. Code § 224, CA FOOD & AG § 224**

Current with urgency legislation through Ch. 1 of the 2009 Reg.Sess., Ch. 12 of the 2009-2010 2nd Ex.Sess., Ch. 25 of the 2009-2010 3rd Ex.Sess., and Props. 1A to 1F on the 5/19/2009 ballot and propositions on the 6/8/2010 ballot received as of 3/15/2009

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**Division 6. Pesticides and Pest Control Operations**

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**CBARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS**  
**TITLE 3. FOOD AND AGRICULTURE**  
**DIVISION 6. PESTICIDES AND PEST CONTROL OPERATIONS**  
**CHAPTER 1. PESTICIDE REGULATORY PROGRAM**  
**SUBCHAPTER 1. DEFINITION OF TERMS**  
**ARTICLE 1. DEFINITIONS FOR DIVISION 6**  
This database is current through 7/11/08, Register 2008, No. 28

§ 6000. Definitions.

"Agricultural commodity," 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 turn grown commercially for sod.

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Application block" means a field, or portion of a field, treated in a 24-hour period that typically is identified by visible indicators, maps, or other tangible means.

"Applied to the soil" or "applied to the ground" means the labeling of a pesticide product includes terminology such as,

- (a) Soil fumigant
- (b) Soil applied
- (c) Soil treatment product
- (d) Can be used as a soil drench

- (e) Application to soil
- (f) Inject into the soil
- (g) Incorporate in top (x) inches of soil; pre-plant incorporation
- (h) Use on soil for control of soil-borne diseases
- (i) Surface application; band treatment, surface blend
- (j) Side dressing both/one side of row and cultivate into soil
- (k) Should be mixed uniformly into top (x) inches of soil
- (l) Pre-emergent to the weed
- (m) Broadcast to the soil
- (n) Apply in seed furrow

"Artificial recharge basin" means a surface facility, such as an infiltration pond or basin, or spreading ground specifically designed and managed to increase the infiltration of introduced surface water supplies into a ground water basin. "Artificial recharge basin" does not include ditches, canals, or reservoirs designed primarily to transport and store water, or stream channels, lakes, and other naturally occurring water bodies that are not principally managed to recharge ground water.

"Assure" or "Ensure" means to take all reasonable measures so that the behavior, activity, or event in question occurs. When the behavior, activity, or event in question involves or concerns an employee, reasonable measures by an employer include determining that the employee has the knowledge to comply; providing the means to comply; supervising the work activity; and having and enforcing a written workplace disciplinary action policy covering the employer's requirements, as well as other measures required by pesticide law or this division.

"Atmosphere-supplying respirator" means a respirator

that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SAR) and self-contained breathing apparatus (SCBA) units.

"Branch location" means any location, other than the principal place of business, operated by a pesticide dealer or an agricultural pest control business to carry out licensed activities in California.

"Buffer zone" as used in sections 6447, 6447.1, 6447.2, and 6447.3 means an area that surrounds a pesticide application block in which certain activities are restricted for a specified period of time to protect human health and safety from existing or potential adverse effects associated with a pesticide application.

"Carbamates" means esters on N-methyl carbamic acid which inhibit cholinesterase.

"Certified commercial applicator" means:

- (a) A person holding a valid qualified license issued by the director;
- (b) A pilot holding a valid journeyman pest control aircraft pilot's certificate issued by the director;
- (c) A person holding a certified technician certificate issued by the Vector Biology and Control Section of the Department of Health Services;
- (d) A person holding a valid structural pest control operator or field representative license issued by the Structural Pest Control Board of the Department of Consumer Affairs; and
- (e) A person holding a valid qualified applicator certificate by the director.

"Certified private applicator" means a private applicator holding a valid private applicator certificate issued by the commissioner (or the director in any county where there is no commissioner).

"Chemical resistant" or "Waterproof" means a material that allows no measurable movement of the pesticide through it during use. When a specific material is specified on pesticide product labeling, personal protective equipment constructed of that material shall be

used.

"Chemigation" means the application of pesticides through irrigation systems.

"Closed system" means a procedure for removing a pesticide from its original container, rinsing the emptied container and transferring the pesticide product, mixtures and dilutions and rinse solution through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of any person to the pesticide or rinse solution. Rinsing is not required when the pesticide is used without dilution. The system's design and construction shall meet the director's closed system criteria.

"Commercial applicator" means a person who uses or supervises the use of a pesticide for any purpose or on any property other than as provided by the definition of "private applicator."

"Confidential reader" is a person chosen by an employee required to wear a respirator to read to him/her the Medical Evaluation Questionnaire required under section 6739 in a language primarily understood by the employee. This includes, but is not limited to, a coworker, family member, friend, or an independent translator provided by the employer. The employer or the employer's direct agent, such as a supervisor, manager, foreman, or secretary, are not included and are prohibited from being confidential readers.

"Conflict with labeling" means any deviation from instructions, requirements or prohibitions of pesticide product labeling concerning storage, handling or use except:

- (a) A decrease in dosage rate per unit treated;
- (b) A decrease in the concentration of the mixture applied;
- (c) Application at a frequency less than specified;
- (d) Use to control a target pest not listed, provided the application is to a commodity/site that is listed and the use of the product against an unnamed pest is not expressly prohibited;
- (e) Employing a method of application not expressly prohibited, provided other directions are followed;

(f) Mixing with another pesticide or with a fertilizer, unless such mixture is expressly prohibited;

(g) An increase in the concentration of the mixture applied, provided it corresponds with the current published UC Pest Management Guidelines of the University of California, which are available from their Statewide Integrated Pest Management Project, One Shields Avenue, Davis, California 95616, or on-line at <http://www.ipm.ucdavis.edu>; or

(h) The use of personal protective equipment consistent with the exceptions and substitutions in section 6738.

"Continuous monitoring" means the measurement of the air concentration of a specific pesticide on an uninterrupted, real-time basis by instrumental methods.

"Course" means any course, class, or program offered by a provider of continuing education approved pursuant to section 6512.

"Coverall" means a one- or two-piece garment of closely woven fabric or equivalent that covers the entire body, except the head, hands, and feet, and must be provided by the employer as personal protective equipment. Coverall differs from, and should not be confused with, work clothing that can be required to be provided by the employee.

"Display" means to make information available to the employee so that he or she may readily see and read the document, during normal business hours, without having to make a specific request of any person. An employee shall not be hindered or impeded from examining documents required to be displayed. This definition does not preclude using a binder or filing cabinet, that otherwise meets these criteria, to contain documents for display.

"Dormant insecticide" means petroleum distillates, petroleum hydrocarbons, unclassified petroleum oils, and mineral oils with the addition of other insecticides -or other insecticides used alone -that are used for pest control and applied to deciduous plants.

"Dormant oil" means petroleum distillates, petroleum hydrocarbons, unclassified petroleum oils, and mineral oils that are used for pest control and applied to deciduous

plants.

"Early entry" means entry into a treated field or other area after the pesticide application is complete, but before the restricted entry interval or other restrictions on entry for that pesticide have expired.

"Employee" means any person who, for any kind of compensation, performs work, services, or activities covered by this division.

"Employer" means any person who exercises primary direction and control over the work, services, or activities of an employee. A foreman, crew leader, supervisor, or similarly situated person represents the employer when hiring an employee or when exercising, or having responsibility for exercising, the primary direction and control, but is not considered the employer himself or herself.

"Enclosed cab" means a chemical resistant barrier that completely surrounds the occupant(s) of the cab and meets those portions of the requirements in American Society of Agricultural Engineers Standard S-525 (Rev. 5/98) that pertain to dermal protection.

"Enclosed cab acceptable for respiratory protection" means an enclosed cab that incorporates a dust/mist filtering and/or a vapor or gas removing air purification system, as appropriate for the exposure situation. Enclosed cabs certified by the manufacturer as meeting American Society of Agricultural Engineers Standard S-525 (Rev. 5/98) are acceptable under this definition. The Director may, upon request, approve other enclosed cabs as acceptable under this definition.

"Engineered rights-of-way" means areas within a ground water protection area that are constructed in a way that results in increased runoff and collection of storm water, such as railroad ballasts and berms, public roadsides, and highway median strips or similar areas, but not canal or ditch banks or utility lines.

"Evapotranspiration" is the combination of water transpired from vegetation and evaporated from the soil and plant surfaces. Evapotranspiration data can be obtained from the California Irrigation Management Information System (CIMIS) or other local sources.

"Examination" means written examination.

"Feasible" means capable of being accomplished in a successful manner, within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

"Feasible alternatives" means other chemical or non-chemical procedures which can reasonably accomplish the same pest control function with comparable effectiveness and reliability, taking into account economic, environmental, social, and technological factors and timeliness of control.

"Feasible mitigation measure" means a condition attached to the approval of an activity which, if implemented, would substantially reduce any adverse impact, taking into account economic, environmental, social, and technological factors and timeliness of control.

"Field" means any area (including a greenhouse) upon which one or more agricultural plant commodities (including forest and nursery products) are grown for commercial or research production. Field does not include range or pasture harvested by grazing animals.

"Field capacity" is the amount of water remaining in soil when the downward water flow due to gravity becomes negligible.

"Fieldworker" means any person who, for any kind of compensation, performs cultural activities in a field. Fieldworker does not include persons performing tasks as a crop advisor, including field checking or scouting, making observations of the well being of the plants, or taking samples, nor does it include local, state, or federal officials performing inspection, sampling, or other similar official duties.

"Filter or air purifying element" means a component used in respirators to remove solid or liquid aerosols from the inspired air.

"Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium.

"Fumiscope[" is a monitoring instrument that measures the concentration of methyl bromide inside a structure in ounces per 1,000 cubic feet. (The analytical detection

limit of a Fumiscope[is 250 parts per million [ppm]).

"Greenhouse" means a structure or space, of sufficient size to permit entry, that is enclosed with a nonporous covering and used in the commercial or research production of an agricultural plant commodity. The term includes, polyhouses, mushroom houses, rhubarb houses and similar structures.

"Ground-based application equipment" means equipment such as:

- (a) Hand sprayers
- (b) Backpack sprayers
- (c) Air-blast sprayers
- (d) Field soil injection equipment
- (e) Dusters
- (f) Drills
- (g) Granular applicators
- (h) Ground-rig sprayers

"Ground water protection area" means an area of land that has been determined by the Director to be vulnerable to the movement of pesticides to ground water, as identified in the Department of Pesticide Regulation document EH03-05 (Est. 08/03), hereby incorporated by reference, entitled "Ground Water Protection Areas," in Appendix I. The determination of a ground water protection area is based on factors, such as soil type, climate, and depth to the ground water, that are characteristic of areas where legally applied pesticides or their breakdown products have been detected and verified in ground water.

"Hand labor" means any cultural activity, performed by hand or with hand tools, that causes substantial contact with surfaces (such as plants or soil) that may have pesticide residues. These activities include hand harvesting, detasseling, thinning, hand weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include operating, moving, or repairing

irrigation equipment or performing the duties of a crop advisor, field checker, or scout, making observations of the well being of the plants, or taking samples.

"Handle" means mixing, loading, transferring, applying (including chemigation), or assisting with the application (including flagging) of pesticides, maintaining, servicing, repairing, cleaning, or handling equipment used in these activities that may contain residues, working with opened (including emptied but not rinsed) containers of pesticides, adjusting, repairing, or removing treatment site coverings, incorporating (mechanical or watered-in) pesticides into the soil, entering a treated area during any application or before the inhalation exposure level listed on pesticide product labeling has been reached or greenhouse ventilation criteria have been met, or performing the duties of a crop advisor, including field checking or scouting, making observations of the well being of the plants, or taking samples during an application or any restricted entry interval listed on pesticide product labeling. Handle does not include local, state, or federal officials performing inspection, sampling, or other similar official duties.

"Home use" means use in a household or its immediate environment.

"Human Participant" means a living person who participates in a human pesticide exposure study conducted in order to obtain (1) data through intervention or interaction with the participant, or (2) identifiable private information. Intervention, as used in this definition, includes both physical procedures by which data are gathered and manipulations of the participant or the participant's environment that are performed for research purposes. Interaction, as used in this definition, includes communication or interpersonal contact between the investigator and human participant. Private information, as used in this definition, includes information about behavior that occurs in a context in which a participant can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by a participant and which the participant can reasonably expect will not be made public. Private information must be individually identifiable in order for the acquisition of that information to constitute research involving human participants. Individually identifiable means that the identity of the participant is or may readily be ascertained by the investigator or associated with the information.

"Hydrologically isolated site" means any treated area that does not produce runoff capable of entering any irrigation or drainage ditch, canal, or other body of water.

"Immediately dangerous to life or health (IDLH)" means an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

"Industrial use" means use for or in a manufacturing, mining or chemical process or use in the operation of factories, processing plants, and similar sites.

"Institutional Review Board (IRB)" means an objective committee whose purpose is to review protocols of human pesticide exposure studies to ensure the safety and general welfare of the human participants, and to guarantee that their human rights are not violated. The Institutional Review Board shall meet the requirements as specified in Title 40 Code of Federal Regulations, (Protection of the Environment), Part 26, (Protection of Human Subjects), when conducting a review of a protocol.

"Institutional use" means use within the confines of, or on property necessary for the operation of buildings such as hospitals, schools, libraries, auditoriums and office complexes.

"Leaching ground water protection areas" are sections of land designated as "leaching" in the Department of Pesticide Regulation, document EH03-05 (Est. 08/03), hereby incorporated by reference, entitled "Ground Water Protection Areas," where pesticide residues move from the soil surface downward through the soil matrix with percolating water to ground water.

"Medical supervision" means occupational health guidance and necessary associated health evaluation by a physician licensed to practice medicine.

"Net irrigation requirement" is the amount of water needed to bring the soil in the crop root zone to field capacity at the time of irrigation. It can be determined by direct measurements of soil moisture, such as by using tensiometers, or indirect measurements of soil moisture, such as by estimating evapotranspiration that has accumulated since the last irrigation.

"Notice of Intent" means oral or written notification to

the commissioner, as specified by the commissioner, prior to the use of a pesticide pursuant to a permit.

"Nursery" means any operation engaged in the outdoor commercial or research production of cut flowers or ornamental cut greens or any plants that will be used in their entirety in another location.

"Operator of the property" means a person who owns the property and/or is legally entitled to possess or use the property through terms of a lease, rental contract, trust, or other management arrangement.

"Organophosphates" means organophosphorus esters which inhibit cholinesterase.

"Ozone nonattainment area" means an area designated in Title 40, Code of Federal Regulations section 81.305 for the purpose of air quality planning within the chart titled "California - Ozone (1-Hour Standard)."

"Person" means any individual, partnership, association, corporation, business entity or organized group of persons whether incorporated or not.

"Personal protective equipment" (PPE) means apparel and devices worn to minimize human body contact with pesticides or pesticide residues that must be provided by an employer and are separate from, or in addition to, work clothing. PPE may include, chemical resistant suits, chemical resistant gloves, chemical resistant footwear, respiratory protection devices, chemical resistant aprons, chemical resistant headgear, protective eyewear, or a coverall (one- or two-piece garment).

"Pest management guides" are manuals prepared by the Department or University of California that include pest management information on specific crops and which have been adopted as a standard by the director.

"Pesticide" means:

(a) any substance or mixture of substances that is a pesticide as defined in the Food and Agricultural Code and includes mixtures and dilutions of pesticides.

(b) as the term is used in Section 12995 of the Food and Agricultural Code, includes any substance or product that the user intends to be used for the pesticidal poison purposes specified in Sections 12753 and 12758 of the

Food and Agricultural Code.

"Pesticide exposure study" means

(a) A data gathering project that meets one or more of the following criteria:

(1) Human participants are to be directly exposed to the pesticide for the purpose of determining its pharmacokinetics or pharmacodynamics;

(2) Human participants are monitored and the use of the pesticide is not consistent with current accepted labeling or current regulations;

(3) Humans are exposed as the result of a contrived application in order to monitor exposure without routine pest control being a significant objective;

(4) Human participants are monitored for the purpose of satisfying initial or continuing registration requirements of the U.S. Environmental Protection Agency or the Department; or

(5) Human participants are monitored to develop or contribute knowledge of pesticide exposure to be generalized to other populations.

(b) "Pesticide exposure study" does not include the following:

(1) Data collected for the purpose of satisfying an existing health standard for exposure monitoring or if it is understood that routine monitoring is a condition of employment;

(2) Unscheduled monitoring of persons in response to a medical emergency to identify possible sources of exposure;

(3) Monitoring conducted by a government agency or by an employer, to determine the workplace exposure of his or her employees.

(4) Monitoring requested by an individual or group of individuals to determine personal exposure levels.

(5) The analysis or evaluation, after the human participant involvement has ceased, of existing or

previously collected data, documents, records, specimens, or samples, if these sources are publicly available or if the information is recorded by the study director in such a manner that the human participants cannot be identified, directly or through identifiers linked to the participants.

"Pesticide safety information series" means a series of leaflets that summarize health and safety aspects of various pesticides and groups of pesticides.

"Pesticides in toxicity category one" means pesticide products which are required to prominently display the signal word "DANGER" on the label.

"Pesticides in toxicity category two" means pesticide products which are required to prominently display the signal word "WARNING" on the label.

"Physician or other licensed health care professional (PLHCP)" means an individual whose legally permitted scope of practice allows him or her to independently provide, or be delegated the responsibility to provide, some or all of the health care services required by these regulations.

"Private applicator" means:

(a) an individual who uses or supervises the use of a pesticide for the purpose of producing an agricultural commodity on property owned, leased, or rented by him/her or his/her employer; or

(b) a householder who uses or supervises the use of a pesticide, outside the confines of a residential dwelling for the purpose of controlling ornamental, plant or turf pests on residential property owned, leased, or rented by that householder.

"Qualified applicator certificate holder" means a person who has qualified by examination in one or more pest control categories to supervise pesticide applications. However, such qualification shall not entitle the holder to supervise the operations of a pest control business licensed pursuant to section 11701 of the Food and Agricultural Code, except as provided in section 11704.

"Qualified applicator licensee" means a person who has qualified by examination in one or more pest control categories to supervise the pesticide applications made by

a pest control business licensed pursuant to sections 11701 to 11709, inclusive, of the Food and Agricultural Code, and who is responsible for safe and legal operations under such license.

"Qualitative fit test (QLFT)" means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quantitative fit test (QNFT)" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Regularly handle" means that the employee is handling pesticides during any part of the day for more than 6 calendar days in any 30 consecutive day qualifying period beginning on the first day of handling. Any day spent on loading pesticides while exclusively using a closed system or mixing only pesticides sealed in water-soluble packets is not included for any employee who has a baseline blood cholinesterase level established pursuant to section 6728(c)(1).

"Respirator program administrator" is a person who is qualified by appropriate training or experience that is commensurate with the complexity of the respiratory protection program, and demonstrates knowledge necessary to administer a respiratory protection program. Such training or experience includes, but is not limited to, reading and understanding either the American National Standard for Respiratory Protection Publication (ANSI Z88.2), or the U.S. Department of Labor's "Small Entity Compliance Guide for the Revised Respiratory Protection Standard"; or taken specific course work on developing a respiratory protection program from a college or a respirator manufacturer's authorized representative; or is an American Board of Industrial Hygiene Certified Industrial Hygienist.

"Restricted entry interval" (REI) means the period of time after a field is treated with a pesticide during which restrictions on entry are in effect to protect persons from potential exposure to hazardous levels of residues. An REI may be found on pesticide product labeling or in regulation.

"Runoff ground water protection areas" are sections of land designated as "runoff" in the Department of Pesticide Regulation document EH03-05 (Est. 08/03), hereby incorporated by reference, entitled "Ground Water Protection Areas," where pesticide residues are carried in



runoff water to more direct routes to ground water such as dry or drainage wells, poorly sealed production wells, or soil cracks, or to areas where leaching can occur.

"Sensitive aquatic site" means any irrigation or drainage ditch, canal, or other body of water in which the presence of dormant insecticides could adversely impact any of the beneficial uses of the waters of the state specified in Water Code section 13050(f).

"Site specific" means a pesticide permit that identifies the specific area to be treated, the size of that area, and the commodity(ies) or site(s) on that area to be treated.

"Solicits services or sales," as used in section 11410 of the Food and Agricultural Code, means sells or offers for sale any pesticide, method, or device outside of a fixed place of business.

"Structural use" means a use requiring a license under chapter 14 (commencing with section 8500), division 3 of the Business and Professions Code.

"Study director" means the individual responsible for the overall conduct of a research project.

"Substantial Drift" means the quantity of pesticide outside of the area treated is greater than that which would have resulted had the applicator used due care. This definition is applicable to section 12972 of the Food and Agricultural Code and section 6614 of title 3, California Code of Regulations.

"Time specific" means a pesticide permit that specifies the date the intended application is to commence or permit with a notice of intent requirement. The pesticide use may commence within four days following such date if delays are caused by uncontrollable conditions such as adverse weather or unavailability of equipment. The commissioner shall require a notice of intent from either the grower, the grower's authorized representative, or the pest control business when necessary to make the permit time and site specific.

"Treated field" means a field that has been treated with a pesticide or had a restricted entry interval in effect within the last 30 days. A treated field includes associated roads, paths, ditches, borders, and headlands, if the pesticide was also directed to those areas. A treated field does not include areas inadvertently contaminated by drift or over

spray.

"Use" means any pesticide related activity including:

(a) Pre-application activities, including;

(1) Arranging for the application;

(2) Mixing or loading; and

(3) Making necessary preparations for the application, including responsibilities related to notification, handler training, decontamination facilities, use and care of personal protective equipment, medical monitoring and assistance, and heat stress management;

(b) Application of the pesticide;

(c) Post-application activities, including;

(1) Control of the treated area to reduce exposure, including responsibilities for restricted entry intervals, warnings, decontamination facilities, medical assistance, and fieldworker training;

(2) Management of the treated area, crop, or crop by-products, including responsibilities for preharvest intervals and plant back restrictions;

(3) Transportation, storage, and disposal of excess pesticides, spray mix, equipment wash water, and pesticide containers; and

(4) Cleaning of application equipment and other pesticide containing materials.

(d) Use does not include:

(1) Activities where involvement is only incidental to other tasks such as emergency responders providing incident management, commercial transportation of pesticide related waste for disposal or recycling, or a waste disposal or recycling facility accepting or handling these wastes; or

(2) Manufacturing, formulating, or packaging (including bulk repackaging) by a registered pesticide producing establishment.



"Veterinarian" means a person licensed to practice veterinary medicine in California.

"Volatile organic compound (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions. This includes any organic compound other than those exempted by the U.S. Environmental Protection Agency pursuant to Title 40 of the Code of Federal Regulations section 51.100.

"Weed oil" means a pesticide, the label of which states that the product may be used, by itself, to control weeds, and which contains 70% or more of the following active ingredients, petroleum hydrocarbons, mineral oil, petroleum oil, petroleum distillates, and/or aromatic petroleum distillates.

"Work clothing" means garments such as long-

sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks. Work clothing is not considered personal protective equipment although pesticide product labeling or regulations may require specific work clothing during some activities. Work clothing differs from and should not be confused with a coverall. While coveralls shall be provided by the employer, work clothing can be required to be provided by the employee. Short sleeved shirts and short pants are considered acceptable work clothing only under conditions expressly permitted by pesticide product labeling.

Note: Authority cited: Sections 11456, 11502, 12111, 12781, 12976, 12981, 13145, 14001 and 14005, Food and Agricultural Code. Reference: Sections 11401.2, 11408, 11410, 11501, 11701, 11702(b), 11704, 11708(a), 12042(f), 12103, 12971, 12972, 12973, 12980, 12981, 13145, 13146 and 14006, Food and Agricultural Code.

#### HISTORY

1. Change without regulatory effect repealing section and adopting new section filed 10-12-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 42). For prior history, see Register 92, No. 5.
2. New definition "Economic poison" filed 9-23-94; operative 10-24-94 (Register 94, No. 38).
3. New definition "Pesticide exposure study" and amendment of Note filed 5-26-95; operative 6-26-95 (Register 95, No. 21).
4. New definitions for "Assure," "Chemical resistant," "Chemigation," "Coverall," "Display," "Early entry," "Enclosed cab acceptable for respiratory protection," "Fieldworker," "Greenhouse," "Hand labor," "Nursery," "Treated field," and "Use," and amendment of definitions for "Commercial applicator," "Employee," "Employer," "Enclosed cab," "Field," "Handle," "Personal protective equipment," "Private applicator," "Restricted entry interval" and "Work clothing" and amendment of Note filed 12-31-96; operative 1-1-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 1).
5. Change without regulatory effect repealing definition of "Economic poison" and amending definitions of "Pesticide" and "Weed oil" filed 3-27-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

6. Amendment of definitions of "Conflict of labeling," "Enclosed cab" and "Enclosed cab acceptable for respiratory protection" filed 5-10-99; operative 6-9-99 (Register 99, No. 20).

7. New definition for "Fumiscope" and amendment of Note filed 8-15-2000; operative 9-14-2000 (Register 2000, No. 33).

8. Repealer of definition "Authorized representative," amendment of definitions "Certified private applicator," "Operator of the property" and "Private applicator," new definitions "Course" and "Person" and amendment of Note filed 10-20-2000; operative 11-19-2000 (Register 2000, No. 42).

9. New definitions of "Application block" and "Buffer zone" filed 12-15-2000; operative 1-14-2001 (Register 2000, No. 50).

10. Change without regulatory effect amending regulatory definitions of "Enclosed cab" and "Enclosed cab acceptable for respiratory protection" and repealing regulatory definition of "Restricted materials hazard chart" filed 3-8-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 10).

11. New definitions of "Ethical review," "Human participant," "Institutional Review Board (IRB)" and "Study director" and amendment of definition of "Pesticide exposure study" filed 7-18-2002 as an emergency; operative 7-18-2002 (Register 2002, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-15-2002 or emergency language will be repealed by operation of law on the following day.

12. Repealer and new definitions of "Application block" and "Buffer zone" filed 9-19-2002 as an emergency; operative 9-22-2002 (Register 2002, No. 38). A Certificate of Compliance must be transmitted to OAL by 1-21-2003 or emergency language will be repealed by operation of law on the following day.

13. New definitions of "Ethical review," "Human participant," "Institutional Review Board (IRB)" and "Study director" and amendment of definition of "Pesticide exposure study" refiled 11-7-2002 as an emergency; operative 11-15-2002 (Register 2002, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-17-2003 or emergency language will be repealed by operation of law on the following day.

14. Repealer and new definitions of "Application block" and "Buffer zone" refiled 1-21-2003 as an emergency; operative 1-21-2003 (Register 2003, No. 4). A Certificate of Compliance must be transmitted to OAL by 5-21-2003 or emergency language will be repealed by operation of law on the following day.

15. Certificate of Compliance as to 11-17-2002 order, including repealer of definition of "Ethical review" and further amendment of definitions of "Institutional Review Board" and "Pesticide exposure study," transmitted to OAL 3-17-2003 and filed 4-24-2003 (Register 2003, No. 17).

16. Repealer and new definitions of "Application block" and "Buffer zone" refiled 5-19-2003 as an emergency; operative 5-21-2003 (Register 2003, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-18-2003 or emergency language will be repealed by operation of law on the following day.

17. Repealer and new definitions of "Application block" and "Buffer zone" refiled 9-11-2003 as an emergency; operative 9-18-2003 (Register 2003, No. 37). A Certificate of Compliance must be transmitted to OAL by 1-16-2004 or emergency language will be repealed by operation of law on the following day.

18. Repealer and new definitions of "Application block" and "Buffer zone" refiled 1-14-2004 as an emergency; operative 1-17-2004 (Register 2004, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-17-2004 or emergency language will be repealed by operation of law on the following day.

19. Repealer of definition of "Groundwater protection advisory" and new definitions of "Artificial recharge basin," "Engineered rights-of-way," "Evapotranspiration," "Field capacity," "Ground water protection area," "Leaching ground water protection areas," "Net irrigation requirement" and "Runoff ground water protection areas" and amendment of Note filed 4-27-2004; operative 5-27-2004 (Register 2004, No. 18).

20. Repealer and new definitions of "Application block" and "Buffer zone" refiled 5-17-2004 as an emergency; operative 5-18-2004 (Register 2004, No. 21). A Certificate of Compliance must be transmitted to OAL by 9-15-2004 or emergency language will be repealed by operation of law on the following day.

21. Repealer and new definitions of "Application block" and "Buffer zone" refiled 9-9-2004 as an emergency; operative 9-15-2004 (Register 2004, No. 37). A Certificate of Compliance must be transmitted to OAL by 1-13-2005 or emergency language will be repealed by operation of law on the following day.

22. Certificate of Compliance as to 9-15-2004 order, including further amendment of definitions of "Application block" and "Buffer zone," transmitted to OAL 9-21-2004 and filed 11-3-2004 (Register 2004, No. 45).

23. New definitions of "Dormant oil," "Dormant insecticide," "Hydrologically isolated site" and "Sensitive aquatic site" filed 7-18-2006; operative 8-17-2006 (Register 2006, No. 29).

24. New definitions of "Air-purifying respirator," "Atmosphere-supplying respirator," "Confidential reader," "Filter or air purifying element," "Filtering facepiece (dust mask)," "Immediately dangerous to life or health (IDLH)," "Physician or other licensed health care professional (PLHCP)," "Qualitative fit test (QLFT)," "Quantitative fit test (QNFT)" and "Respirator program administrator" filed 6-13-2007; operative 1-1-2008 (Register 2007, No. 24).

25. Amendment of definition of "Buffer zone" and new definitions of "Ozone

3 CA ADC § 6000  
3 CCR § 6000  
Cal. Admin. Code tit. 3, § 6000

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nonattainment area" and "Volatile organic compound (VOC)" filed 1-25-2008;  
operative 1-25-2008 pursuant to Government Code section 11343.4 (Register  
2008, No. 4).

3 CCR § 6000, 3 CA ADC § 6000

1CAC

3 CA ADC § 6000  
END OF DOCUMENT

**§ 6379. Restrictions on Use of Bladex (Cyanizine).**

NOTE: Authority cited: Sections 407 and 12781, Food and Agricultural Code. Reference: Section 12824, Food and Agricultural Code.

**HISTORY**

1. New section filed 4-19-85 as an emergency; effective upon filing (Register 85, No. 20). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 8-19-85.
2. Repealed by operation of Government Code Section 11346.1(g) (Register 87, No. 2).

**Subchapter 3. Assessments****Article 1. Mill Assessment Collection****§ 6380. Sales Invoice Misrepresentation.**

NOTE: Authority cited: Sections 407 and 12781, Food and Agricultural Code. Reference: Section 12841, Food and Agricultural Code.

**HISTORY**

1. Renumbering and amendment of former Chapter 4 (Article 9, Sections 2430-2435) to Chapter 6, Group 3 (Articles 1 and 2, Sections 6380-6392, not consecutive) filed 8-4-82; designated effective 1-1-83 (Register 82, No. 32). For prior history, see Registers 80, No. 12; 79, No. 52; 79, No. 28; and 78, No. 52.
2. Change without regulatory effect repealing section filed 2-27-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 9).

**§ 6382. Penalties.**

For any delinquency in making a return, or any deficiency in payment, of the pesticides mill assessment which is received after the date due (one calendar month after March 31, June 30, September 30, and December 31 of each year), a penalty of 10 percent of the amount which is due shall be added.

NOTE: Authority cited: Section 12781, Food and Agricultural Code. Reference: Section 12843, Food and Agricultural Code.

**HISTORY**

1. Change without regulatory effect amending section and NOTE filed 3-27-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

**§ 6384. Exemptions.**

When a registered pesticide is sold by the registrant to a purchaser for a nonpesticide use and the invoice clearly identifies its specific intended use, the sale is not subject to the mill assessment.

NOTE: Authority cited: Section 12781, Food and Agricultural Code. Reference: Section 12841, Food and Agricultural Code.

**HISTORY**

1. OAL Notice of Erroneous Filing filed 4-11-85; purported amendment of Section 6384 filed in error on 3-18-85 is null and void and text as filed with Secretary of State on 8-4-82 remains in effect uninterrupted (Register 85, No. 16).
2. Change without regulatory effect amending section and NOTE filed 3-27-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).

**§ 6386. Established Rate.**

The director establishes the mill assessment on pesticide products at 21 mills (0.021) per dollar of sales for all sales of registered pesticides for use in this state pursuant to Food and Agricultural Code section 12841.

NOTE: Authority cited: Sections 12781 and 12841, Food and Agricultural Code. Reference: Section 12841, Food and Agricultural Code.

**HISTORY**

1. Amendment filed 10-12-90 as an emergency; operative 10-12-89 (Register 89, No. 41). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 2-10-90.
2. Certificate of Compliance as to 10-12-89 order transmitted to OAL 2-2-90 and filed 3-2-90 (Register 90, No. 11).
3. Change without regulatory effect amending section and NOTE filed 3-27-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 13).
4. Amendment of section and NOTE filed 11-3-2003 as an emergency; operative 1-1-2004 (Register 2003, No. 45). This action is a permanent emergency change for which no Certificate of Compliance is needed pursuant to Food and Agricultural Code section 12841.
5. Editorial correction of HISTORY 4 (Register 2004, No. 37).

**§ 6388. Pesticide Sales and Assessment Reporting.**

(a) Each registrant shall report quarterly to the Department the total dollars of sales and total pounds or gallons of each registered and labeled pesticide product sold by the registrant for use in this State and the total assessments due. Each report of pesticide sales and assessment shall be on a form prescribed by the Department or in a format approved by the Director.

(b) An acceptable Department form for reporting the pesticide sales is form "Report of Pesticide Sales in California," PR-ENF-181 (Rev. 07/98). The information to be reported shall include the following:

- (1) The ending and delinquent date of the quarter being reported;
- (2) The name, address and U.S. Environmental Protection Agency (U.S. EPA) firm number of the registrant;
- (3) The U.S. EPA or State registration number and brand name of each product registered and sold for use in the State; and
- (4) The total dollar sales and total pounds or gallons of each formulated product sold.

(c) An acceptable form for reporting the pesticide mill assessments is form "Report of Pesticide Sales in California," PR-ENF-180 (Rev. 07/98). The information to be reported shall include the following:

- (1) The ending and delinquent date of the quarter being reported;
- (2) The name, address and U.S. EPA firm number of the registrant;
- (3) The total dollar sales for all products registered and sold for use in the State during the quarter;
- (4) The pesticide mill assessment rate;
- (5) The total assessments and penalty (if applicable) that are due;
- (6) The total amount of payment submitted;
- (7) The name, title, signature, and phone number of the authorized representative completing the form;
- (8) The date when the form was completed; and
- (9) Certification under penalty of perjury that the information contained in the report is true and correct.

(d) The individual report specified in (b) and the dollar sales figures associated with a specific product found on the report shall be considered official information acquired in confidence pursuant to Government Code section 6254(k) of the Public Records Act and section 1040 of the Evidence Code.

NOTE: Authority cited: Sections 11456, 12781 and 12845, Food and Agricultural Code. Reference: Sections 12843 and 12845, Food and Agricultural Code.

**HISTORY**

1. OAL Notice of Erroneous Filing filed 4-11-85; purported amendment of section 6388 filed in error on 3-18-85 is null and void and text as filed with Secretary of State on 8-4-82 remains in effect uninterrupted (Register 85, No. 16).

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2. Amendment filed 1-22-92; operative 2-21-92 (Register 92, No. 13).  
 3. Amendment filed 5-16-2005; operative 6-15-2005 (Register 2005, No. 20).

## Article 2. Mill Assessment Disbursement Criteria

### § 6390. Purpose of Article.

This article specifies the criteria to be used in allocating pesticide mill assessment funds to counties based upon each county's costs, pesticide regulatory activities, workload, and performance, pursuant to Section 12844 of the Food and Agricultural Code.

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code. Reference: Section 12844, Food and Agricultural Code.

#### HISTORY

1. Repealer of Article 2 (Sections 6390 and 6392) and new Article 2 (Sections 6390-6396) filed 7-8-83; effective thirtieth day thereafter (Register 83, No. 28).
2. Change without regulatory effect amending NOTE filed 6-20-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 25).

### § 6391. County Reimbursement.

(a) Reimbursement for work specified in section 6393(b) shall be made by April 1 of each year pursuant to section 12841 of the Food and Agricultural Code.

(b) Reimbursement shall not exceed costs incurred by the county as shown in the County Agricultural Commissioners' Annual Financial Statement, Item 5, entitled "Pesticide Use Enforcement."

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code. Reference: Sections 12841 and 12844, Food and Agricultural Code.

#### HISTORY

1. Amendment filed 1-22-90 as an emergency; operative 1-22-90 (Register 90, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 5-22-90.
2. Certificate of Compliance as to 1-22-90 order transmitted to OAL 4-23-90 and filed 5-9-90 (Register 90, No. 24).
3. Amendment of subsections (a) and (b), new subsection (c), subsection relettering, and amendment of NOTE filed 2-25-99; operative 3-27-99 (Register 99, No. 9).
4. Repealer of subsections (a) and (b), subsection relettering and amendment of newly designated subsection (a) filed 6-10-2002; operative 7-1-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).

### § 6392. County Reports.

Each county shall submit a monthly report on a form prescribed by the director supporting the administration and enforcement of their pesticide regulatory program. The monthly report shall be submitted within 30 days after the end of each month. All reports shall be subject to audit by the director, and the director may require substantiation of the matters therein.

NOTE: Authority cited: Sections 11456 and 12781, Food and Agricultural Code. Reference: Sections 11455, 12844 and 14012, Food and Agricultural Code.

#### HISTORY

1. Change without regulatory effect amending NOTE filed 6-20-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 25).

### § 6393. Criteria Items and Apportionment.

(a) The amount of funds allocated to each county for each criteria item shall be based on each county's pest control activities, costs, workload, and performance in proportion to all counties, except as provided in sections 6391(b) and 6395.

(b) The apportionment for each criteria item shall be a percentage of the total mill assessment funds available for reimbursement to counties [less the amount specified in section 6395(b)]. Such criteria items and corresponding apportionments are as follows:

(1) Apportionment, 3 percent: The total number of Pesticide Use Enforcement Program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans;

(2) Apportionment, 3 percent: The total number of: licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control operators providing no-

tice of work in each county; active operator identification numbers in each county; and any additional similar workload activities approved jointly by the Director and the commissioners.

(3) Apportionment, 3 percent: The total number of private applicator certificate holders certified in each county;

(4) Apportionment, 3 percent: Work hours expended on pesticide related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license;

(5) Apportionment, 3 percent: Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners;

(6) Apportionment, 3 percent: The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979.

(7) Apportionment, 21 percent: The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and notices of intent reviewed by each county;

(8) Apportionment, 21 percent: Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information; and

(9) Apportionment, 40 percent: Based on each county's pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties.

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code. Reference: Sections 12841 and 12844, Food and Agricultural Code.

#### HISTORY

1. Amendment of subsection (a) and new subsection (c) filed 1-22-90 as an emergency; operative 1-22-90 (Register 90, No. 5). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 5-22-90.
2. Certificate of Compliance as to 1-22-90 order transmitted to OAL 4-23-90 and filed 5-9-90 (Register 90, No. 24).
3. Amendment of subsection (c) filed 3-12-91; operative 4-20-91 (Register 91, No. 14).
4. Editorial correction of printing error in subsection (c) (Register 91, No. 33).
5. Editorial correction of printing error in subsection (c) (Register 91, No. 46).
6. Amendment of subsections (a), (a)(4) and (c), new subsections (d)-(d)(2)(K), and amendment of NOTE filed 2-25-99; operative 3-27-99 (Register 99, No. 9).
7. Repealer of subsections (a)-(d), redesignation of former subsections (d)(1)-(d)(2)(K) as subsections (a)-(b)(11) and amendment of newly designated subsection (a) filed 6-10-2002; operative 7-1-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).
8. Repealer and new section filed 1-12-2006; operative 2-11-2006 (Register 2006, No. 2).
9. Change without regulatory effect amending subsection (b)(8) filed 2-21-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 8).

### § 6394. Performance Evaluation.

(a) The Director shall evaluate each county pesticide use enforcement program, at least every three years. The evaluation shall measure the county's effectiveness in implementing state program areas recognized in statute or regulation, or agreed upon by the county and Director as an essential program element.

(b) The Director shall provide a performance evaluation report to the commissioner that documents the county's performance in implementing the state program areas recognized by the Director.

(c) The Director and the commissioner shall jointly develop and document corrective actions to improve the county's pesticide use enforcement program in the program areas identified in the performance evaluation report. Corrective actions may be brought forth as a recommendation for mill assessment allocation under section 6396(a).





(d) When any commissioner fails to implement the jointly developed corrective actions or an agreement on corrective actions cannot be reached, the Director shall take measures to improve the pesticide use enforcement program in the county. The measures may include but are not limited to, a reduction of the county's annual mill assessment allocation under sections 6393 and 6395(a).

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code. Reference: Sections 2281 and 12844, Food and Agricultural Code.

#### HISTORY

1. Change without regulatory effect amending subsection (a) and NOTE filed 10-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 44).
2. Amendment of section and NOTE filed 6-10-2002; operative 7-1-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).
3. Amendment of section heading and section filed 1-12-2006; operative 2-11-2006 (Register 2006, No. 2).

### § 6395. Minimum Reimbursement.

(a) Determinations as specified in sections 6393 and 6394(c), notwithstanding, but subject to section 6391(b), no county shall be reimbursed funds less than the amount of funds reimbursed to the county pursuant to section 12844 of the Food and Agricultural Code, for the fiscal year ending June 30, 2003, or the average for fiscal years ending June 30, 2001, 2002, and 2003, whichever is greater, unless the mill assessment funds available for allocation on March 1 of the current year are less than \$14.3 million, in which case each county's reimbursement shall be reduced in the same proportion as it would have been reimbursed under this article. However, in no instances shall a county's minimum reimbursement be less than \$27,600 except as provided in section 6391(b).

(b) From the total funds available for allocation to counties, 30 percent shall be utilized for the stipulation of subsection (a) above.

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code. Reference: Sections 12841 and 12844, Food and Agricultural Code.

#### HISTORY

1. Change without regulatory effect amending subsection (a) and NOTE filed 10-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 44).
2. Amendment of subsection (a) filed 6-10-2002; operative 7-1-2002 pursuant to Government Code section 11343.4 (Register 2002, No. 24).
3. Repealer and new section and amendment of NOTE filed 1-12-2006; operative 2-11-2006 (Register 2006, No. 2).

### § 6396. Residual Funds.

(a) Any residual funds resulting after the application of sections 6395 may be disbursed based on commissioner requests to support restricted materials permitting and reporting system activities, and any other program element that the Director and the California Agricultural Commissioners and Sealers Association jointly agree upon, on a case-by-case basis. Funding request shall be submitted to the Director by March 31st of each year and jointly approved by the Director and the California Agricultural Commissioners and Sealers Association no later than June 30th.

(b) Any residual funds resulting after the application of sections 6391, 6394(d), 6395, or 6396(a) shall be distributed to all counties not subject to section 6394(d), in the same proportion as funds reimbursed under section 6393.

NOTE: Authority cited: Sections 11456, 12781 and 12844, Food and Agricultural Code. Reference: Section 12844, Food and Agricultural Code.

#### HISTORY

1. Change without regulatory effect amending NOTE filed 6-20-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 25).
2. Repealer and new section filed 1-12-2006; operative 2-11-2006 (Register 2006, No. 2).

### § 6397. Sunset Review of Regulations.

NOTE: Authority cited: Section 11456, Food and Agricultural Code. Reference: Section 11456, Food and Agricultural Code.

#### HISTORY

1. New section filed 2-25-99; operative 3-27-99 (Register 99, No. 9).
2. Repealer filed 1-20-2000; operative 2-19-2000 (Register 2000, No. 3).

## Subchapter 4. Restricted Materials

### Article 1. Restricted Materials

#### § 6400. Restricted Materials.

The Director designates the pesticides listed in this section as restricted materials.

(a) Any pesticide labeled as a "restricted use pesticide" pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (Title 7, United States Code, section 136a).

(b) Any pesticide used under an "emergency exemption" issued pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (Title 7, United States Code, section 136p).

(c) Pesticides formulated as a dust, labeled to permit outdoor use, and packaged in containers of more than 25 pounds, except:

(1) products containing only exempt materials specified in section 6402; and

(2) products containing only carbaryl, disulfoton, endosulfan, lindane, strychnine, zinc phosphide or an active ingredient not otherwise included in this section, and labeled only for one or more of the following uses: home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

(d) Pesticide products containing active ingredients listed in section 6800(a) (potential to pollute ground water), when labeled for agricultural, outdoor institutional, or outdoor industrial use.

(e) Certain other pesticides:

Acrolein, when labeled for use as an aquatic herbicide

Aldicarb (Temik)

Aluminum phosphide (Phostoxin)

4-Amino pyridine (Avitrol)

Azinphos-methyl (Guthion)

Calcium cyanide

Carbaryl (Sevin), except:

(1) when formulated as a bait; or

(2) when labeled only for one or more of the following uses: use directly on livestock or poultry, home use, structural pest control, industrial use, institutional use, or use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Carbofuran (Furadan)

Chloropicrin

3-Chloro-p-toluidine hydrochloride (Starlicide)

Dazomet (Basamid), when labeled for the production of agricultural plant commodities.

Dicamba (Banvel), except:

(1) liquid formulations packaged in containers of 1 quart or less regardless of percentage of dicamba;

(2) liquid formulations that contain 15% or less dicamba packaged in containers of 1 gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, of a product that is labeled to be further diluted for use; and

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less dicamba and is labeled to be used without further dilution.

2,4-dichlorophenoxyacetic acid (2,4-D), except:

(1) liquid formulations, packaged in containers of 1 quart or less, regardless of percentage of 2,4-D;

(2) liquid formulations that contain 15% or less 2,4-D packaged in containers of 1 gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of 2,4-D;

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less 2,4-D and is labeled to be used without further dilution; and

(6) products labeled only for use as a plant growth regulator.

2,4-dichlorophenoxybutyric acid (2,4-DB), except:

(1) liquid formulations, packaged in containers of 1 quart or less, regardless of percentage of 2,4-DB;

(2) liquid formulations that contain 15% or less 2,4-DB packaged in containers of one gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of 2,4-DB; and

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less 2,4-DB and is labeled to be used without further dilution.

2,4-dichlorophenoxypropionic acid (2,4-DP), except:

(1) liquid formulations, packaged in containers of 1 quart or less, regardless of percentage of 2,4-DP;

(2) liquid formulations that contain 15% or less 2,4-DP packaged in containers of 1 gallon or less;

(3) liquid formulations of a product that is labeled to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of 2,4-DP;

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains 10% or less 2,4-DP and is labeled to be used without further dilution.

1,3-Dichloropropene (Telone II)

Disulfoton (Di-Syston), except when labeled only for one or more of the following uses: home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Endosulfan (Thiodan), except when labeled only for one or more of the following uses: home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Ethoprop (Mocap), when labeled for turf use.

Fenamiphos (Nema-cur)

Lindane, except when labeled only for one or more of the following uses: home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Magnesium Phosphide

Metam sodium labeled for the production of agricultural plant commodities

Methamidophos (Monitor)

Methidathion (Supracide)

Methomyl (Lannate), except fly baits containing not more than 1% methomyl

Methyl bromide

2-methyl-4-chlorophenoxyacetic acid (MCPA), except:

(1) liquid formulations packaged in containers of 1 quart or less regardless of percentage of MCPA;

(2) liquid formulations that contain 15% or less MCPA packaged in containers of 1 gallon or less;

(3) liquid formulations of a product that is to be used without further dilution;

(4) dry formulations, packaged in containers of 1 pound or less, regardless of percentage of MCPA; and

(5) dry formulations, packaged in containers of 50 pounds or less, of a product that contains less than 10% MCPA and is labeled to be used without further dilution.

Methyl isothiocyanate (MITC) labeled for the production of agricultural plant commodities

Mevinphos (Phosdrin)

Molinate (Ordram)

Oxydemeton-methyl (Metasystox-R)

Paraquat (Gramoxone)

Parathion-methyl

Phorate (Thimet)

Phosphine Gas

Potassium N-methyldithiocarbamate (metam-potassium), when labeled for the production of agricultural plant commodities.

Propanil (3,4-dichloropropionanilide)

Sodium cyanide

Sodium fluoroacetate (compound 1080)

Sodium tetrathiocarbonate (Enzone)

Strychnine, except rodenticides when labeled only for one or more of the following uses: home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

Sulfotepp

Sulfuryl Fluoride

Thiobencarb (Bölero)

Tribüfos (DEF, Folex)

Tributyltin, organotin, or a tri-organotin compound formulated as an antifouling paint, coating or compound and labeled for the control of fouling organisms in an aquatic environment.

Zinc phosphide, except when labeled only for one or more of the following uses: home use, structural pest control, industrial use, institutional use, and use by public agency vector control districts pursuant to section 2426 of the Health and Safety Code.

NOTE: Authority cited: Sections 14004.5 and 14005, Food and Agricultural Code. Reference: Sections 14004.5 and 14005, Food and Agricultural Code.

#### HISTORY

1. New subsection (n)(13) filed 12-31-87 as an emergency; operative 1-1-88 (Register 88, No. 3). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-2-88. For prior history, see Register 87, No. 25.
2. Certificate of Compliance including amendment of subsection (n)(13) transmitted to OAL 4-5-88 and filed 5-4-88 (Register 88, No. 19).
3. Amendment of subsections (n)(10)-(n)(13) filed 5-18-88; operative 5-20-88 pursuant to Government Code section 11346.2(d) (Register 88, No. 21).
4. New subsection (n)(14) filed 10-27-88 as an emergency; operative 10-27-88 (Register 88, No. 45). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 2-24-89.
5. New subsection (n)(16) filed 12-2-88 as an emergency; operative 12-2-88 (Register 88, No. 51). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 4-24-89.
6. Relettering of subsection (p) to subsection (r) and new subsection (q) filed 1-4-89; operative 1-4-89 pursuant to Government Code section 11346.2(d) (Register 89, No. 5).
7. New subsection (n)(15) filed 2-14-89 as an emergency; operative 2-14-89 (Register 89, No. 9). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 6-14-89.
8. Readoption of subsection (n)(14) filed 2-24-89 as an emergency; operative 2-24-89 (Register 89, No. 13). A Certificate of Compliance must be transmitted to OAL by 6-26-89 or readoption will be repealed by operation of law effective 6-27-89.
9. New subsections (n)(14), (15), and (16) filed 8-10-89 as an emergency; operative 8-10-89 (Register 89, No. 19). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed by operation of law on 12-8-89.
10. Amendment of subsection (f)(3) filed 3-29-90 as an emergency; operative 3-29-90 (Register 90, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days, by 7-27-90, or emergency language is repealed by operation of law.
11. A Certificate of Compliance as to 3-29-90 order transmitted to OAL 7-24-90 and filed 8-23-90 (Register 90, No. 39).
12. Editorial correction adding previously missing HISTORY 9 and renumbering former HISTORY 9 and 10 to HISTORY 10 and 11 (Register 91, No. 19).
13. Notice of Repeal of subsections (n)(14), (15) and (16) filed 1-15-91 by operation of Government Code section 11346.1(g) (Register 91, No. 19).
14. Amendment of subsection (n)(10) filed 12-12-91; operative 1-13-92 (Register 92, No. 13).
15. New subsections (g)(10)-(11) and amendment of NOTE filed 7-5-94 as an emergency; operative 7-5-94 (Register 94, No. 27). A Certificate of Com-

- pliance must be transmitted to OAL by 11-2-94 or emergency language will be repealed by operation of law on the following day.
16. Editorial correction of HISTORY 15 (Register 94, No. 44).  
New subsections (g)(10)-(11) and amendment of NOTE refiled 10-31-94 as an emergency; operative 10-31-94 (Register 94, No. 44). A Certificate of Compliance must be transmitted to OAL by 2-28-95 or emergency language will be repealed by operation of law on the following day.
  18. New subsections (g)(10)-(11) and amendment of NOTE refiled 2-23-95 as an emergency; operative 2-23-95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-95 or emergency language will be repealed by operation of law on the following day.
  19. Repealer and new section filed 5-31-95; operative 6-30-95 (Register 95, No. 22).
  20. Certificate of Compliance as to 2-23-95 order including subsection relettering transmitted to OAL 5-15-95 and filed 6-27-95 (Register 95, No. 26).
  21. Change without regulatory effect amending subsection (e) carbafuran entry filed 7-24-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 30).
  22. Amendment adding exception (6) to subsection (e) — "2,4-dichlorophenoxyacetic acid (2,4-D)" filed 1-14-97; operative 2-13-97 (Register 97, No. 3).
  23. Amendment of subsection (e) adding "Dazomet" and "Potassium N-methyldithiocarbamate" filed 11-20-2000 as an emergency; operative 11-20-2000 (Register 2000, No. 47). A Certificate of Compliance must be transmitted to OAL by 3-20-2001 or emergency language will be repealed by operation of law on the following day.
  24. Amendment of subsection (e) adding "Dazomet" and "Potassium N-methyldithiocarbamate" refiled 3-15-2001 as an emergency; operative 3-15-2001 (Register 2001, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-13-2001 or emergency language will be repealed by operation of law on the following day.
  25. Certificate of Compliance as to 3-15-2001 order transmitted to OAL 6-12-2001 and filed 7-24-2001 (Register 2001, No. 35).
  26. Amendment of subsection (e) adding "Sulfuryl Fluoride" filed 4-4-2005 as an emergency; operative 4-4-2005 (Register 2005, No. 14). A Certificate of Compliance must be transmitted to OAL by 8-2-2005 or emergency language will be repealed by operation of law on the following day.
  27. Amendment of subsection (e) adding "Sulfuryl Fluoride" refiled 7-21-2005 as an emergency; operative 8-2-2005 (Register 2005, No. 29). A Certificate of Compliance must be transmitted to OAL by 11-30-2005 or emergency language will be repealed by operation of law on the following day.  
Certificate of Compliance as to 7-21-2005 order transmitted to OAL 3-1-2005 and filed 12-15-2005 (Register 2005, No. 50).
  28. Amendment of subsection (e) filed 1-25-2008; operative 1-25-2008 pursuant to Government Code section 11343.4 (Register 2008, No. 4).
  30. Amendment of subsection (e) adding "Magnesium Phosphide" and "Phosphine Gas" filed 11-20-2008; operative 12-20-2008 (Register 2008, No. 47).

### § 6402. Exempt Materials.

The director designates and establishes pursuant to Section 14006.7 of the Food and Agricultural Code the pesticides stated in this section as exempt materials.

- (a) Spray adjuvants
- (b) Petroleum oils
- (c) Sulfur
- (d) Lime
- (e) Lime-sulfur
- (f) Sodium polysulfide
- (g) Certain copper compounds
  - (1) Bordeaux mixture
  - (2) Copper acetate
  - (3) Copper carbonate
  - (4) Copper hydroxide
  - (5) Copper-lime mixtures
  - (6) Copper linoleate
  - (7) Copper oleate
  - (8) Copper oxychloride
  - (9) Copper sulfate (basic, monohydrate, and pentahydrate)
  - (10) Copper oxide
  - (11) Copper calcium oxychloride
- (h) *Bacillus thuringiensis* Berliner

NOTE: Authority cited: Sections 11456 and 14006.7, Food and Agricultural Code. Reference: Section 14006.7, Food and Agricultural Code.

#### HISTORY

1. Editorial renumbering of former Section 2462 to Section 6402 filed 8-13-85 (Register 85, No. 33).
2. Repealer of subsection (g)(9), subsection renumbering and amendment of NOTE filed 3-21-95 as an emergency; operative 3-21-95 (Register 95, No. 12). A

3. Repealer of subsection (g)(9), subsection renumbering and amendment of NOTE refiled 7-13-95 as an emergency; operative 7-13-95 (Register 95, No. 28). A Certificate of Compliance must be transmitted to OAL by 11-10-95 or emergency language will be repealed by operation of law on the following day.
4. Repealer of subsection (g)(9), subsection renumbering and amendment of NOTE refiled 11-17-95 as an emergency; operative 11-17-95 (Register 95, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-16-96 or emergency language will be repealed by operation of law on the following day.
5. Repealer of subsection (g)(9), subsection renumbering and amendment of NOTE refiled 3-15-96 as an emergency; operative 3-15-96 (Register 96, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-13-96 or emergency language will be repealed by operation of law on the following day.
6. Reinstatement of subsection (g)(9), subsection renumbering and reinstatement of NOTE as they existed prior to emergency order of 3-21-95 by operation of Government Code section 11346.1(f) (Register 96, No. 39).
7. Change without regulatory effect amending NOTE filed 6-20-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 25).

## Article 2. Possession and Use Limitations

### § 6404. Certification Requirements.

NOTE: Authority cited: Sections 407, 14005 and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14006, Food and Agricultural Code.

#### HISTORY

1. Editorial renumbering and amendment of former Section 2465 first sentence to Section 6404 filed 8-13-85 (Register 85, No. 33).
2. Repealer filed 8-1-96; operative 8-31-96 (Register 96, No. 31).

### § 6406. Supervision Standards.

The certified applicator responsible for this supervision shall be aware of the conditions at the site of application and be available to direct and control the manner in which applications are made by the noncertified applicator. The availability of the certified applicator shall be directly related to the actual or potential hazard of the situation.

NOTE: Authority cited: Sections 11456, 14005 and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14006, Food and Agricultural Code.

#### HISTORY

1. Editorial renumbering of former Section 2465 to Section 6406 filed 8-13-85 (Register 85, No. 33).
2. Change without regulatory effect amending NOTE filed 6-20-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 25).

### § 6408. Private Applicator Certification.

NOTE: Authority cited: Sections 407, 14005 and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14006, Food and Agricultural Code.

#### HISTORY

1. Editorial renumbering and amendment of former Section 2452(h) and (j)(13) to Section 6408 filed 8-13-85 (Register 85, No. 33).
2. Repealer filed 8-1-96; operative 8-31-96 (Register 96, No. 31).

### § 6410. Pesticide Safety Information Series.

NOTE: Authority cited: Sections 407, 14005 and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14006, Food and Agricultural Code.

#### HISTORY

1. Editorial renumbering and amending of former section 2452(j)(9)(A) last sentence to section 6410 filed 8-13-85 (Register 85, No. 33).
2. Repealer filed 8-13-90; operative 8-13-90 (Register 90, No. 41). (See subsection (c) of 6724.)

### § 6412. Restricted Material Permit Requirements.

(a) Except as provided in this section and Sections 6400, 6414 and 6416, restricted materials shall be possessed or used only under permit of the commissioner or under his direct supervision, or under permit of the director in any county in which there is no commissioner.

(b) The person named in a restricted material permit is authorized to retain possession, except for sale, of materials for which the permit was valid after such permit expires, provided they are stored in accordance with Sections 6670 and 6672.

NOTE: Authority cited: Sections 11456, 14005 and 14102, Food and Agricultural Code. Reference: Sections 11501 and 14006, Food and Agricultural Code.

#### HISTORY

1. Editorial renumbering and amendment of former Section 2452(a) and (g) to Section 6412 filed 8-13-85 (Register 85, No. 33).
2. Amendment filed 1-4-89; operative 1-4-89 pursuant to Government Code Section 11346.2(d) (Register 89, No. 5).



Estate of DENIS H. GRISWOLD, Deceased.  
 NORMA B. DONER-GRISWOLD, Petitioner and  
 Respondent,  
 v.  
 FRANCIS V. SEE, Objector and Appellant.  
 No. S087881.

Supreme Court of California  
 June 21, 2001.

## SUMMARY

After an individual died intestate, his wife, as administrator of the estate, filed a petition for final distribution. Based on a 1941 judgment in a bastardy proceeding in Ohio, in which the decedent's biological father had confessed paternity, an heir finder who had obtained an assignment of partial interest in the estate from the decedent's half siblings filed objections. The biological father had died before the decedent, leaving two children from his subsequent marriage. The father had never told his subsequent children about the decedent, but he had paid court-ordered child support for the decedent until he was 18 years old. The probate court denied the heir finder's petition to determine entitlement, finding that he had not demonstrated that the father was the decedent's natural parent pursuant to Prob. Code, § 6453, or that the father had acknowledged the decedent as his child pursuant to Prob. Code, § 6452, which bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent/child relationship unless the parent or relative acknowledged the child and contributed to the support or care of the child. (Superior Court of Santa Barbara County, No. B216236, Thomas Pearce Anderle, Judge.) The Court of Appeal, Second Dist., Div. Six, No. B128933, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal. The court held that, since the father had acknowledged the decedent as his child and contributed to his support, the decedent's half siblings were not subject to the restrictions of Prob. Code, § 6452. Although no statutory definition of "acknowledge" appears in Prob. Code, § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had confessed

paternity in the 1941 bastardy proceeding, he had acknowledged the decedent under the plain terms of the statute. The court also held that the 1941 Ohio judgment established the decedent's biological father as his natural parent for purposes of intestate succession under Prob. Code, § 6453, subd. (b). Since the identical issue was presented both in the Ohio proceeding and in this California proceeding, the Ohio proceeding bound the parties in this proceeding. (Opinion by Baxter, J., with George, C. J., Kennard, Werdegar, and Chin, JJ., concurring. Concurring opinion by Brown, J. (see p. 925).)

## HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b, 1c, 1d) Parent and Child § 18--Parentage of Children-- Inheritance Rights--Parent's Acknowledgement of Child Born Out of Wedlock: Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half siblings of the decedent were precluded by Prob. Code, § 6452, from sharing in the intestate estate. Section 6452 bars a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative acknowledged the child and contributed to that child's support or care. The decedent's biological father had paid court-ordered child support for the decedent until he was 18 years old. Although no statutory definition of "acknowledge" appears in § 6452, the word's common meaning is: to admit to be true or as stated; to confess. Since the decedent's father had appeared in a 1941 bastardy proceeding in another state, where he confessed paternity, he had acknowledged the decedent under the plain terms of § 6452. Further, even though the father had not had contact with the decedent and had not told his other children about him, the record disclosed no evidence that he disavowed paternity to anyone with knowledge of the circumstances. Neither the language nor the history of § 6452 evinces a clear intent to make inheritance contingent upon the decedent's awareness of the relatives who claim an inheritance right.

[See 12 Witkin, Summary of Cal. Law (9th ed. 1990)]



Wills and Probate, §§ 153, 153A, 153B.]

(2) Statutes §. 29--Construction--Language--Legislative Intent.

In statutory construction cases, a court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. A court begins by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, the court presumes the lawmakers meant what they said, and the plain meaning of the language governs. If there is ambiguity, however, the court may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. In such cases, the court selects the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoids an interpretation that would lead to absurd consequences.

(3) Statutes § 46--Construction--Presumptions--Legislative Intent--Judicial Construction of Certain Language.

When legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, a court may presume that the Legislature intended the same construction, unless a contrary intent clearly appears.

(4) Statutes § 20--Construction--Judicial Function.

A court may not, under the guise of interpretation, insert qualifying provisions not included in a statute.

(5a, 5b) Parent and Child § 18--Parentage of Children--Inheritance Rights--Determination of Natural Parent of Child Born Out of Wedlock:Descent and Distribution § 3--Persons Who Take--Half Siblings of Decedent.

In a proceeding to determine entitlement to an intestate estate, the trial court erred in finding that the half-siblings of the decedent, who had been born out of wedlock, were precluded by Prob. Code. § 6453 (only "natural parent" or relative can inherit through intestate child), from sharing in the intestate estate. Prob. Code. § 6453, subd. (b), provides that a natural parent and child relationship may be established through Fam. Code. § 7630, subd. (c), if a court order declaring paternity was entered during the father's lifetime. The decedent's father had appeared in a 1941 bastardy proceeding in Ohio, where he con-

fessed paternity. If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. Since the Ohio bastardy proceeding decided the identical issue presented in this California proceeding, the Ohio proceeding bound the parties in this proceeding. Further, even though the decedent's mother initiated the bastardy proceeding prior to adoption of the Uniform Parentage Act, and all procedural requirements of Fam. Code. § 7630, may not have been followed, that judgment was still binding in this proceeding, since the issue adjudicated was identical to the issue that would have been presented in an action brought pursuant to the Uniform Parentage Act.

(6) Judgments § 86--Res Judicata--Collateral Estoppel--Nature of Prior Proceeding--Criminal Conviction on Guilty Plea.

A trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. The issue of the defendant's guilt was not fully litigated in the prior criminal proceeding; rather, the plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his or her guilt. The defendant's due process right to a civil hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources.

(7) Descent and Distribution § 1--Judicial Function.

Succession of estates is purely a matter of statutory regulation, which cannot be changed by the courts.

COUNSEL

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BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship

unless the parent or relative "acknowledged the child" and "contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory \*908 construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

#### Factual and Procedural Background

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner-Griswold. Doner-Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner-Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves, <sup>FN1</sup> objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

FN1 California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

See and Doner-Griswold stipulated to the following background facts pertinent to See's entitlement peti-

tion.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy complaint" <sup>FN2</sup> in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as \$5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

FN2 A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed. 1999) pp. 146, 1148.)

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold \*909 divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children—Margaret and Daniel—as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves

was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted Doner-Griswold's petition for review.

#### Discussion

(1a) Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent ...."

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner-Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

Because Griswold was born out of wedlock, three additional Probate Code provisions—section 6450, section 6452, and section 6453—must be considered.  
\*910

As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person, and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmar-

ried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child*. [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

#### A. Acknowledgement

As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

(2) In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272 [ \*911105 Cal.Rptr.2d 457, 19 P.3d 1196].) "We begin by examining the statutory language, giving the words



their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230 [ 99 Cal.Rptr.2d 570, 6 P.3d 228].) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272; *People v. Lawrence*, *supra*, 24 Cal.4th at pp. 230-231.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 272.) In such cases, we "' "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." "' (*Ibid.*)

(1b) Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge" is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed. 1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit".]) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly "confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances. <sup>FN3</sup> Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable con-

clusion on this record is that Draves acknowledged Griswold.

FN3 Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, \*912 test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 274; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93 [ 40 Cal.Rptr.2d 839, 893 P.2d 1160].)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats. 1983, ch. 842, § 55, p. 3084; Stats. 1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

Typically, disputes regarding parental acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved

without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation \*913 of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigarán* (1907) 150 Cal. 682, 688 [ 89 P. 833] [construing Civ. Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scallier* (1996) 51 Cal.App.4th 843 [ 59 Cal.Rptr.2d 346](*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10-month-old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession."

(Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child" and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano, supra*, 51 Cal.App.4th at pp. 845, 848.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identified. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano, supra*, 51 Cal.App.4th at p. 848.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, citing \*914 Code Civ. Proc., § 376, subd. (c), Health & Saf. Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano, supra*, 51 Cal.App.4th at p. 849.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ. Code, former § 230.)<sup>FN4</sup> Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

FN4 Former section 230 of the Civil Code provided: "The father of an illegitimate

child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ. Code (1872) § 230, p. 68, repealed by Stats. 1975, ch. 1244, § 8, p. 3196.)

In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828-829 [ 4 Cal.Rptr.2d 615, 823 P.2d 1216].)

In *Blythe v. Ayres* (1892) 96 Cal. 532 [ 31 P. 915], decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayers, supra*, 96 Cal. at p. 577.) We therefore employed the word's common meaning, which was "to own or admit the knowledge of." (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542 [ 108 P. 499].) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal.App.2d 385, 388-389 [ 330 P.2d 452]; see *Estate of Gird, supra*, 157 Cal. at pp. 542-543), but, as discussed, the word retains virtually the same meaning in general usage today—"to admit to be true or as stated; confess." (Webster's New World Dict., *supra*, at p. 12; see Webster's 3d New Internat. Dict., *supra*, at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82 [ 183 P. 552, 7 A.L.R. 313], for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case had contained additional evidence of the father's acknowledgement, we focused our attention

on his "one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97-98.)

Similarly, in *Estate of Gird, supra*, 157 Cal. 534, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird, supra*, 157 Cal. at pp. 542-543.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391 [ 181 P.2d 741], a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393-394.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452. <sup>FN5</sup> (*Wong v. Young, supra*, 80 Cal.App.2d at p. 394; see also *Estate of De-Laveaga* (1904) 142 Cal. 158, 168 [ 75 P. 790] [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young, supra*, 80 Cal.App.2d at p. 394.)

FN5 Section 255 of the former Probate Code provided in pertinent part: "Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother; and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock ...." (*Estate of Ginochio* (1974) 43 Cal.App.3d 412, 416 [ 117

Cal.Rptr. 565, italics omitted.)

Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner to that provision was enacted in 1985. (See former § 6408.5, added by Stats. 1983, ch. 842, § 55, p. 3084, and amended by Stats. 1984, ch. 892, § 42, p. 3001.) (3) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the \*916 same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437 [ 35 Cal.Rptr.2d 155]; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007 [ 55 Cal.Rptr.2d 760, 920 P.2d 705]; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557 [ 147 Cal.Rptr. 165, 580 P.2d 665].) (1c) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former § 255, as well) suffice for purposes of intestate succession under section 6452.<sup>FN6</sup>

FN6 Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner-Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

Doner-Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayres*, *supra*, 96 Cal. 532, *Estate of*

*Wilson*, *supra*, 164 Cal.App.2d 385, and *Estate of Maxey* (1967) 257 Cal.App.2d 391 [ 64 Cal.Rptr. 837].

In *Blythe v. Ayres*, *supra*, 96 Cal. 532, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres*, *supra*, 96 Cal. at p. 577.)

In *Estate of Wilson*, *supra*, 164 Cal.App.2d 385, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute. \*917

In *Estate of Maxey*, *supra*, 257 Cal.App.2d 391, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner-Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193

Cal. 225, 277 [ 223 P. 974]. In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano, supra*, 51 Cal.App.4th 843 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird, supra*, 157 Cal. at pp. 542-543; *Wong v. Young, supra*, 80 Cal.App.2d at pp. 393-394.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey, supra*, 257 Cal.App.2d at p. 397) or "shouted ... from the house-tops" (*Blythe v. Ayres, supra*, 96 Cal. at p. 577).

Doner-Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano, supra*, 51 Cal.App.4th at p. 848.) (4) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [ 45 Cal.Rptr.2d 279, 902 P.2d 297].)

(1d) Second, even though *Blythe v. Ayres, supra*, 96 Cal. 532, *Estate of Wilson, supra*, 164 Cal.App.2d 385, and *Estate of Maxey, supra*, \*918257 Cal.App.2d 391, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions:

(1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of DeLaveaga, supra*, 142 Cal. at pp. 168-169 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner-Griswold. (See *Lozano, supra*, 51 Cal.App.4th at pp. 848-849; compare with Fam. Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child".])

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner-Griswold emphasizes the circumstance that Draves did not tell his two other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird, supra*, 193 Cal. 225, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260-261.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact



of paternity. " (*Id.* at p. 276.) \*919

Unlike the situation in *Estate of Baird*, Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante*, fn. 3), or that he affirmatively denied he was Griswold's father despite his confession of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner-Griswold's reliance on *Estate of Baird* is misplaced.

*Estate of Ginocchio*, *supra*, 43 Cal.App.3d 412, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante*, fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginocchio*, *supra*, 43 Cal.App.3d at pp. 416-417.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner-Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of the child" born out of wedlock.<sup>FN7</sup> In construing

former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099 [ 9 Cal.Rptr.2d 475] held that a half sibling was a "natural brother or sister" within the meaning of such \*920 exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats. 1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as amended June 3, 1996, pp. 17-18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995-1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.)

FN7. Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child." (Stats. 1990, ch. 79, § 14, p. 722, italics added.)

This legislative history does not compel Doner-Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives.

(See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17-18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby subjecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran*, *supra*, 7 Cal.App.4th 1099, and to substantially reduce the risk noted by the Commission. <sup>FN8</sup>\*921

FN8 We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544 [740 N.E.2d 259, 262-263].) Here, however, Doner-Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ. Code, §§ 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493-496 [ 159 P.2d 643, 162 A.L.R. 606] [where father died domiciled in California, his out-of-wedlock son could inherit where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

#### B. Requirement of a Natural Parent and Child Relationship

(5a) Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession. <sup>FN9</sup> (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474-475 [ 3 Cal.Rptr.2d 536].) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam. Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

FN9 Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used in this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code, <sup>FN10</sup> if a court order was entered during the father's lifetime declaring paternity. <sup>FN11</sup> (§ 6453, subd. (b)(1).)

FN10 Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the

mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664."

FN11 See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he \*922 argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (Ruddock v. Ohls (1979) 91 Cal.App.3d 271, 276 [154 Cal.Rptr. 87].) California courts generally recognize the importance of a final determination of paternity. (E.g., Weir v. Ferreira (1997) 59 Cal.App.4th 1509, 1520 [70 Cal.Rptr.2d 33](Weir); Guardianship of Claralyn S. (1983) 148 Cal.App.3d 81, 85 [195 Cal.Rptr. 646]; cf. Estate of Camp (1901) 131 Cal. 469, 471 [63 P. 736] [same for adoption determinations].)

Doner-Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See Weir, *supra*, 59 Cal.App.4th at pp. 1516-1517, 1521.) Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a

bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (Birman v. Sproat (1988) 47 Ohio App.3d 65 [546 N.E.2d 1354, 1357] [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child, <sup>FN12</sup> satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (Beck v. Jolliff (1984) 22 Ohio App.3d 84 [489 N.E.2d 825, 829]; see also Estate of Hicks (1993) 90 Ohio App.3d 483 [629 N.E.2d 1086, 1088-1089] [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

FN12 The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See State ex rel. Discus v. Van Dorn (1937) 56 Ohio App. 82 [8 Ohio Op. 393, 10 N.E.2d 14, 16].)

Next, Doner-Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. \*923 It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner-Griswold relies upon Pease v. Pease (1988) 201 Cal.App.3d 29 [246 Cal.Rptr. 762](Pease). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a



criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. (6) The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appellant's due process right to a hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, fn. omitted.)

(5b) Even assuming, for purposes of argument only, that *Pease's* reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19 [6 Ohio Op. 501, 4 N.E.2d 151, 152] [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease, supra*, 201 Cal.App.3d at p. 34.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner-Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record. \*924

Finally, Doner-Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding

initiated by Griswold's mother forecloses Doner-Griswold's relitigation of the parentage issue.

Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir, supra*, 59 Cal.App.4th at p. 1521.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14 [ 97 S.Ct. 1459, 1466, 52 L.Ed.2d 31] [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

#### Disposition

(7) "Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts." (*Estate of De Cigarán, supra*, 150 Cal. at p. 688.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

George, C. J., Kennard, J., Werdegar, J., and Chin, J., concurred. \*925 BROWN, J.

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must affirm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession—to carry out "the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss. 1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own" in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here. \*926

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Estate of Griswold

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END OF DOCUMENT

THE PEOPLE, Respondent,  
v.  
DAVID KNOWLES, Appellant. FN\*  
No. CR. 4992.

Supreme Court of California  
Apr. 21, 1950

FN\* Reporter's Note: In the superior court this case was entitled *People v. Caryl Chessman and David Knowles*. (Los Angeles Superior Court No. 117963.)

#### HEADNOTES

**(1) Criminal Law § 1333--Appeal--Questions of Law and Fact--Identity:**

It is for the trier of facts to weigh the evidence relating to identification of the accused and to resolve the conflicts therein, and the trier's acceptance of an identification not inherently improbable must be upheld if there is substantial evidence to support it, even though the contradictory evidence, if believed, would have induced a contrary result.

**(2) Kidnapping § 2--For Purpose of Robbery.**

Pen. Code, § 209, applies not only to orthodox kidnapping for ransom or robbery, but also to detention of the victim during the commission of armed robbery. Under that statute one accused of armed robbery who has inflicted bodily harm on the victim, can be charged with a capital offense.

**(3) Kidnapping § 2--For Purpose of Robbery.**

The 1933 amendment of Pen. Code, § 209, abandoned the requirement of movement of the victim that characterized the offense of kidnapping proscribed by that section before the amendment, and made the act of seizing for ransom, reward, or to commit extortion or robbery a felony.

**(4) Kidnapping § 2--For Purpose of Robbery.**

Evidence that defendant restrained a store owner and his clerk in the stockroom for about 15 or 20 minutes and inflicted bodily harm on the owner during the detention, while the codefendant rifled the cash register, showed that defendants seized and confined the

two victims with intent to hold and detain them, or that they held and detained such individuals to commit robbery, within the meaning of Pen. Code, § 209.

**(5) Kidnapping § 2--For Purpose of Robbery.**

Pen. Code, § 209, as amended in 1933, is not restricted to acts of seizure and confinement incident to a traditional act of kidnapping, but includes also the seizure and confinement of an individual for the purpose of robbery.

**(6) Kidnapping § 2--For Purpose of Robbery.**

Subject to the constitutional prohibition of cruel and unusual punishment, the Legislature may define and punish offenses as it see fit, and hence may, as in Pen. Code, § 209, define and punish as kidnapping an offense that other states regard only as armed robbery.

**(7) Kidnapping § 2--For Purpose of Robbery.**

The statutory definition of the offenses proscribed by Pen. Code, § 209, is not rendered uncertain or ambiguous because some of the prohibited acts are not ordinarily regarded as kidnapping, and the Supreme Court should not impute to the statute a meaning not rationally supported by its wording.

**(8) Kidnapping § 2--For Purpose of Robbery.**

The will of the Legislature must be determined from the statutes, and since Pen. Code, § 209, clearly prohibits and punishes the offense of kidnapping for the purpose of robbery, there is no basis for supposing that the Legislature did not mean what it said.

**(9) Statutes § 112(2)--Construction--Power and Duty of Courts--Adding to Statute.**

If the words of a statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.

See 23 Cal.Jur. 29; 50 Am.Jur. 261.

**(10) Kidnapping § 2--For Purpose of Robbery.**

Pen. Code, § 209, in providing that every person "who seizes, confines ... or who holds or detains any individual ... to commit extortion or robbery ... is guilty of a felony," sets forth the conditions as alternative ones, and only one need be present to consti-

tute the offense.

(11) Kidnapping § 2--For Purpose of Robbery.  
Pen. Code, § 209, does not require that kidnapping be premeditated as part of a robbery, or that robbery be premeditated as part of a kidnapping.

(12) Kidnapping § 2--For Purpose of Robbery.  
Where the seizure and restraint are clearly forcible and the purpose of the seizure is robbery, the offense is kidnapping within the meaning of Pen. Code, § 209.

(13a, 13b) Criminal Law § 144--Former Jeopardy--Identity of Offenses.

Where defendant's convictions of armed robbery and kidnapping for the purpose of robbery were predicated on the commission of a single act, and he committed no act of seizure or confinement other than that necessarily incident to the commission of robbery, he cannot be subjected to punishment for both offenses, but must under Pen. Code, § 654, be punished only once; and since the Legislature prescribed greater punishment for the violation of Pen. Code, § 209, relating to kidnapping for the purpose of robbery, it must be deemed to have considered that the more serious offense, and the convictions thereunder must be the ones affirmed.

See 7 Cal.Jur. 959; 15 Am.Jur. 53.

(14) Criminal Law § 144--Former Jeopardy--Identity of Offenses.

If only a single act is charged as the basis of multiple convictions, only one conviction can be affirmed, notwithstanding that the offenses are not necessarily included offenses. It is the singleness of the act and not of the offense that is determinative.

#### SUMMARY

APPEAL from judgments of the Superior Court of Los Angeles County and from an order denying a new trial. Harold B. Landreth, Judge. Judgments affirmed in part and reversed in part. Order affirmed.

Prosecution for armed robbery and for kidnapping for purpose of robbery. Judgments of conviction of kidnapping for purpose of robbery, affirmed; judgments of conviction of armed robbery, reversed.

#### COUNSEL

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Fred N. Howser, Attorney General, and Henry A. Dietz, Deputy Attorney General, for Respondent.

TRAYNOR, J.

Defendant and Caryl Chessman were jointly charged by information with two counts of armed robbery, two counts of kidnapping for the purpose of robbery, and one count of grand theft. Defendant waived a jury and was tried separately. The trial court found him guilty on both counts of robbery and both counts of kidnapping, but not guilty on the count of grand theft. It determined that one kidnapping involved bodily harm to the victim and sentenced appellant to life imprisonment without possibility of parole. The sentences on the other offenses were to run concurrently. Defendant appeals from the judgment of conviction and the order denying his motion for a new trial, contending that the evidence is insufficient to establish his guilt and that armed robbery is not punishable as kidnapping under Penal Code, section 209. \*178

On January 23, 1948, at about 6:30 p.m., defendant and Chessman entered a clothing store in Redondo Beach. There was no one in the store except the owner Melvin Waisler and Joe Leshner, a clerk. Defendant asked to look at overcoats and Leshner showed him several while Chessman sat nearby and Waisler walked around the store. The accused stood in a well-lighted area, and Waisler and Leshner testified that they were able to get a good look at them. Shortly thereafter, defendant and Chessman displayed guns, saying "this is a stick-up, put up your hands." They compelled Waisler and Leshner to enter a stockroom in the rear of the store and face the wall, and then took their wallets. Defendant held them at gunpoint in the stockroom while Chessman took some clothes and attempted to open the cash register. He returned to the stockroom, forced Leshner to come back and open the register for him, and took money therefrom, after which he returned Leshner to the stockroom. Defendant struck Waisler on the head with the barrel of his gun, and then left with Chessman. Waisler and Leshner ran to the front of the store in time to see defendant and Chessman escaping in a gray 1946 Ford coupe. They then notified the police.

About an hour later, two police officers in a radio car observed the gray Ford proceeding in a northerly direction on Vermont Avenue in Los Angeles, about half a block south of Hollywood Boulevard. They pursued the Ford and saw Chessman, who was driving, turn into a service station, circle it and drive out. The Ford proceeded south at high speed for about a mile, and when Chessman then attempted a U-turn the officers drove their car into the side of the Ford. Both men ran from the car but were quickly caught. The officers found the stolen clothing and a .45 automatic in the rear of the Ford. Chessman had about \$150 on his person and defendant \$8.00.

To establish an alibi, defendant produced Miss Ann Stanfield who testified that he visited her at her residence in Hollywood at about 6 p.m. on the evening of the robbery and that he remained there for about 15 or 20 minutes. If her testimony were true, appellant could not have been in Redondo Beach, 23 miles distant, at the time of the robbery. Defendant testified that he met Chessman by appointment at the corner of Vermont Avenue and Sunset Boulevard at about 7 p.m. on the evening of the robbery. He testified that there was a man in the car at the time introduced to him by Chessman as Joe, and that Joe rode with them when the police \*179 pursuit began, but got out of the car at the service station and ran into the rest room while Chessman and appellant drove off. Chessman corroborated defendant's story.

The foregoing testimony was contradicted in every material detail by witnesses for the prosecution. Waisler and Leshner positively identified defendant as a participant in the robbery. The officers testified that they had the car in plain view at all times, that there were only two occupants, and that they saw none leave it at the station. The direct conflict in the evidence was resolved by the trial court in favor of the People.

(1) Defendant contends that Waisler's and Leshner's identification of him does not establish his guilt beyond a reasonable doubt, because the identification was not by means of a standard police line-up, and because they made the identification after being informed by the police that the robbers had been caught and after they saw defendant's picture in the newspapers upon his arrest in company with Chessman, "a famous bandit." It is for the trier of facts to weigh the

evidence relating to identification and to resolve the conflicts therein. His acceptance of an identification not inherently improbable must be upheld if there is substantial evidence to support it, even though the contradictory evidence, if believed, would have induced a contrary result. (*People v. Waller*, 14 Cal.2d 693, 700 [96 P.2d 344]; *People v. Braun*, 14 Cal.2d 1, 5 [92 P.2d 402]; *People v. Farrington*, 213 Cal. 459, 463 [2 P.2d 814]; *People v. Ash*, 88 Cal.App.2d 819, 825 [199 P.2d 711]; *People v. Alexander*, 78 Cal.App.2d 954, 957 [178 P.2d 813]; *People v. Tanner*, 77 Cal.App.2d 181, 186 [175 P.2d 26]; *People v. Deal*, 42 Cal.App.2d 33, 36 [108 P.2d 103].) Substantial evidence of defendant's guilt leaves his first contention without merit.

(2) Defendant also contends that the crime of which he was convicted is only armed robbery, and that Penal Code section 209 cannot properly be construed as applicable to that crime. In his view, the statute applies only to orthodox kidnapping for ransom or robbery, not to the detention of the victim during the commission of armed robbery. This interpretation of section 209 finds no support in its language or legislative history; it could not be sanctioned without a *pro tanto* repeal by judicial fiat.

Defendant concedes that the language of the statute does not in its ordinary sense support his interpretation. Under that language one accused of armed robbery who has inflicted \*180 bodily harm on the victim, can be charged with a capital offense. Reasonable men may regard the statute as unduly harsh and therefore unwise; if they do, they should address their doubts to the Legislature. It is not for the courts to nullify a statute merely because it may be unwise. "We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it." (Cardozo, J., in *Anderson v. Wilson*, 289 U.S. 20, 27 [53 S.Ct. 417, 77 L.Ed. 1004].)

(3) Before its amendment in 1933, Penal Code, section 209 provided that "Every person who maliciously, forcibly or fraudulently takes or entices away any person with intent to restrain such person and thereby to commit extortion or *robbery*, or exact from the relatives or friends of such person any money or valuable thing" (*italics added*) shall be punished by imprisonment for life or for a minimum of ten years.

The 1933 amendment made the punishment, where the victim suffered bodily harm, death or life imprisonment without possibility of parole. At the same time, however, the Legislature redefined the offense to encompass "Every person who *seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any individual by any means whatsoever with intent to hold or detain, or who holds and detains*, such individual for ransom, reward or to commit extortion or robbery. ..." (Italics added.) The addition by amendment of the italicized words is a deliberate abandonment of the requirement of movement of the victim that characterized the offense of kidnapping proscribed by section 209 before the amendment. By that amendment the Legislature "changed the offense theretofore described in section 209 from one which required the asportation of the victim to one in which the act of seizing for ransom, reward or to commit extortion or robbery became a felony." (*People v. Raucha*, 8 Cal.App.2d 655, 663 [47 P.2d 1108].)

(4) The trial court found on substantial evidence that defendant restrained Waisler and Leshner in the stockroom for about fifteen or twenty minutes and inflicted bodily harm on Waisler during the detention, while his confederate Chessman rifled the cash register. That conduct is clearly covered by the words of section 209 given their plain meaning. Webster's New International Dictionary, Unabridged Edition (1943), defines "seize" as "To take possession of by force," and "confine" as "To restrain within limits; to limit; ... to \*181 shut up; imprison; to put or keep in restraint ... to keep from going out." Clearly a person is taken possession of by force when he is compelled to enter a room at the point of a gun, as in this case. He is also restrained within limits, shut up, and kept from going out when he is forced to remain in that room for fifteen or twenty minutes. That he is held and detained thereby and that such detention was the purpose of the seizure and confinement is readily apparent. There can be no doubt therefore that defendant and Chessman *seized* and *confined* the two victims with intent to hold and detain them or that they *held and detained* "such individual[s]" (the victims seized and confined) to commit robbery.

(5) Defendant concedes that asportation of the victim is not an essential element of section 209, but he contends that the Legislature intended that the statute apply only to acts of seizure and confinement inci-

dent to a "traditional act of kidnapping." The Legislature, however, has broadened the statutory prohibition to include not only the seizure and confinement of an individual in a traditional act of kidnapping (for ransom or reward), but also the seizure and confinement of an individual for the purpose of robbery, a purpose foreign to "traditional kidnapping" as defined by defendant. It is therefore idle to suggest that conduct aptly described by the statute is not punishable thereunder. (*People v. Raucha*, *supra*, 8 Cal.App.2d 655, 663.)

(6) There is no question that the Legislature has the power to define kidnapping broadly enough to include the offense here committed and to prescribe the punishment specified in section 209. Subject to the constitutional prohibition of cruel and unusual punishment, the Legislature may define and punish offenses as it sees fit. (*People v. Lavine*, 115 Cal.App. 289, 297 [1 P.2d 496], appeal dismissed, *Lavine v. California*, 286 U.S. 528 [52 S.Ct. 500, 76 L.Ed. 1270].) It may define and punish as kidnapping an offense that other states regard only as armed robbery. Section 209 establishes that definition as the law of California. (*People v. Tanner*, 3 Cal.2d 279, 296 [44 P.2d 324].) (7) The statutory definition of the proscribed offenses is not rendered uncertain or ambiguous because some of the prohibited acts are not ordinarily regarded as kidnapping. When the Legislature has made such acts punishable as kidnapping, this court should not impute to the statute a meaning not rationally supported by its wording. "The judgment of the court, if I interpret the reasoning aright, does not \*182 rest upon a ruling that Congress would have gone beyond its power if the purpose that it professed was the purpose truly cherished. The judgment of the court rests upon the ruling that another purpose, not professed, may be read beneath the surface, and by the purpose so imputed, the statute is destroyed. Thus the process of psycho-analysis has spread to unaccustomed fields. There is a wise and ancient doctrine that a court will not inquire into the motives of a legislative body." (Cardozo, J., dissenting in *United States v. Constantine*, 296 U.S. 287, 298-299 [56 S.Ct. 223, 80 L.Ed. 233]; *Smith v. Union Oil Co.*, 166 Cal. 217, 224 [135 P. 966]; *City of Eureka v. Diaz*, 89 Cal. 467, 469-470 [26 P. 961]; *Callahan v. City and County of San Francisco*, 68 Cal.App.2d 286, 290 [156 P.2d 479].) (8) The will of the Legislature must be determined from the statutes; intentions cannot be ascribed to it at odds with the intentions articulated in the statutes. Section 209



clearly prohibits and punishes the offense committed by defendant; there is no basis for supposing that the Legislature did not mean what it said.

An insistence upon judicial regard for the words of a statute does not imply that they are like words in a dictionary, to be read with no ranging of the mind. They are no longer at rest in their alphabetical bins. Released, combined in phrases that imperfectly communicate the thoughts of one man to another, they challenge men to give them more than passive reading, to consider well their context, to ponder what may be their consequences. Speculation cuts brush with the pertinent question: what purpose did the Legislature seek to express as it strung those words into a statute? The court turns first to the words themselves for the answer. It may also properly rely on extrinsic aids, the history of the statute, the legislative debates, committee reports, statements to the voters on initiative and referendum measures. Primarily, however, the words, in arrangement that superimposes the purpose of the Legislature upon their dictionary meaning, stand in immobilized sentry, reminders that whether their arrangement was wisdom or folly, it was wittingly undertaken and not to be disregarded.

"While courts are no longer confined to the language [of the statute], they are still confined by it. Violence must not be done to the words chosen by the legislature." (Frankfurter, *Some Reflections on the Reading of Statutes*, 47 *Columb.L.Rev.* 527, 543.) A standard of conduct prescribed by a statute would hardly command acceptance if the statute were \*183 given an interpretation contrary to the interpretation ordinary men subject to the statute would give it. "After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him." (*Addison v. Holly Hill Fruit Products Co.*, 322 U.S. 607, 618 [64 S.Ct. 1215, 88 L.Ed. 1488]; see, also, *McBoyle v. United States*, 283 U.S. 25, 27 [51 S.Ct. 340, 75 L.Ed. 816].) (9) If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Matson Nav. Co. v. United States*, 284 U.S. 352, 356 [52 S.Ct. 162, 76 L.Ed. 336]; *State Board of Equalization v. Young's Market Co.*, 299 U.S. 59, 62-64 [57 S.Ct. 77, 81

*L.Ed.* 38]; *United States v. Johnson*, 221 U.S. 488, 496 [31 S.Ct. 627, 55 L.Ed. 823]; *In re Miller*, 31 Cal.2d 191, 198-199 [ 187 P.2d 722]; *Caminetti v. Pacific Mut. Life Ins. Co.*, 22 Cal.2d 344, 353-354 [ 139 P.2d 908]; *Seaboard Acc. Corp. v. Shay*, 214 Cal. 361, 369 [ 5 P.2d 882]; *People v. Stanley*, 193 Cal. 428, 431 [225 P. 1]; *Mulville v. City of San Diego*, 183 Cal. 734, 739 [ 192 P. 702]; *Gordon v. City of Los Angeles*, 63 Cal.App.2d 812, 816 [ 147 P.2d 961]; *People v. One 1941 Buick 8*, 63 Cal.App.2d 661, 667 [ 147 P.2d 401]; *People v. Pacific Guano Co.*, 55 Cal.App.2d 845, 848-849 [ 132 P.2d 254]; see, also; *De Sloovere, The Equity and Reason of a Statute*, 21 *Cornell L.Quar.* 591, 605, *Contextual Interpretation of Statutes*, 5 *Fordham L.Rev.* 219, 221, 230; *Extrinsic Aids in the Interpretation of Statutes*, 88 *Univ. of Penn. L.Rev.* 527, 531, 538; *Cox, Learned Hand and the Interpretation of Statutes*, 60 *Harv.L.Rev.* 370, 374-375; *Jones, Statutory Doubts and Legislative Intention*, 40 *Columb.L.Rev.* 957, 964, 974, and *Extrinsic Aids in the Interpretation of Federal Statutes*, 25 *Wash.U.L.Q.* 2, 8, 9.) Certainly the court is not at liberty to seek hidden meanings not suggested by the statute or by the available extrinsic aids. (*In re Miller*, 31 Cal.2d 191, 198-199 [ 187 P.2d 722], and cases cited therein.)

Defendant's interpretation of the statute rests entirely upon speculation. It finds no support in the statutory language or its contextual implications or in the legislative history of the statute. He relies upon the wave of public indignation at the widespread kidnapping for ransom during the early 1930's as a motivation for the statute. He takes no account of the equally rampant and terrorizing armed \*184 robbery that compelled the attention of state legislatures at the same time. There is no reason to suppose that the latter evil was not in the minds of the authors of the statute, particularly in view of the retention of the "to commit ... robbery" provision. The contention that only orthodox kidnapping for ransom was contemplated by the statute is hardly tenable in view of the broad scope of the federal Lindbergh Law that served as a model for the revision of section 209. The federal statute did not limit its prohibition to kidnapping for the purpose of ransom or reward. It (Act of May 18, 1934, ch. 301, 48 Stat. 781, 18 U.S.C. § 408a) provides a discretionary death penalty for the transportation in interstate commerce of a person "held for ransom or reward or otherwise." (Italics added.) The holding of an officer to prevent the arrest of his captor, although admittedly not within the concept of

orthodox kidnapping for ransom or pecuniary benefit, was held punishable under the statute. (*Gooch v. United States*, 297 U.S. 124, 126 [56 S.Ct. 395, 80 L.Ed. 522].)

Since 1901, the Legislature has included robbery as one of the purposes of kidnapping prohibited under section 209. There is no indication that in making the penalty therefor more severe and the concept of the crime so broad that movement of the victim was no longer required, the Legislature intended to apply these provisions only to kidnapping for ransom or reward. "Familiar legal expressions in their familiar legal sense" (*Henry v. United States*, 251 U.S. 393, 395 [40 S.Ct. 185, 64 L.Ed. 322]) used by the Legislature indicates the contrary, that the broad coverage was intended.

Given the unequivocal language of the statute, there is no merit to defendant's contention that the Legislature did not intend to change the substantive nature of the existing crime. Certainly that contention finds no support in any of the cases decided under the statute. In *People v. Tanner*, 3 Cal.2d 279 [44 P.2d 324], the defendants forced the victim to go from his driveway to his house at gunpoint and there questioned him about the location of money that they had heard was on the premises. On appeal from their conviction under section 209, they contended that their offense was only armed robbery and that the Legislature did not intend to punish it under a kidnapping statute. The court affirmed the conviction, holding that the Legislature is empowered to define criminal offenses as it sees fit and that the statute clearly indicates an intention to punish standstill kidnapping under its provisions. It is suggested that under the statute there must \*185 be movement of the victim, under a pre-conceived plan for protracted detention to obtain property that would not be available in the course of ordinary armed robbery. Defendant seeks to read into the statute a condition that the victim be moved a substantial distance. The statute itself is a refutation of that contention. Movement of the victim is only one of several methods by which the statutory offense may be committed. The statute provides that "Every person who seizes, confines ... or who holds or detains [any] individual ... to commit extortion or robbery ... is guilty of a felony." (10) It is contended that the statute cannot properly be read with the omissions indicated, for all that is then left is "cautious legal verbiage" of no significance. The statute,

however, sets forth the conditions as alternative ones, and only one need be present. Thus, under a statute providing that the victim be seized or abducted, a defendant who has seized a victim cannot claim exemption from the statute because he has not also abducted him.

(11) There is no condition in the statute that kidnapping be premeditated as part of a robbery or that robbery be premeditated as part of a kidnapping. In *People v. Brown*, 29 Cal.2d 555, 558- 559 [ 176 P.2d 929], this court rejected an attempt to read into the statute a condition that the robbery be premeditated, where the defendant abducted a woman to commit rape. After raping her, he took her wristwatch. A finding that the victim suffered bodily harm was supported both by the forcible rape and by the fact that the defendant subsequently struck her. The judgment imposing the death penalty was affirmed on the ground that the taking of the wristwatch made the abduction kidnapping to commit robbery, even if the original objective were rape and the intent to rob was only an afterthought. (See, also, *People v. Kristy*, 4 Cal.2d 504 [50 P.2d 798]; *People v. Holt*, 93 Cal.App.2d 473, 476 [ 209 P.2d 94]; *People v. Melendrez*, 25 Cal.App.2d 490 [ 77 P.2d 870]; *People v. Johnston*, 140 Cal.App. 729 [35 P.2d 1074].)

*Chatwin v. United States*, 326 U.S. 455 [66 S.Ct. 233, 90 L.Ed. 198], affords no support for appellant's contention. In that case, a conviction under the Federal Kidnapping Act of a member of a plural marriage sect for the interstate transportation of his 15-year-old "celestial spouse" was reversed on the ground that the record failed to show that the girl was held against her will as required by the act. "But the broadness \*186 of the statutory language does not permit us to tear the words out of their context, using the magic of lexicography to apply them to unattractive or immoral situations lacking the involuntariness of seizure and detention which is the very essence of the crime of kidnapping. Thus, if this essential element is missing, the act of participating in illicit relations or contributing to the delinquency of a minor or entering into a celestial marriage, followed by the interstate transportation, does not constitute a crime under the Federal Kidnapping Act." (*Chatwin v. United States*, 326 U.S. 455, 464 [66 S.Ct. 233, 90 L.Ed. 198], Italics added.) There is no intimation that had the restraint been forcible, the transportation would not have been within the broad meaning of the "or



otherwise" clause of the federal act. (12) Similarly, in a case like the present one, where the seizure and restraint are clearly forcible and the purpose of the seizure is robbery, the offense is kidnapping within the meaning of section 209.

(13a) Defendant's convictions for violation of Penal Code, section 209 (kidnapping) and Penal Code, section 211 (robbery) both rest upon the commission of a single act: the taking of personal property in the possession of Waisler and Leshner from their persons and in their immediate possession by force and fear<sup>FN\*</sup>, namely, by seizing and confining them under force of arms. The seizure and confinement were an inseparable part of the robbery. Penal Code section 654 provides: "An act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other." If the two offenses committed by the same act are such that the commission of one is necessarily included in the commission of the other, the defendant can be punished only for the commission of one. (*People v. Greer*, 30 Cal.2d 589, 596 [184 P.2d 512]; "Where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily included offense." The use of a minor to transport narcotics (Health & Saf. Code, § 11714) necessarily contributes to the delinquency of that minor (Welf. & Inst. Code, § 702). Section 654 requires \*187 that the defendant be punished only for one of those offenses. (*People v. Krupa*, 64 Cal.App.2d 592, 598 [149 P.2d 416].) Similarly the commission of statutory rape necessarily contributes to the delinquency of the minor victim and a defendant cannot be punished for violation of both statutes on the basis of the one act. (*People v. Greer*, 30 Cal.2d 589, 596 [184 P.2d 512].)

FN\* Penal Code, section 211: "Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

(14) But the applicability of section 654 is not limited to necessarily included offenses. If a course of criminal conduct causes the commission of more than one offense, each of which can be committed without

committing any other, the applicability of section 654 will depend upon whether a separate and distinct act can be established as the basis of each conviction, or whether a single act has been so committed that more than one statute has been violated. If only a single act is charged as the basis of the multiple convictions, only one conviction can be affirmed, notwithstanding that the offenses are not necessarily included offenses. It is the singleness of the act and not of the offense that is determinative. A statute providing for the punishment of any person operating a "still" or having a "still" in his possession (Stats. 1927, ch. 277, p. 497) states two distinct offenses: operation and possession. If, however, the only act of possession is that necessarily incident to the operation, only one conviction can be affirmed. (*People v. Clemett*, 208 Cal. 142, 146 [280 P. 681].) An unsuccessful attempt at murder by use of a bomb may form the basis for convictions of attempted murder, assault with intent to kill, or malicious use of explosives. Insofar as only a single act is charged as the basis of the convictions, however, the defendant can be punished only once. (*People v. Kynette*, 15 Cal.2d 731, 762 [104 P.2d 794].) The possession of narcotics is an offense distinct from the transportation thereof, but there can be only one conviction when a single act of transportation is proved and the only act of possession is that incident to the transportation. (*Schroeder v. United States*, 7 F.2d 60, 65.) In *People v. Greer*, 30 Cal.2d 589, 600 [184 P.2d 512], the defendant was charged with the violation of Penal Code, section 261(1), and Penal Code, section 288. Both charges were based upon a single act of sexual intercourse with a girl under 14. It is possible to violate either statute without violating the other, and this court there stated that if the commission of separable and distinct acts were charged, although they might have been committed at relatively the same time, the convictions of both offenses would \*188 be upheld. If, as in that case, however, the violation of both statutes is predicated on the commission of a single act of sexual intercourse, Penal Code, section 654, requires that the defendant be punished under only one statute.

The distinction recognized in *People v. Greer*, *supra*, has permitted the affirmance of multiple convictions in cases in which separate and divisible acts have been proved as the basis of each conviction, even though those acts were closely connected in time and were part of the same criminal venture. In *People v. Slobodion*, 31 Cal.2d 555, 561-563 [191 P.2d 1], this

court sustained convictions under Penal Code, sections 288 and 288a, based upon a course of conduct with a young girl where the commission of a separate act as the basis of each offense was proved. (See, also, *People v. Pickens*, 61 Cal.App. 405, 407 [214 P. 1027]; *People v. Ciulla*, 44 Cal.App. 725 [187 P. 49].) In *People v. Ciulla*, *supra*, the court sustained convictions for kidnapping under Penal Code, section 207, and forcible rape, both offenses having been committed upon the same girl, for the reason that the acts charged were separate and divisible and were connected only by the fact that they were part of a single criminal venture.

(13b) Since defendant's convictions were predicated upon the commission of a single act, he cannot be subjected to punishment for both offenses under the rule of *People v. Greer*, *supra*. Defendant committed no act of seizure or confinement other than that necessarily incident to the commission of robbery. Waisler and Leshner were restrained only while the actual taking of personal property was being accomplished. No separate act not essential to the commission of the robbery was charged or proved. For that reason, there is no inconsistency between this case and those in which this court has affirmed multiple convictions of kidnapping and robbery. In each of those cases, the acts that formed the basis of the kidnapping conviction were separate from those that involved the actual taking of property. In *People v. Brown*, 29 Cal.2d 555 [176 P.2d 929], the defendant forced his victim to drive a considerable distance to the outskirts of the city where they stopped and he raped her. While she was dressing, he took her wristwatch. The abduction or carrying away upon which the kidnapping conviction was based was separable from the robbery and not essential to its commission. In *People v. Dorman*, 28 Cal.2d 846 [172 P.2d 686], the defendants drove their victim about for several hours without attempting robbery, then murdered him and only thereafter took his money.\*189 Again, the act of kidnapping was separable from the commission of robbery. (See, also, *People v. Pickens*, 61 Cal.App. 405, 407 [214 P. 1027].) In *People v. Kristy*, 4 Cal.2d 504 [50 P.2d 798], the defendants robbed their victims and then kidnapped them to accomplish their escape from prison. In *People v. Pearson*, 41 Cal.App.2d 614 [107 P.2d 463] (habeas corpus denied, *In re Pearson*, 30 Cal.2d 871 [186 P.2d 401]), the defendant robbed X and thereafter forced Y and Z to drive him away in an attempt to escape. He was convicted of the rob-

bery of X and the kidnapping of Y and Z. In *People v. Tanner*, 3 Cal.2d 279 [44 P.2d 324], the defendants first took the valuables that formed the basis of the robbery conviction and thereafter confined their victims and tortured them in an unsuccessful attempt to secure information as to the location of other property.

Unlike the defendants in the foregoing cases, Knowles committed no act of kidnapping that was not coincident with the taking of personal property. There was no seizure or confinement that could be separated from the actual robbery as a separate and distinct act. Since he committed only a single, indivisible act, Penal Code, section 654, requires that he be punished only once therefor. In view of the fact that the Legislature prescribed greater punishment for the violation of section 209 it must be deemed to have considered that the more serious offense, and the convictions thereunder must be the ones affirmed. (*People v. Kehoe*, 33 Cal.2d 711, 716 [204 P.2d 321]; *People v. Chapman*, 81 Cal.App.2d 857, 866 [185 P.2d 424]; *People v. Degnen*, 70 Cal.App. 567, 578 [234 P. 129]; *Durrett v. United States*, 107 F.2d 438, 439; *Hewitt v. United States*, 110 F.2d 1, 10-11; *People v. Goggin*, 281 N.Y. 611 [22 N.E.2d 174], affg 10 N.Y.S.2d 586, 587; *People v. Heacox*, 231 App.Div. 617 [247 N.Y.S. 464, 466].)

The order denying the motion for a new trial is affirmed. The judgments of conviction of kidnapping for the purpose of robbery are affirmed, and the judgments of conviction of armed robbery are reversed.

Shenk, J., Schauer, J., and Spence, J., concurred.  
EDMONDS, J.

By the present decision, "the detention of a victim during the commission of armed robbery" constitutes kidnaping, and although "[d]efendant committed no act of seizure or confinement other than that necessarily incident to the commission of robbery," he may be prosecuted \*190 either for robbery or for kidnaping at the election of the district attorney. As I read section 209 of the Penal Code, it neither compels nor warrants this construction, and it is a startling innovation in criminal law that an act which constitutes robbery is also kidnaping.

Under the law now stated, the crime of kidnaping

may merge into the crime of robbery. In its practical operation, where one is convicted of robbery only, he may be imprisoned for a period of from five years to life. If he is convicted only of kidnaping, under certain circumstances he may be confined for life, with the possibility of being released upon parole. But if he is guilty not only of kidnaping but also of robbery, since under section 654 of the Penal Code he cannot be punished for both crimes, his term of imprisonment may be only for the period prescribed for one of them.

Thus one who also robs will receive no greater punishment than the criminal who does nothing more than kidnap a person. This is a clear invitation to the kidnaper. He has nothing to lose if he also takes property from his victim's person or immediate presence by means of force or fear (Penal Code, § 211). Under the present decision, if prosecuted for both kidnaping and robbery, punishment can be imposed only for kidnaping. Otherwise stated, instead of being subject to imprisonment upon two sentences, each of which may be for life with the possibility of parole and, in practical effect terms of confinement for years, he can only be given one such sentence, with consequent reduction in the time to be served in prison. The fact that Knowles will be subject to imprisonment for life without the possibility of parole under one of the sentences for kidnaping does not warrant a construction of the applicable statutes to allow a substantial decrease in the amount of punishment in those cases where the victim was kidnaped and robbed but suffered no physical harm.

Under the rule now stated, section 209 of the Penal Code may be applied in connection with section 1159. By the latter statutes, "The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged. ..." As an act of robbery now will also constitute a kidnaping, the jury may find one charged with robbery guilty of kidnaping. As a result, one who ordinarily would be subjected to a sentence for a minimum term of one year may be executed. From now on, many charges of attempted robbery, and every one of robbery, inevitably \*191 will be prosecutions for a crime which may be punishable by death.

Unquestionably, the Legislature has the power to make either attempted robbery or robbery a capital

offense. But in my opinion, considering both the language and historical background of section 209, it has not done so. A cardinal rule of statutory interpretation is that where "... a statute is fairly susceptible of two constructions, one leading inevitably to mischief or absurdity and the other consisting of sound sense and wise policy, the former should be rejected and the latter adopted." (*People v. Ventura Refining Co.*, 204 Cal. 286, 292 [268 P. 347, 283 P. 60]; *San Joaquin etc. Irr. Co. v. Stevinson*, 164 Cal. 221 [128 P. 924].)

As amended in 1933, section 209 provides: "Every person who seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any individual by any means whatsoever *with intent to hold or detain, or who holds or detains*, such individual for ransom, reward or to commit extortion or robbery ..." is punishable for kidnaping. [Italics added.] The proper construction of the statute largely turns upon the meaning of the italicized words. The prevailing opinion also stresses the words "seizes" and "confines," although each of them is consistent with the traditional concept of kidnaping, and unlike those italicized does not pertain to conduct invariably present in robbery.

As defined in Webster's New International Dictionary, Unabridged Edition (1943), the word "seize" means: "*Transitive* ... 2.b To take possession of by force; ... 4. To lay hold of suddenly or forcibly; ... 5. To take prisoner; ... *Intransitive* ... 3. To make a snatch or clutch." Synonyms for "seize" are listed as "Catch, grip; apprehend, arrest, take, capture." The same authority defines the word "confine" as "... *transitive* ... 2. To restrain within limits; to limit; ... to shut up; imprison; to put or keep in restraint ..." Synonyms listed are "Restrain, immure, circumscribe, compass; incarcerate, cage."

The definitions and synonyms demonstrate that the words "seizes" and "confines" are consistent with conduct which, until the present decision, has been understood to amount to kidnaping. Although proof of asportation is not necessary to sustain a conviction, nevertheless much more is required than the mere "detention" almost invariably present in attempted robbery or robbery. Words like "take prisoner," "arrest," \*192 "imprison," and "incarcerate" suggest the more purposeful aspect of the control exercised by the wrongdoer over the victim's person which is present in kidnaping.

As to the controversial words of section 209 designated by italics, the first clause of the statute defines the specific intent necessary to establish the crime of kidnaping. Rather than the requirement prior to 1933 that the acts be done "maliciously, forcibly or fraudulently," the amended statute declares that the acts need only be done "... with intent to hold or detain." None of the acts listed in the first clause is that of holding or detaining. The conduct described as constituting kidnaping is the act of seizing, confining, inveigling, enticing, decoying, abducting, concealing, kidnaping or carrying away any individual *with intent to hold or detain him.* [Italics added.] Had the Legislature intended the detention of the victim, in and of itself, to constitute kidnaping, that conduct would have been stated as the criminal act denounced, rather than being used to describe the necessary intent.

The first clause, therefore, defines as a crime any one of a series of specified acts done to "... any individual ..." with the specific intent to hold or detain him. Following this clause is the disjunctive word, "or." This word introduces an alternative definition of kidnaping. One "... who holds or detains, *such individual for ransom, reward or to commit extortion or robbery ...*" [italics added] is also guilty of kidnaping. The phrase "... who holds or detains" is qualified by the words "... such individual." The words "such individual" must refer to the antecedent noun, "individual," in the preceding clause. And the word "individual" in the first clause is qualified as one whom a person "... seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away. ..."

Applying these plain grammatical principles, it follows that the only type of holding or detaining which may constitute kidnaping under section 209 is the holding or detaining of an individual who has previously been kidnaped in the well understood sense. It is clear that the words "holding" and "detaining" are used in the code section to extend the definition of kidnaping to one who acts as the guard or keeper of the kidnaped victim. The inclusion of the words "... who aids or abets ..." reflects a superabundance of caution on the part of the Legislature, and also demonstrates an intent to make even one who aids the keeper guilty of kidnaping.

For these reasons, the language used by the Legislature \*193 makes it clear that mere detention is not

sufficient to constitute kidnaping, excepting where the detention follows a traditional act of kidnaping. Grammatically, the construction which the court has placed upon the statute is not supported by its language. And even if there were sound grammatical authority for the conclusion reached, the individual words of a statute should not be subjected to semantic dissection; the severed members are cold and lifeless without the spirit of the law.

The historical background and development of section 209 also lead to the conclusion that simple detention during an act of robbery does not constitute kidnaping. In analyzing the evolution of the legislation, it is essential to distinguish between the two statutory crimes of kidnaping which exist in California and in most modern jurisdictions. The first, and more historically orthodox form of the offense, is defined in section 207 of the Penal Code. It is, with certain modifications which harmonize its terms with modern political development, the continuation of the crime of kidnaping as it has existed since before the Christian era. (See Lardone, *Kidnaping in Roman Law*, 1 U.Det.L.J. 163-171.) At common law, as under the earlier Jewish law, kidnaping was "the forcible abduction or stealing away of a man, woman or child from ... [his] own country, and sending ... [him] into another." (4 Bl. Comm. [Christian Ed.] 221.) This is substantially the crime defined by section 207 as it was enacted in 1872 and has since remained without material change. (Amended Stats. 1905, p. 653, to add "carries him into another ... county, or into another part of the same county.")

The second crime of kidnaping is of comparatively recent origin. Perhaps no modern crime is as deeply and inescapably attached to its historical basis as is kidnaping for pecuniary purposes, and any adequate analysis of the offense necessarily must be based upon thorough understanding and appreciation of that background.

Apparently kidnaping for ransom was unknown at common law. One of the first reported instances of the crime in this country occurred in 1874. (Ross, *The Kidnapped Child* [1876], cited and discussed in 12 N.Y.U.L.Q. Rev. 646, 649-50.) The next kidnaping for the purpose of ransom which attracted great attention was in 1900 when Edward Cudahy was abducted and \$25,000 demanded for his release. (*Spreading Evil-The \*194 Autobiography of Pat Crowe* [1927],

cited and discussed in 12 N.Y.U.L.Q. Rev. 646, 650-51.) In the following year, one of the first of the kidnaping for ransom statutes to be enacted in the United States was adopted in Illinois, which from the outset, made kidnaping "for the purpose of extorting ransom" a capital offense. (Stats. Ill. 1901, p. 145, § 1.) Other jurisdictions enacted similar statutes, but the penalty prescribed was generally no more than life imprisonment, although uniformly well in excess of the penalty under the preexisting crime of "common-law" kidnaping, such as that defined in section 207 of the Penal Code.

In 1901 the California Legislature enacted section 209 of the Penal Code, which read: "Every person who maliciously, forcibly, or fraudulently takes or entices away any person with intent to restrain such person and thereby to commit extortion or robbery, or exact from the relatives or friends of such person any money or valuable thing, is guilty of a felony, and shall be punished therefor by imprisonment in the state's prison for life, or any number of years not less than ten." (Stats. 1901, ch. 83, p. 98.) This section differed from the majority of kidnaping for ransom or extortion statutes by enumerating robbery as an additional purpose of the unlawful act. Inasmuch as extortion, as then defined, was "the obtaining of property from another, with his consent" (Pen. Code, § 518 [enacted 1872]), quite evidently the Legislature determined that robbery should be specified as a purpose in order to include the taking of a thing of value from the person of the victim, against his will. (*People v. Fisher*, 30 Cal.App. 135 [157 P. 7] [promissory note and deeds to property]; *People v. Salter*, 59 Cal.App.2d 59 [137 P.2d 840] [combination to office safe].)

Although in the years after the first World War a number of isolated kidnapings for ransom occurred, "it was not until the latter part of 1931 that the public began to be aware of the fact that kidnapings were becoming more numerous, and that the hit-or-miss methods of the lone criminal had given away to the carefully planned activity of the professional." (Fisher & McGuire, *Kidnapping and the So-Called Lindbergh Law*, 12 N.Y.U.L.Q. Rev. 646, 652 [citing Sullivan, *The Snatch Racket*, 1931].) "Kidnaping appeared to have acquired some of the characteristics of a profitable and skilled profession." (Finley, *The Lindbergh Law*, 28 Georgetown L.Rev. 908, 909.) The Lindbergh kidnaping awakened the American

people to the fact that a revolting crime was being generally committed \*195 and unless the menace was met fearlessly and with determination, "the very sanction of the criminal law was threatened." (Fisher & McGuire, *Kidnapping, supra*.)

The Federal Kidnaping Act, the so-called Lindbergh Law (18 U.S.C.A. 1201; [June 22, 1932], ch. 271, § 1, 47 Stats. 326), was "drawn in 1932 against a background of organized violence. 75 Cong. Rec. 13282-13304. Kidnaping by that time had become an epidemic in the United States. Ruthless criminal bands utilized every known legal and scientific means to achieve their aims and to protect themselves. Victims were selected from among the wealthy with great care and study. Details of the seizures and detentions were fully and meticulously worked out in advance. Ransom was the usual motive." (*Chatwin v. United States* (1946), 326 U.S. 455, 462-3 [66 S.Ct. 233, 90 L.Ed. 198].)

It was in this nationwide atmosphere of public alarm that, in 1933, the California Legislature amended section 209 of the Penal Code to make kidnaping for ransom, reward, extortion or robbery a capital crime. During the years 1933 to 1935, similar statutes were enacted in almost all of the other states, or the punishment specified by existing statutes defining kidnaping was increased. The effectiveness of this uniform action by the various states, and particularly by the Federal government, is clearly demonstrated by the statistics which show a decrease in kidnaping and a larger percentage of convictions for the commission of this crime. (See Bomar, *The Lindbergh Law*, 1 Law & Contemp. Prob. 435; Fisher & McGuire, *Kidnaping, supra*.)

California is almost unique in its specification of robbery as one of the purposes for kidnaping. Other than Nevada and Arizona, where the statute is modeled upon the California code section (Nev. Comp. Laws 1931-41, Supp. vol. 2, § 10612.01; Ariz. Code Anno. [1939] vol. 3, § 43-3202), only two states in the United States specify robbery as a purpose for kidnaping. (Ark. Stats. 1947 Anno. vol. 4, § 41-2302; Wyo. Comp. Stats. 1945 Anno. vol. 1, § 9-214.) The vast majority of American jurisdictions list "ransom" or "extortion" as the dominant purpose.<sup>FN1</sup> Five states, however, follow the New \*196 York pattern of having a single crime of kidnaping, the only purpose specified being to hold or detain,<sup>FN2</sup> although in New

York, Delaware and Maryland the offense, as it is broadly defined, may carry a death penalty.

FN1 18 U.S.C.A. 1201; Colo. Stats. Anno. [1935], ch. 48, § 77 (4); Gen. Stats. Conn. [1949 Rev.] vol. 3, § 8372; Dist. Col. Code [1940], § 22-2101; Fla. Stats. Anno. vol. 22, § 805.02; Ga. Code [1933], § 26-1603; Smith-Hurd Ill. Anno. Stats., ch. 38, § 386; Gen. Stats. Kans. Anno. [1935], ch. 21, art. 5, § 449; Ky. Rev. Stats. 1948, § 435.140; Anno. Laws of Mass. vol. 9, ch. 265, § 26; Mich. Stats. Anno. vol. 25, § 28.581; Mo. Rev. Stats. Anno. vol. 13, § 4414; Rev. Code Mont. [1935] Anno vol. 5, § 10970.1; Rev. Stats. of Neb. [1943] vol. 2, ch. 28, § 417; N Mex. Stats. 1941 Anno., vol. 3, § 41-2503; Gen. Stats. N. C. 1943, vol. 1, § 14-39; 10 Page's Ohio Gen. Code Anno., § 12427; Okla. Stats. Anno. [1937] title 21, § 745; Ore. Comp. Laws Anno., vol. 3, § 23-435; Purdon's Pa. Stats. Anno., tit. 18, § 4723; Gen. Laws R. I. [1938], ch. 606, § 21; Code of S. C., vol. 1, § 1122; S. D. Code [1939] vol. 1, § 13.2701; Williams Tenn. Code, vol. 7, § 10795; Vernon's Texas Pen. Code, vol. 2, art. 1177a; Utah Code Anno. [1943], vol. 5, § 103-33-1(b) (1); Virginia Code 1936 Anno., § 4407; Vermont Stats. [1947], § 8259; Remington's Rev. Stats. Wash. vol. 4, § 2410-1; W. Va. Code [1943] Anno., § 5929(3); Wis. Stats. [1943], § 340.56; Rev. Stats. Me., vol. 2, ch. 117, § 14; also Code of Ala. [1940], tit. 14, § 7; Burns Ind. Stats. Anno. vol. 4 [1942 Rep.] 10-2903; Code of Iowa [1946], vol. 2, § 706.3; La. Code of Crim. L. & Proc. [1943], art. 740-44; N.J.S.A., 2:143-1.

FN2 39 McKinney's Cons. Laws of N. Y. [Pen. Code], pt. 2, § 1250; Rev. Laws of N. H. [1942], vol. 2, p. 1827; Minn. Stats. Anno. vol. 40, § 619.34; Rev. Code Del. [1935], § 5174; Anno. Code Md. [1939], vol. 1, art. 27, § 385. Possibly Washington should also be listed here as a result of judicial construction of their statute. State v. Andre, [195 Wash. 221] 80 P.2d 553; State v. Berry, [200 Wash. 495] 93 P.2d 782, noted and criticized in 38 Colum.L.Rev. 1287; 19 Ore. L.R. 301.

Thus, although the state laws enacted during the Lindbergh era vary greatly in specific phraseology, the great body of them define the crime as kidnaping for ransom or extortion in the American gangland tradition of the early 1930's. The two exceptions to the general rule are found (1) in the New York act which, in effect, makes "common law" kidnaping, such as is defined in section 207 of our Penal Code, a capital offense; and (2) in the California statute, which includes robbery as one of the purposes of the crime.

If simple detention during robbery is kidnaping, the scope and coverage of the California and New York statutes go far beyond any normal conceptions of kidnaping for ransom. The very severity of the punishment,<sup>FN3</sup> and the revolting nature of the crimes which were the driving force behind such modern statutes, make it obvious that detention incidental to robbery is not kidnaping. These kidnaping for ransom statutes are "to be construed in the light of [their] contemporary historical background" (Finch v. State, 116 Fla. 437, 442 [156 So. 489]); and "the act must be so construed to avoid the absurdity."<sup>197</sup> The court must restrain the words. The object designed to be reached by the act must limit and control the literal import of the terms and phrases employed. (1 Kent's Com. 462; Commonwealth v. Kimball, 24 Pick. [Mass.] 366, 370; United States v. Fisher, 2 Cranch [358] 400 [2 L.Ed. 304].)" (State v. Clark, 29 N.J.L. 96.)

FN3 In California, although first degree murder is punishable by death or life imprisonment (Pen. Code, § 190), kidnaping for purposes of extortion or robbery may be punished by death or life imprisonment *without possibility of parole*, if the victim suffers bodily harm. (Pen. Code, § 209.)

The courts which construed the exceedingly broad language of the New York statute were among the first to recognize the reasonable limitations which must be placed upon the language used in such legislation. Thus, in People v. Kuntzsch, 64 N.Y.S.2d 116, which was a case involving an abduction for union membership purposes during a strike, the court dismissed an indictment for kidnaping, saying: "A literal reading of the statute makes a wilful seizure with intent to confine, against the will of the person



seized, a kidnaping. Such a literal construction can be carried to absurd extremes. ... The Court in construing the Statute should keep in mind the penalty imposed for violation of the statute. The crime is most serious." ( 64 N.Y.S.2d at 118-9; see, also, Black on Interpretation of Laws, 2d Ed. § 46, p. 129.)

The federal courts have also shown a recent tendency to retreat from their former broad construction of the intent required under the Lindbergh Law. That act specifies, "for ransom or reward or otherwise." In Gooch v. United States (1936), 297 U.S. 124 [56 S.Ct. 395, 80 L.Ed. 522], the "or otherwise" clause was given a broad construction to cover nonmonetary benefits. However, recently, in Chatwin v. United States (1946), 326 U.S. 455 [66 S.Ct. 233, 9 L.Ed. 198], the court considered the conviction of an advocate of polygamous "celestial marriages," who was charged with taking a small girl from Utah into Mexico, going through a marriage ceremony with her and then returning to Arizona where they resided as man and wife. The prosecution was under the "or otherwise" clause of the Lindbergh Law. In reversing the conviction, it was said: "The stipulated facts of this case reveal a situation quite different from the general problem to which the framers of the Federal Kidnaping Act addressed themselves. ... Comprehensive language was used to cover every possible variety of kidnaping followed by interstate transportation ... [but] were we to sanction a careless concept of the crime of kidnaping or were we to disregard the background and setting of the Act the boundaries of potential liability would be lost in infinity. ... The absurdity of such a result, with its attendant likelihood of unfair punishment and blackmail, \*198 is sufficient by itself to foreclose that construction." ( 326 U.S. at pp. 462-465.) In reaching its conclusions concerning the particular crime for which Knowles should be punished, the court attempts to dismiss the Chatwin case by saying there "... is no intimation that had the restraint been forcible, the transportation would not have been within the broad meaning of the 'or otherwise' clause of the federal act." This, however, does not give proper weight to the broad policy stated by the Supreme Court of the United States in refusing to "... sanction a careless concept of the crime of kidnaping. ..."

Applying the rule of the Chatwin case, the facts shown in the prosecution of Knowles reveal a situation quite different from the general conduct against

which the framers of the statute directed legislation. Clearly, he was a participant in an armed robbery, but only by a strained construction of section 209 may his acts be said to constitute kidnaping for the purpose of robbery. The record includes no evidence showing any plan to control the victims' whereabouts as a method of extorting money from them or their friends. The dominant act was the robbery. It could have been accomplished without requiring the victims to go into the storeroom. That movement was merely incidental to the robbery; it was a movement during the robbery, but *it was not a considered and essential prelude to the robbery*. Unquestionably, the crime Knowles committed was not kidnaping for the purpose of robbery in the sense that the Legislature intended by the enactment and amendment of section 209 of the Penal Code.

This conclusion logically follows the rationale of the cases decided when the statute enacted in 1901 was in effect. In People v. Fisher (1916), 30 Cal.App. 135 [157 P. 7], the court prefaced its statement of facts by noting that the record "reads as though it were a tale of medieval brigandage." The defendants seized the victim on the highway and forced him to write a note to his secretary explaining his absence. They then drove him from Merced to Stockton, where he escaped and they were captured. Wire-tapping equipment, unsigned deeds to all of the victim's real property and a number of blank promissory notes were found in the automobile. This was a clear case of kidnaping for the purpose of robbery, that is, the property was to be obtained from a victim's person without his consent. Moreover, viewing the transaction in its entirety, it was an orthodox kidnaping.

The other cases which were prosecuted under the 1901 act \*199 were decided upon similar facts. In People v. Lombard (1933), 131 Cal.App. 525 [21 P.2d 955], a conviction of attempt to commit kidnaping for purposes of ransom was sustained upon facts which showed the usual kidnap plan: a hideaway prepared, ransom notes and other preparations for extorting money. And People v. Wagner (1933), 133 Cal.App. 775 [24 P.2d 927], according to one of the defendants in the case, was "just a case of one racket playing on another." The court there said that "the object of kidnaping which is made an offense by the statute is not primarily the seizure and restraint of the victim, but the mulcting him or his relatives or friends of money or other property through coer-

cion.” ( 133 Cal.App. at p. 780.)

The first decision in which this court considered the effect of the 1933 amendment to section 209 of the Penal Code is *People v. Tanner* (1935), 3 Cal.2d 279 [44 P.2d 324]. The defendants believed that the victim had a large amount of cash hidden in his house. He was accosted in his car just outside his garage and was forced to reenter the house. For over an hour he was questioned, threatened, and finally tortured as the defendants attempted to find out where the “real money” was hidden. Finally, they became convinced that their information was incorrect and there was no large sum of money in the house. Although the asportation was slight, it was clearly connected with a prearranged plan which called for protracted holding and coercion to obtain from the victim property which would not have been available in the course of an ordinary armed robbery. This was the type of criminal conduct which the Legislature sought to prevent by making kidnaping “for the purpose of robbery” a capital crime.

At least four other prosecutions under the 1933 amendment may be placed within the same category. In one of them, there was a prison break in which the warden and other officials were detained for the purpose of obtaining money and clothing and to assure safe exit from the prison. The seizure and transportation was as much for the purpose of robbery as for purpose of obtaining human shields for the escape. It was all part of an organized plan to seize the victims and secure the escape. <sup>FN4</sup> (*People v. Kristy*, 4 Cal.2d 504 [50 P.2d 798].) \*200 *People v. Grimes*, 35 Cal.App.2d 319 [ 95 P.2d 486], presents an excellent example of orthodox kidnaping for ransom. A farmer's wife was taken from her home after a demand was made for \$25,000 under threat that otherwise she would never be seen again. *People v. Salter*, 59 Cal.App.2d 59 [ 137 P.2d 840], concerned a situation similar to that shown in *People v. Tanner*, *supra*. The defendants seized the victim in his driveway and thereafter held him, both in his house and in a car driven about town, while they attempted to obtain from him the combination to his office safe. And the prosecution in *People v. Anderson*, 87 Cal.App.2d 857 [ 197 P.2d 839], was based upon the kidnaping for robbery of a used car dealer who was taken on a feigned demonstration ride. All of these decisions, upon their facts, affirmed judgments of conviction for seizing and carrying away a person for a purpose

which could not be accomplished at the place where he was attacked.

FN4 The 1939 amendment to the extortion statute which added the language “the obtaining of an official act of a public officer, induced by the wrongful use of force or fear,” (Pen. Code, § 518; Am. Stats. 1939, p. 2017), would appear to more aptly bring such prison break kidnapings under the heading of “for the purpose of extortion.”

To ascertain the legislative intent in the amendment of section 209, reference properly may be made to Senate Bill No. 1226 and Assembly Bill No. 334 which were enacted in 1933. These bills, identical in text, were entitled “An act to amend section 209 of the Penal Code, relating to the punishment of kidnaping.” After the Legislature passed the assembly bill, a report on it was made to the governor by the legislative counsel, who is charged with the duty of advising him, as well as the legislators, upon pending bills and other matters (Gov. Code, §§ 10230-10245; Rule 34 of the Joint Rules of the Senate and Assembly, California Legislature, 1949). The report analyzed the proposed amendment as follows: “This bill enlarges the definition of kidnaping. It makes the doing of the designated act or acts an offense by deleting the existing requirement that the seizure or carrying away must be done maliciously, forcibly or fraudulently, and includes within the definition one who aids or abets.”

“The existing penalty for kidnaping, upon conviction, is imprisonment in the state prison for from 10 years to life. This bill specifies ... [greatly increased] penalties.”

The legislative counsel's opinion went to the governor while the bills were being considered by him. “The executive is, by the constitution, a component part of the law-making power. In approving a law, he is ... supposed to act ... as a part of the legislative branch of the government.” (*Fowler v. Peirce*, 2 Cal. 165, 172.) And the enactment of legislation requires the concurrent action not only of the two houses of the Legislature, but of the governor. (See: \*201 *Davies v. City of Los Angeles*, 86 Cal. 37, 50 [ 24 P. 771.]) “While engaged in considering bills ... presented to him for approval or disapproval, he is acting in a legislative capacity and not as an execu-



tive." (*Lukens v. Nye*, 156 Cal. 498, 501 [105 P. 593, 20 Ann.Cas. 158, 36 L.R.A.N.S. 244]. See, also, *Wright v. United States*, 302 U.S. 583 [58 S.Ct. 395, 82 L.Ed. 439]; *Edwards v. United States*, 286 U.S. 482 [52 S.Ct. 627, 76 L.Ed. 1239].) Presumably, in considering the two bills, the governor relied upon, or at least considered, the opinion of the legislative counsel. As the legislation was presented to him by his advisor, the only purpose of the amendment of section 209 was to omit the requirement that the acts specified by the statute then in effect be done maliciously and to change the penalties for kidnaping.

Since the amendment in 1933, the decisions of this court have consistently recognized the distinct characteristics of kidnaping and robbery. Before the present case, whenever the conviction of one found guilty of both kidnaping and robbery arising out of the same chain of events was upheld, the judgment as to each crime has been affirmed. By these decisions, impliedly at least, it has been held that one can commit robbery without also being guilty of kidnaping; until now the court has not held that the same act may constitute both kidnaping and robbery. The decisions are to the contrary. (*In re Pearson*, 30 Cal.2d 871 [186 P.2d 401] [kidnaping for the purpose of committing robbery and attempted robbery of one Afornin; see *People v. Pearson*, 41 Cal.App.2d 614, 617 [107 P.2d 463], for details]; *People v. Brown*, 29 Cal.2d 555 [176 P.2d 929] [kidnaping for the purpose of robbery and robbery of one Mrs. Jacobs]; *People v. Dorman*, 28 Cal.2d 846 [172 P.2d 686] [kidnaping for the purpose of robbery and robbery of one Bigelow]; *People v. Britton*, 6 Cal.2d 8 [56 P.2d 493] [one charge of kidnaping for the purpose of robbery and two charges of robbery]; *People v. Kristy*, 4 Cal.2d 504 [50 P.2d 798] [four counts of kidnaping for the purpose of robbery and four counts of robbery]; *People v. Tanner*, 3 Cal.2d 279 [44 P.2d 324] [two counts of kidnaping and two counts of robbery of one Bodkin and his wife].)

In *People v. Dorman*, *supra*, the defendant was convicted upon one count for murder, one count for kidnaping for the purpose of robbery, and three counts for robbery. In affirming the judgment, Justice Shenk discussed "... the undisputed acts of transporting Bigelow to an isolated spot, and \*202 robbing him" as sufficient evidence to support each of the convictions.

A later case is *People v. Brown*, *supra*, in which Justice Traynor spoke for the court in affirming convictions for two counts of robbery and one of kidnaping for the purpose of robbery, where the victim suffered bodily harm. The most recent decision is *In re Pearson*, *supra*, in which a petition for a writ of habeas corpus was denied one imprisoned following convictions for kidnaping and attempted robbery based upon the same facts. At page 878 of the opinion, Justice Schauer stated as to the conviction for kidnaping, "Petitioner is legally imprisoned for life without possibility of parole under a judgment verdict which so fixes his punishment."

By the present decision, the court *sub silentio* has overruled the cases cited. And if since 1933 an act of robbery has also constituted kidnaping, the defendants in those cases were entitled to the same relief now given Knowles.

The majority opinion attempts to distinguish the prior decisions upon the ground that, in each of them, "... the acts that formed the basis of the kidnaping conviction were separate from those that involved the actual taking of property. ..." If this be true, the present case apparently is the first one in reported California legal history where there were inseparable acts of robbery and kidnaping. Furthermore, assuming that the records upon which convictions for robbery and kidnaping for the purpose of robbery were affirmed by this court showed separable acts constituting these crimes, the decisions in those cases are entirely inconsistent with the conclusions now reached. It cannot be said with any certainty whether the triers of fact placed the judgments of conviction upon evidence of the incidental detention necessary to relieve the victims of their property, or upon testimony concerning the defendants' conduct not directly connected with the robberies. As now stated, every robbery is a kidnaping because of such incidental detention and one is unable to say which act the jury relied upon as the basis for its verdict of guilty of kidnaping. If in the prior cases the juries determined that there was detention incidental to robbery and based the convictions for the kidnapings upon that evidence, then, as here, the judgment of conviction for robbery should have been reversed. This is true because, under the new formula, either the evidence as to detention incidental to robbery or that concerning an independent act unrelated to robbery would support the judgment of conviction for kidnaping. And

applying \*203 section 654 of the Penal Code as used in the majority opinion, where, as in the present case, the conviction for robbery and for kidnaping for the purpose of robbery are based upon the robbery alone, the conviction of the lesser crime should have been set aside.

To summarize my conclusions, the grammatical construction and language of the statute, the legislative history and development of section 209, and the legislative intent as derived from the history and circumstances surrounding the enactment of the 1933 amendment clearly show that one can commit robbery without also being guilty of kidnaping. Considering particularly the facts shown by the present record, I see no basis whatever for holding that one who moves his victim within the immediate zone of the crime merely to facilitate the robbery, or detains him briefly in order to obtain property from him, is guilty of kidnaping.

Otherwise stated, if there be detention alone, it must follow a traditional act of kidnaping in order to render the one detaining guilty of that crime. It is true that section 209 does not in every case require asportation, although that is an element usually present in kidnaping. But the seizure, confinement, inveigling, enticing, decoying, abducting, concealing, kidnaping or carrying away must be done, as the words themselves demonstrate, to control the victim's whereabouts for the purpose of robbery or extortion. If the defendant's control of the location of the victim's person is purely transitory or incidental, as in the ordinary robbery, the crime is not kidnaping.

I would reverse the judgments of conviction for kidnaping, and affirm the judgments of conviction for robbery.

Gibson, C. J., concurred.  
CARTER, J.,

Dissenting.

I am in full accord with the views expressed in the dissenting opinion of Mr. Justice Edmonds, but feel that something further should be said in regard to the holding in the majority opinion. It is there held that a robbery is also a violation of section 209 of the Penal Code, called "kidnaping." The prosecuting attorney is given the sole and arbitrary power to determine

whether a person shall suffer life imprisonment without possibility of parole or even death on the one hand, or, in the case of robbery in the second degree, as little as one year's imprisonment. It all depends on the charge he chooses, at his whim or caprice, \*204 to make against the accused. If he charges both robbery and kidnaping and the defendant is convicted of both crimes, he must suffer the greater punishment provided for kidnaping, or, if he wishes, he may charge kidnaping alone and likewise obtain the extreme penalty. However, he may charge robbery alone, and, in case of a conviction, lesser punishment would follow. All these things could occur on the identical set of facts which establish only robbery as will later appear. It is not to be supposed that the Legislature intended to place any such drastic and arbitrary power in the hands of the district attorney. On the contrary, it is clear that it did not intend to embrace the crime of robbery in section 209 of the Penal Code. Every robbery, whether first or second degree, necessarily involves some detention or holding of the victim if we give those words a narrow and restricted meaning. The Legislature has carefully defined robbery and fixed its punishment, deeming that punishment adequate. If it had intended to depart from those provisions, it would have done so directly by amending the robbery statute. It would not have attempted to achieve that result by amending section 209, the kidnap statute. The case falls squarely within *In re Shull*, 23 Cal.2d 745 [ 146 P.2d 417], where this court held that a statute imposing an additional five-year term of imprisonment where a felony was committed with a deadly weapon was not intended to apply to the felony of assault with a deadly weapon, for the elements in both instances were the same and the punishment for the latter was clearly defined. It is there said: "It is not unreasonable to suppose that the Legislature believed that for felonies in which the use of a gun was not one of the essential factors, such as rape, larceny, and the like, an added penalty should be imposed by reason of the fact that the defendant being armed with such a weapon would probably be more dangerous because of the probability of death or physical injury being inflicted by the weapon. Hence, such a condition would be reasonable grounds for increasing the penalty where felonies are involved which do not include as a necessary element being armed with a pistol. The Legislature has by other acts imposed an increased punishment where the only additional factor, being armed with a deadly weapon, is present. The only difference between a simple assault and one with a deadly weapon is the latter fac-

tor. The commission of a simple assault is declared a misdemeanor, and the punishment therefor is a fine of not over \$500 or imprisonment in the county jail for six months, or by both. (Pen. Code, §§ 240, \*205 241.) When there is added to the assault the use of a deadly weapon the punishment is increased to imprisonment in the state prison not exceeding ten years or in the county jail not exceeding one year or a fine not exceeding \$5,000 or by both fine and imprisonment (Pen. Code, § 245), and if section 1168(2)(a) or 3024(2) is applicable and the weapons therein mentioned are used, the *minimum* term is fixed at five years where the perpetrator is not one previously convicted of a felony. Briefly, the Legislature has fixed the punishment for an assault where a deadly weapon is used, a particular crime, and it is not to be supposed that for the same offense without any additional factor existing the added punishment should be imposed. In felonies where a deadly weapon is not a factor in the offense, the additional punishment is imposed by section 3 of the Deadly Weapons Act, because of the additional factor of a deadly weapon being involved."

Applying the foregoing rule to the case at bar, it seems obvious to me that by the amendment to section 209 of the Penal Code the Legislature did not intend to make the punishment for kidnapping applicable to robbery, but such is the holding of the majority in this case.

Appellant's petition for a rehearing was denied May 18, 1950. Gibson, C. J., Edmonds, J., and Carter, J., voted for a rehearing.

Cal.  
People v. Knowles  
35 Cal.2d 175, 217 P.2d 1

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# About DPR

*DPR's mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management.*

Pesticides play a unique role in environmental protection. Contradicting the usual preventive approach, pesticides are toxic by design and deliberately released into nature. This paradox is explained by the fact that, when used properly, both natural and synthetic pesticides protect people and their environment from pests – animal, plant or microbial – that threaten human health and the balance of nature. Indeed, nature created the first chemical pesticides, produced by some plants and animals to repel their natural enemies.

Over time, people observed, adapted, and improved on natural pest management. Like most human endeavors, the beneficial use of pesticides depends on information and sound judgment. Scientific knowledge of pesticides continually evolves and improves. California's approach is based on a strong scientific foundation and has built the most comprehensive pesticide regulation program in the nation. Our task is to ensure that pesticides are used safely. Our standards are uncompromising, as is our commitment to protect people and the environment.

California has regulated pesticides for more than a century. Its citizens – through their gubernatorial administrations and Legislature – have established a comprehensive body of law to control every aspect of pesticide

sales and use, and to assure the state's pesticide regulators also have the tools to assess the impacts of that use.

The first pesticide-related law was passed in this state in 1901, and since the 1960s, a whole body of modern, increasingly science-based pesticide law and regulation has come into being. The Department of Pesticide Regulation (DPR) is not only the premier state agency for pesticide regulation in the U.S., but has built a reputation of world-class science and regulatory decisionmaking that makes it the acknowledged peer of the U.S. Environmental Protection Agency and Health Canada.

DPR's mission is to protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. In the 2006-07 fiscal year, DPR's budget was \$66 million, funded by regulatory fees. DPR has about 350 employees, including more than 120 toxicologists, environmental and technical specialists, and other highly trained scientists.

About \$18 million of our budget is designated to support local pesticide enforcement by the County Agricultural Commissioners. Under DPR oversight, the Commissioners and the approximately 400 biologists that work for them serve as the local

enforcement agents for pesticide laws and regulations in the state's 58 counties.

Among other duties, County Agricultural Commissioners are responsible for issuing the site- and time-specific permits required of those who wish to use restricted pesticides in agriculture. (Restricted materials are those pesticides that have a higher potential to have an adverse impact on health or the environment.) No other state has a permitting system for use of highly hazardous pesticides, and few states have effective mechanisms for local enforcement of pesticide laws.

DPR monitors the use of pesticides – from the farm field to the grocery shelf – to assure the safety of workers and consumers. Our program includes:

- Evaluation and registration of pesticide products before they can be sold or used in California.

- Statewide licensing of commercial applicators, dealers, consultants, and other pesticide professionals.
- Evaluation of health impacts of pesticides through illness surveillance and risk assessment.
- Environmental monitoring of air, water, and soil.
- Residue testing of fresh produce.

As a final step, DPR continually reevaluates the health and environmental impacts of the pesticides it regulates, stressing risk reduction and, whenever possible, encouraging less use of pesticides in favor of more natural pest controls. We support development and adoption of pest management practices designed to prevent buildup of pest populations and reduce or eliminate harmful environmental and health impacts of pesticides.

## *What is a pesticide?*

"Pesticide" is an umbrella term that includes many kinds of chemicals, natural and synthetic. A pesticide is any substance intended to control, destroy, repel, or attract a pest. Any living organism that causes damage, economic loss, transmits or produces disease may be the target pest.

Some common pesticides include:

- Insecticides
- Herbicides
- Rodenticides
- Molluscicides
- Repellents
- Disinfectants and sanitizers
- Fungicides



# DPR balance sheet

## Pesticide regulatory program funding

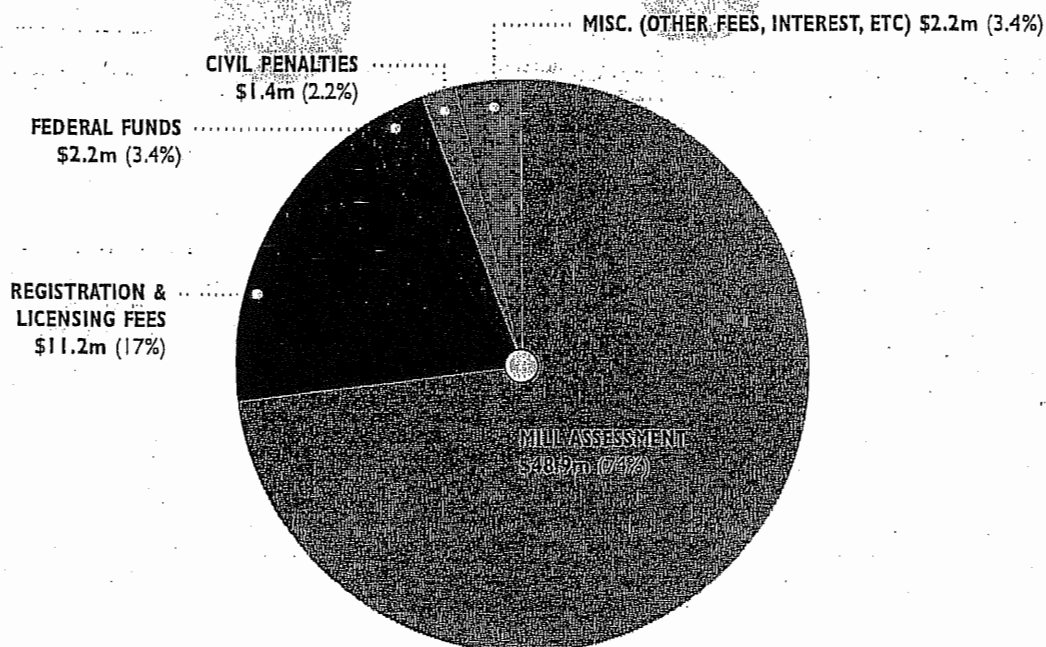
In 2006-07, the Department of Pesticide Regulation (DPR) was budgeted to expend \$65.9 million. We have about 355 employees. DPR is funded entirely by regulatory fees, with a small amount of federal funds and reimbursements.

DPR's largest revenue source is the mill assessment, a fee levied on pesticide sales at the point of first sale into the state. The assessment is currently at the statutory maximum of 21 mills, or 2.1 percent on each dollar of sales. (A mill is equal to one-tenth of a cent.) An additional three-fourths mill is assessed on agricultural and dual-use products (pesticides labeled for use in both agriculture and nonagricultural settings) to support pesticide consultation activities of the California Department of Food and Agriculture.

Other sources of revenue are:

- Annual certificates of product registration. (All pesticide products must be licensed with DPR before sale or use in California.)
- Pesticide-related licenses issued to people and businesses that sell, apply or recommend the use of pesticides.
- Civil penalties (for example, for selling unregistered or misbranded pesticide products).
- Miscellaneous fees and various reimbursements.
- Funds from the U.S. Environmental Protection Agency, U.S. Geological Survey, and U.S. Department of Agriculture for activities DPR performs with or on behalf of these agencies.

### 2006-07 BUDGET: \$65.9 MILLION





## Accounting for costs, achieving our goals

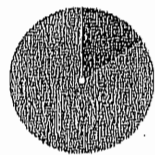
**B**udgets of government agencies traditionally divide funds by organizational units. But, like other integrated regulatory programs, most of DPR's functions cut across organizational units. Unit-based budgeting makes it difficult to know the costs associated with each function.

In 2004, DPR adopted activity-based accounting that focuses on the costs and performance of specific program functions rather than those of each organizational unit. Each program function represents a group of underlying activities, which may be performed by units in one or more branches. For example, the *Risk Assessment* function contains all DPR activities to conduct a risk assessment, no matter what organizational unit the activity occurs in. The information provided by functional accounting allows DPR to refine its budget and fees to accurately recover costs associated with specific activities.

Functional accounting is linked to DPR's operational plan. The plan describes activities DPR plans to complete during the fiscal year, with performance measures for each function. DPR's operational plans and performance measures are posted on our Web site, as are the functional accounting year-end reports. This allows stakeholders to review specific goals, costs associated with them, and whether goals are being met.

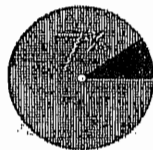
***These are DPR's major business functions and key activities associated with them:***

### PRODUCT REGISTRATION



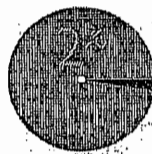
A pesticide must be registered (licensed) with the State before it can be sold or used in California. Pesticide registration is the scientific, legal, and administrative evaluation process of a pesticide product before its registration. It includes tracking submissions; certain technical and scientific evaluation; processing labels; preparing public notices; corresponding with registrants; overseeing data call-ins; maintaining label files and the pesticide data library; and providing information on registered pesticides and label instructions to pesticide enforcement agencies and the public. It also includes special activities such as issuing research authorizations and emergency exemptions from registration.

### RISK ASSESSMENT



Risk assessment includes hazard identification, dose-response assessment, exposure assessment, and preparation of a risk characterization document that assesses potential dietary, workplace, residential, and ambient air exposures. Also included are activities regarding toxic air contaminants (TACs), including evaluating pesticides as candidate TACs, coordinating with other agencies and scientific reviewers on risk assessment documents, preparing the environmental fate element of risk assessments, and prioritization of pesticides for risk assessment. Risk assessment also includes special activities such as emergency evaluations of potential health impacts of illegal pesticide residues on agricultural commodities.

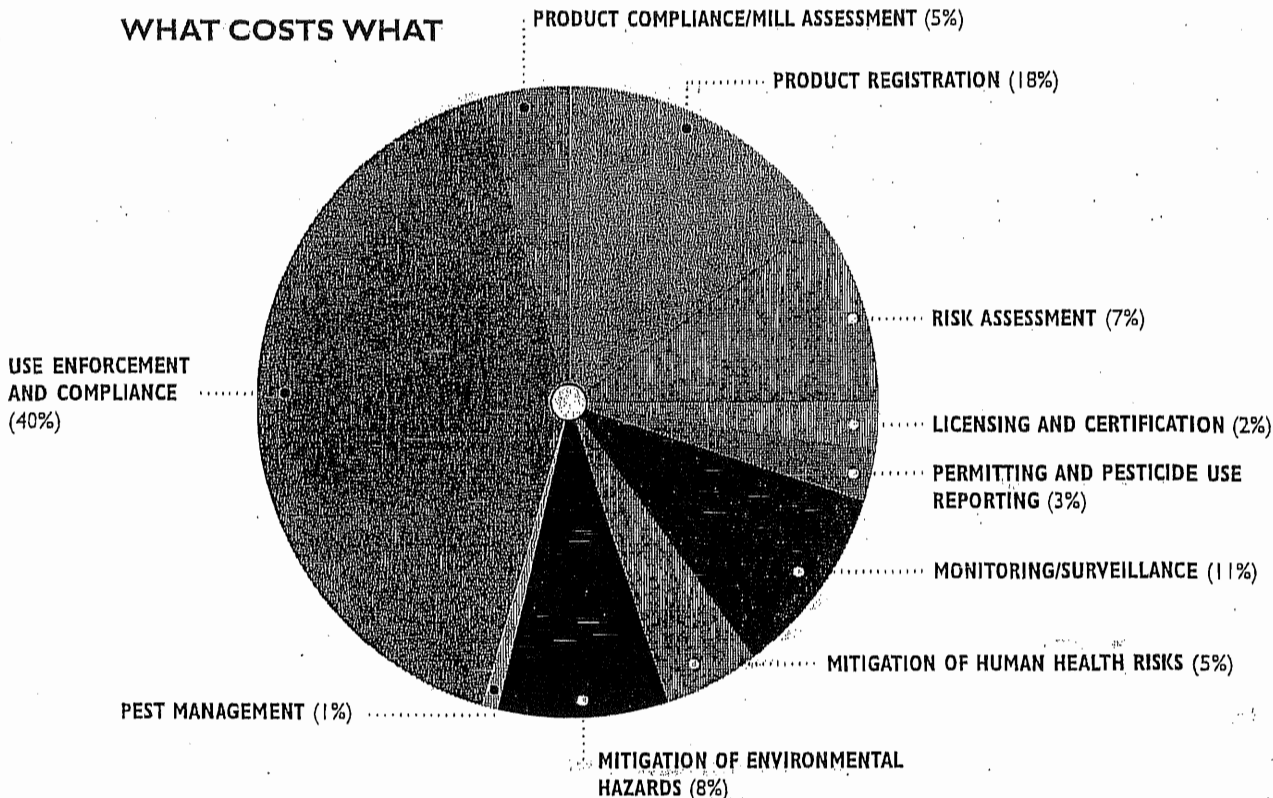
### LICENSING AND CERTIFICATION



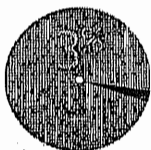
Through licensing and certification, DPR ensures that people selling, possessing, storing, handling, applying, or recommending the use of pesticides are competent and knowledgeable in their safe use. DPR conducts exams; issues and renews licenses for commercial pest control applicators, aerial applicators, pesticide dealers' designated agents, and pest control advisers; and certifies pesticide applicators that use or supervise the use of restricted pesticides. This function also includes reviewing and accrediting continuing education courses. DPR also licenses pest control businesses, maintenance gardener pest control businesses, pesticide brokers, and pest control dealers.



## WHAT COSTS WHAT



### PERMITTING AND PESTICIDE USE REPORTING

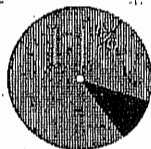


In California, all agricultural pesticide use must be reported, as well as commercial applications to structures, landscapes and turf. The main exceptions to full use reporting are home-and-garden applications, and most industrial and institutional uses. Pesticide users submit reports to their local County Agricultural Commissioner (CAC) who, in turn, submits the data to DPR. DPR compiles and analyzes the data and makes it available online.

Besides federal law and pesticide label restrictions, California has extra controls on certain pesticides that could be especially hazardous to human health or the environment if they are used improperly. Use

of these "restricted materials" requires a permit from CACs, who regulate pesticide use locally. DPR provides support to CACs on their administration of the Restricted Material Permit Program.

### MONITORING/SURVEILLANCE



State law requires DPR to continuously evaluate pesticides after they are in use to protect the public and the environment from pesticide contamination.

Through monitoring and surveillance, DPR analyzes hazards and develops pollution prevention strategies. Activities include air, ground water, and surface water monitoring; investigation and evaluation of pesticide illnesses; and testing of fresh produce. Other activities

include special monitoring projects and developing pesticide analytical methods. Exposure monitoring includes conducting studies to collect data on potential exposure patterns and to assess regulatory requirements. When products are proposed for formal reevaluation, activities include reviewing evidence that supports initiation of reevaluation.

### MITIGATION OF HUMAN HEALTH RISKS



DPR uses scientific data to develop measures to reduce human exposure to pesticides that have unacceptable risks. This may include exposures in air, the workplace, and in food and water. Activities include reviewing data to assess worker health impact of pesticide use and

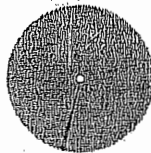
developing mitigation strategies. Mitigation measures may include label changes; placing conditions on registration (for example, restricting use to situations with no exposure concerns); and preparing health and safety recommendations for incorporation into regulations and permit conditions. (Permit conditions are protective use practices a CAC may require before issuing a restricted material permit.) For products under formal reevaluation, activities include determining health risks and identifying methods to reduce or eliminate these risks.

### MITIGATION OF ENVIRONMENTAL HAZARDS



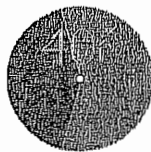
Mitigation of environmental hazards involves using scientific data to develop measures to protect the environment from the potentially adverse effects of pesticides. This includes developing mitigation strategies to protect air, ground water, surface water, endangered species, and desirable (non-target) plants. Mitigation measures may include proposed label changes, placing conditions on registration, regulations, and permit conditions. For products under formal reevaluation, activities include determining environmental risks and identifying methods to reduce or eliminate these risks.

### PEST MANAGEMENT



These programs assess the impacts and potential problems resulting from pesticide use, focusing on preventive solutions that incorporate integrated pest management (IPM). Activities include facilitating adoption of IPM in schools; awarding grants to encourage development and use of alternatives to pesticides of regulatory concern; and evaluating groups nominated for IPM Innovator awards and presenting the awards. Other activities include technical/scientific resource services such as evaluating pest management practices that prevent environmental and human health problems and working with industry to implement these practices.

### USE ENFORCEMENT AND COMPLIANCE



Local enforcement of pesticide use is largely carried out by County Agricultural Commissioners (CACs) and their staffs. DPR headquarters personnel, with field staff in Anaheim, Fresno, and Sacramento, provide the CACs with training, coordination, and technical and legal support. Oversight includes developing statewide enforcement priorities and guidance; evaluating CAC performance under annual workplans; and researching and analyzing compliance trends. Activities also include pesticide misuse investigations and issuing enforcement actions.

### PRODUCT COMPLIANCE AND MILL ASSESSMENT



The mill assessment and product compliance program ensures products are registered before sale and use, that they are labeled correctly, and that required fees have been paid. Activities include inspecting products offered for sale; reviewing labels to ensure they are registered; and auditing pesticide sellers to ensure they are paying sufficient assessments on their sales. Activities include initiating enforcement actions against sellers in violation of requirements. Other activities include overseeing disbursement of the required percentage of mill revenues to CACs, and evaluating trends in the value of the mill.

# Enforcement

*"Law-abiding businesses support strong, consistent enforcement by DPR because this prevents violators from gaining an unfair advantage in the market."*

**MARY-ANN WARMERDAM**  
DPR DIRECTOR

The goal of California's pesticide laws is to protect people and the environment from harm that could be caused by unsafe pesticide use. To help pesticide users follow the law and use pesticides safely, DPR uses many tools, including compliance help, inspections, and enforcement.

California is the only state that has a local pesticide enforcement network. County Agricultural Commissioners in California's 58 counties enforce pesticide laws, under DPR oversight and supported by county and state funding.

## **STRENGTHENING ENFORCEMENT**

As residential development moves increasingly into agricultural areas, pesticide enforcement becomes more challenging. Most pesticide users are conscientious and obey the rules, but a few violators can threaten California's reputation as a world leader in agriculture and pesticide regulation. Carelessness or accidents involving pesticides can have serious consequences. There have been a few incidents when pesticides drifted onto workers or into rural communities, sickening many people. Harmful pesticide drift is illegal, and the public must be protected.

From DPR Director Mary-Ann Warmerdam's perspective, pesticide enforcement, while not broken, needed

strengthening. Building on Cal/EPA's goal of improving environmental enforcement, a pesticide Enforcement Response Policy was developed jointly by DPR and the Agricultural Commissioners in 2005. The goal was to help counties set priorities and make enforcement response more consistent. An informal DPR survey of pesticide enforcement actions found that between 2004 and 2005, proposed fines nearly doubled.

In October 2005, Governor Schwarzenegger directed DPR to adopt the policy as a regulation, which carries the weight of law. The new rules went into effect in late 2006. Like the earlier policy, they follow the common-sense idea that violators should be punished, and the most serious violations should draw the most serious penalties. Enforcement works best when those responsible for enforcing the law use tools suited for the job. Enforcement actions include warning letters, fines imposed by the Commissioner or a court, or action that suspends or cancels a violator's license to do business. Fines can be as low as \$50 and as high as tens of thousands of dollars, keyed to the seriousness of the offense. The regulations also encourage Agricultural Commissioners to give district attorneys the opportunity to file civil or criminal prosecution in serious cases.

*I like working with the CACs, all striving to do the same thing – protecting people and the environment, making sure workers are protected, providing food safe to eat.*

AL LOMELI

### *Al Lomeli*

#### **Pesticide Enforcement Branch**

Al has worked in pesticide regulation for 29 years, 19 years with DPR and before that for the Fresno County Agricultural Commissioner (CAC). In California, county agricultural commissioners are responsible for local enforcement under our oversight. Since 1995, Al has been supervisor of our Central Regional Office in Fresno, one of three DPR regional offices. He and his staff conduct joint inspections with their CAC counterparts to help evaluate how CAC offices are enforcing pesticide laws. They also work with the CACs to target areas that need improvement to strengthen local enforcement programs. Regional staff also help the CACs develop annual work plans designed to strengthen local enforcement. The work plans have clearly stated goals and performance measures, balancing DPR's statewide enforcement priorities with local conditions unique to each county.

With policy now having the force of regulations, some counties have seen a 10-fold increase in penalties. In two years, DPR plans to evaluate the impact of the new rules to see if there are areas where improvement is needed, either by amending the regulation or revising procedures.

#### **GAINING COMPLIANCE WITH PESTICIDE LAWS**

To be effective, strong enforcement must be accompanied by better inspections and compliance assistance. In 2006, DPR published a guide for employers to help them navigate the complex web of pesticide law and regulation. The guide can be downloaded from DPR's Web site and is available from many Agricultural Commissioners' offices.

The Department also printed thousands of wallet cards to help employers and employees interpret the codes on pesticide labels that signify what

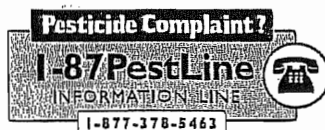
protective equipment pesticide users must wear.

DPR is also funding a pilot project in Kern County designed to improve protections to workers and others from pesticide drift. Kern County is setting up a system to notify operators of bordering properties when restricted materials are to be used. This project complements a grower-sponsored effort ("Spray Safe") aimed at reducing drift incidents by strengthening farmer-to-farmer communication when pesticides are scheduled for application.

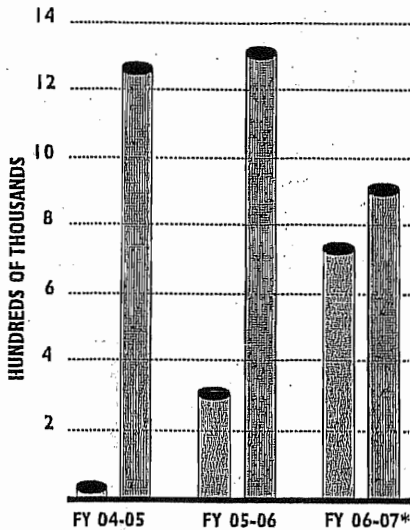
#### **THE CAC CONNECTION: 1-87PESTLINE**

In late 2006, DPR launched an automated, toll-free line that provides the phone number of the County Agricultural Commissioner and then offers to transfer the caller there. The recorded line, in English and Spanish, is designed to encourage timely filing of

*DPR's new toll-free number helps callers connect to their County Agricultural Commissioner, a key to timely investigation of pesticide complaints.*



## AUDITS BOOST MILL PAYMENTS



**MILL COLLECTED FROM AUDITS' CIVIL PENALTIES**

Mill fee collections after auditors turned their attention to unlicensed pesticide sellers and companies that had never before reported pesticide sales. The dark green bar represents past-due mill fees paid by companies after their audits, light green the associated civil penalties.  
(\*FY 06-07 – through March 2007)

pesticide complaints, a key to successful investigations.

"Our goal is to help people with pesticide problems as quickly as possible," said DPR Director Mary-Ann Warmerdam. "The 1-87PestLine is an important innovation that will help us and our local partners, the County Agricultural Commissioners, enforce pesticide laws and protect the public. Despite our earlier outreach, many people seem to be unaware of how to report pesticide problems, or whom to call."

Over the next two years, 1-87-PestLine will be listed in new telephone directories in the government pages under "Pesticide," to make it easier to find.

## HELPING COUNTIES IMPROVE ENFORCEMENT

DPR oversees the work of the County Agricultural Commissioners, who enforce pesticide laws locally. DPR's regional office staff help Agricultural Commissioners develop annual work plans which detail each county's priorities in improving enforcement, compliance, and permitting. (By mid-2007, DPR will post the work plans on our Web site.)

DPR staff also evaluate county enforcement efforts and work with counties

where improvements are needed. DPR's evaluations used to be something of a "widget count," simply totaling inspections, for example, without regard to what the inspection was for. We now use objective-based performance measures, which examine how well counties are targeting local problems and patterns of continuing violations.

## MAKING POLICIES CLEARER

DPR traditionally communicated policies and procedures to Agricultural Commissioners in formal guidance letters. However, with hundreds of such letters issued over many years, searching for specific topics was difficult, as was knowing when a policy had been superseded by a newer one.

So we are consolidating policies and standards into eight manuals that will be the single source of guidance, available online and updated regularly. Three are completed: *Investigative Procedures, Laws and Regulations*, and *Restricted Materials and Permitting*. Nearly done are *Inspection Procedures, Enforcement Guidelines*, and *Hearing Officer Sourcebook*. Staff is working on an overview of the regulatory program, and a final volume, *Guidelines on Interpreting Laws and Regulations*.

## CAL/EPA ENFORCEMENT INITIATIVE

Cal/EPA and its boards, departments and offices have been working for more than two years on a project to foster compliance with environmental laws and regulations.

Other goals of the Agency-wide enforcement initiative include:

- Targeting resources to the areas of highest environmental risk and high non-compliance
- Improving consistency in statewide enforcement response
- Ensuring clear and enforceable rules that are fairly enforced
- Measuring enforcement and environmental results



COUNTY AGRICULTURAL COMMISSIONER PROFILE

Frank Carl

Sacramento County Agricultural Commissioner Frank Carl strolls from his home to a park at the edge of the Carmichael community and points toward a small orange grove. "I'm sure that many people who live around here wonder what orange trees are doing in the park," he observes.

Not so many years ago, they would have wondered what a park was doing in the middle of the orange groves.

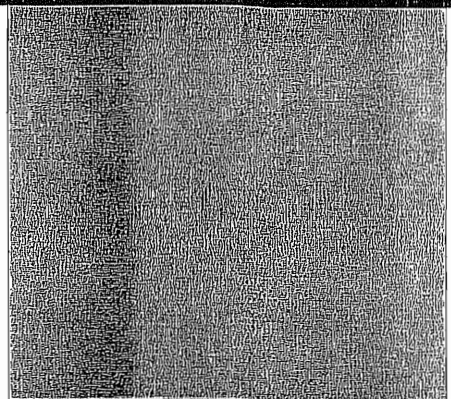
Carl, 57, has been a County Agriculture Commissioner for 17 years. He grew up in Grass Valley and graduated from California State University, Chico, before joining Yuba County as a pest detection surveyor. Then he went on to Merced and Yolo, where he served as deputy commissioner, before taking the top job in Sacramento County.

How has pest management changed? "It's a lot more technical in some respects, particularly when it comes to considering buffer zones for a pesticide spray application or fumigation," he says. "Our regulations today are much more refined – they're based on actual measurements and science, rather than the seat-of-the-pants assessments that we used to make in the field."

Carl also credits pest control advisers for helping growers adopt more sophisticated pest management techniques. "They've really helped us as far as encouraging IPM (integrated pest management)."

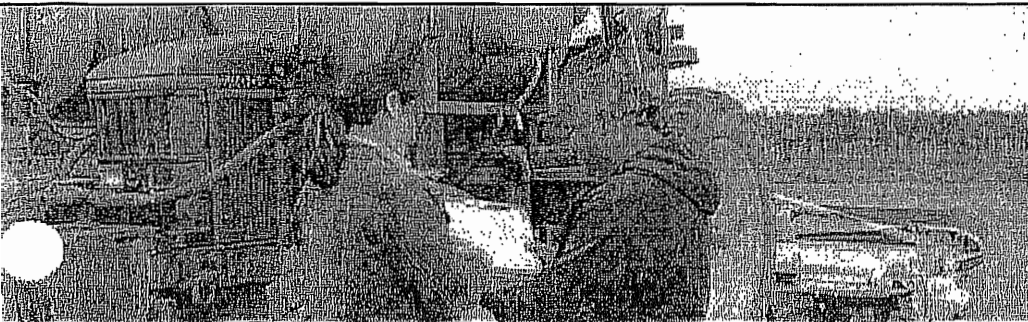
On the urban side, Carl believes pesticide concerns haven't changed as much as people think. "Even 30 years ago, we had calls from folks out in rural areas who didn't appreciate it when their roses were hurt by spraying from a neighbor farm." It's not that suburbanites are so much more environmentally sensitive today, says Carl. "There's just more of them...the percentage of complaints is probably about the same."

Ag-urban friction is now a permanent part of the landscape – in places where farming still has a foot-hold. "Who would have thought that all of Los Angeles could be paved over," says Carl, "when for many years, it was the No. 1 agricultural county in the state."



*"Our regulations today are much more refined, based on actual measurements and science."*

**FRANK CARL  
SACRAMENTO COUNTY  
AGRICULTURAL COMMISSIONER**





### Paul Curtis

#### Product Compliance Branch

Paul, with DPR since 1993, is an auditor whose job is to help make sure companies register their products with DPR as required by law and pay the mill fee on their pesticide sales, a fee that helps support California's regulatory program. A major focus of his branch since early 2006 has been to unravel and understand the complex retail purchasing networks used by the "big box" stores. He and his colleagues—who in earlier years had focused more on the agricultural chemical industry—have found that many home and garden pesticide retailers had not paid the mill fee or were selling some unregistered products. Bringing them into compliance levels the playing field for all pesticide sellers.

*Most companies are cooperative, once they know the rules. Other companies know the rules and when I visit for an audit, their body language tells me they've done something wrong. It's an auditor's job to find out what.*

PAUL CURTIS

#### PROMOTING SAFE PRODUCTS AND AN EQUITABLE MARKETPLACE

To make sure pesticides are safe to use in California, they must be evaluated not only by U.S. EPA but also by DPR scientists before being allowed on the market here. To ensure pesticides have California registration, specialists from DPR's Product Compliance and Pesticide Enforcement branches conduct about 600 inspections a year wherever pesticides are sold. This includes plant nurseries, home-and-garden centers, agricultural chemical dealers, pool and spa centers, and industrial, institutional, restaurant, and hospital suppliers. When staff uncovers sales of unregistered products, sellers must pay any money and interest owed, and they are subject to civil penalties.

The same goes for sellers who fail to pay the fee levied on pesticide sales. The 2.1-cent fee on each dollar of sales supports pesticide enforcement, health and safety, and other DPR programs. To ensure law-abiding businesses are protected from unfair competitors, DPR must make sure firms selling pesticides pay their fair share of this fee.

DPR relies on pesticide sellers to report sales accurately and pay the fee on the

first sale in California. There are about 11,000 brand-name pesticide products registered in California, sold by about 1,300 registrants (companies that make pesticides), 450 dealers, and 100 brokers.

In 2004, DPR formed the Product Compliance Branch to consolidate product enforcement activities. Increased inspection and audits by the new branch found more than \$30 million in unreported sales. The resulting payments and penalties from dealers and retailers, along with higher petroleum costs (which push up pesticide product prices), helped increase mill fee payments to \$46.2 million in 2005-06, compared with about \$41.6 million the previous year.

The Product Compliance Branch audits pesticide registrants, dealers and brokers, and others selling pesticide products into or within California. Audits recently targeted structural pest control franchises, retail drug, pet supply, and hardware chains, the dental and medical supplies industry, and "big box" retailers.

Auditors found significant gaps in reporting of certain types of pesticide transactions, including Internet sales of industrial, institutional, and consumer-





use pesticides, sales by intermediate brokers, and sales through the distribution centers of nationwide retailers. Auditors discovered that shortcomings in state law led to underreporting of pesticide sales and underpayment of fees.

As a result, DPR sponsored legislation (Assembly Bill 1011, Matthews) that in 2006 expanded DPR's broker licensing requirements to cover not only sales of agricultural products but also pesticides sold for use in residential, industrial, and institutional settings. Newly licensed pesticide brokers, now aware of their legal obligations, joined registrants (mainly pesticide manufacturers), pest control dealers, and agricultural pesticide brokers in reporting pesticide sales and paying the mill assessment on those sales.

In mid-2006, budget increases proposed by the Governor and approved by the Legislature allowed DPR to more than double its auditing staff, from three to seven. This restored cuts made more than five years before and provided staff to help identify and track brokers and large retailers who are selling and distributing pesticides into California.

## Getting better at what we do

The Governor's budget for 2007-08 proposes enhancing DPR's capabilities to prevent adverse effects from pesticides and strengthen programs to encourage compliance with pesticide laws. This will help DPR meet challenges to improve California air and water quality and protect workers and others from harm that can be caused by pesticides.

### RESTORING PESTICIDE POLLUTION PREVENTION GRANTS

The budget proposes world-class programs to prevent pesticide impacts, with a particular emphasis on people. The new \$780,000 grant program would advance reduced-risk pest management solutions in agricultural and urban settings. (DPR grant funding has not been available since the Pesticide Alliance Grant Program was eliminated in 2003.) Second, the budget provides for extending the Healthy Schools Act to private child day care facilities. Adding one position and \$19,000 will allow DPR to revise existing outreach materials and training to promote the adoption of integrated pest management in day care settings.

### PREVENTING HARM TO PEOPLE

To fully protect the most vulnerable people in California and to achieve DPR's goal of zero major illness incidents, we must make sure our rules reflect the latest developments in health and safety. A \$647,000 budget item proposes five positions to address pesticide risks to agricultural and to workers. This will help DPR develop risk reduction safety measures, adopt statewide rules, improve worker and physician outreach, and take pesticide product registration actions. Reducing farm worker illnesses, long a priority of California's pesticide regulatory program, has also taken on urgency with new environmental justice concerns. The worker outreach program will address worker safety by including providing information on employee rights to file confidential complaints about pesticide exposures and how to do so.

### ENCOURAGING BETTER COMPLIANCE

Gaining compliance with pesticide rules is a critical underpinning of our capacity to protect people and reduce illness incidents. In the past two years, DPR has significantly strengthened pesticide enforcement, including implementing regulations that make enforcement responses more consistent by redefining the most serious violations and the most serious penalties. Local enforcement is carried out by Agricultural Commissioners in each of California's 58 counties with oversight, guidance and training from DPR liaison staff. A \$667,000 budget item would add 13 positions so DPR could enhance this program.



# Information for Retail Stores Selling Pesticides and Paying Mill Assessment

Department of Pesticide Regulation/Mill Assessment Branch

## What is the pesticide "mill assessment"?

California assesses a fee on all pesticide sales, levied at the point of first sale into the state. A "mill" is equal to one-tenth of a cent. In 2004, this "mill assessment" is 21 mills, or 2.1 cents per dollar of sales.

## What is a pesticide?

A pesticide is any substance intended to control, destroy, repel, or attract a pest. Any living organism that causes damage or economic loss or transmits or produces disease may be the target pest. Pests can be animals (like insects or mice), unwanted plants (weeds), or microorganisms (like plant diseases or "germs," that is, viruses and bacteria).

Before being sold or used in California, all pesticides must be registered with both the U.S. Environmental Protection Agency and the California Department of Pesticide Regulation (DPR).

Pesticide products typically sold in retail stores include:

Types (and product examples)	Pests that are controlled
Algicides (pool chlorine)	Algae
Disinfectants & sanitizers (toilet bowl cleaner)	Bacteria, viruses, mold, mildew
Fungicides (rose dust)	Fungi on plants – powdery mildew
Herbicides (weed killer)	Unwanted plants
Insecticides (ant or roach spray)	Insects and other "bugs"
Molluscicides (snail bait)	Slugs and snails
Repellants (mosquito repellent)	Mosquitoes, ticks
Rodenticides (rat poison)	Mice and other rodent pests

## Where do mill assessment revenues go?

Mill assessment revenues are placed in a special fund used to pay for the State's pesticide regulatory program. DPR is the State lead agency charged with enforcing all aspects of pesticide sales and use in California to protect public health and the environment. DPR's programs are funded primarily from fees on pesticide registrations, professional licenses, and from the mill assessment.

### Important Points About the Mill Assessment

- ▶ *Whoever makes the first sale of a pesticide product into California is responsible for paying the mill fee.*
- ▶ *Mill assessment must be paid on all pesticide sales, whether agricultural or non-agricultural products, no matter whether the seller is a DPR licensee.*

### **How is the mill assessment rate established?**

The mill rate is currently limited by law to a maximum of 21 mills (2.1 cents). The rate is set in regulation by DPR (Title 3, California Code of Regulations, §6386), at a level adequate to support the Department's annual expenditures authorized by the Legislature and to provide a prudent reserve.

### **Who pays mill assessment?**

The law (Food and Agricultural Code [FAC] section 12841) requires that mill assessment "shall be paid by the registrant . . . or other person who first sold the pesticide for use in this state." (*Emphasis added.*)

### **The mill collection process**

The mill assessment program is a 'self-assessment' system. DPR issues mill assessment reporting forms on a quarterly basis to companies that have pesticides registered for sale in California, and to licensed agricultural pesticide brokers and dealers. Sellers of pesticides labeled only for non-agricultural uses are not subject to licensing requirements. However, **mill assessment must be paid on all pesticide sales**, and DPR relies on voluntary cooperation from these non-licensed sellers to collect mill assessment due.

### **Recordkeeping requirements and DPR's audit authority**

The law (FAC section 12842) requires that "every person who sells for use in this state any pesticide products that have been registered by (DPR) shall maintain in this state . . . an accurate record of all transactions subject to assessment. . . . The records are subject to audit by (DPR) and shall clearly demonstrate proof of payment of all applicable assessments for each registered pesticide product. . . ." These requirements apply to all pesticide sellers, whether they sell agricultural or non-agricultural pesticides.

### **How do retailers know if the mill assessment has been paid on product they sell?**

The law (FAC section 12847) requires that invoices for all sales of pesticides into or within California must indicate payment of the mill assessment. Currently, retail sales of non-agricultural products are exempted from the invoicing requirement.

If you have questions, you can e-mail DPR's Mill Assessment Branch at [MillAssessment@cdpr.ca.gov](mailto:MillAssessment@cdpr.ca.gov), or call 916-445-4159.

For more information, visit [www.cdpr.ca.gov](http://www.cdpr.ca.gov), or write [MillAssessment@cdpr.ca.gov](mailto:MillAssessment@cdpr.ca.gov).

**Paula Higashi**

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**From:** Maria Bueb [mbueb@cdpr.ca.gov]  
**Sent:** Tuesday, August 12, 2008 8:25 AM  
**To:** Paula Higashi  
**Subject:** RE: Re: PUR Boilerplate

**Attachments:** 08-09 PUR County Agreement Template.pdf



08-09 PUR County Agreement Tem...

I've scanned the document for you. Let me know if you need anything else.

Maria Bueb  
Budget Analyst  
322-6170

>>> "Paula Higashi" <paula.higashi@csm.ca.gov> 8/7/2008 4:44 PM >>>

Maria,  
We are unable to open the document because it is a mail merge document and we lack the source document. Can you reformat, or send us a merged document file for a county?  
Paula Higashi

-----Original Message-----

**From:** Maria Bueb [mailto:mbueb@cdpr.ca.gov]  
**Sent:** Thursday, August 07, 2008 3:29 PM  
**To:** Paula Higashi  
**Subject:** Fwd: Re: PUR Boilerplate

Paula, I believe this is the document you need. Also, I've attached our "historical background" document in case you don't have it.

Maria Bueb  
Budget Analyst  
322-6170

>>> Mitzi Spatz 8/7/2008 3:27 PM >>>  
Sure.

Maria, here it is.

>>> Tiffany Donohue 8/7/2008 3:26 PM >>>  
Can you send Maria the electronic PUR boiler?

thanks.



AGREEMENT NUMBER <b>«ContractNumber»</b>
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:  
 STATE AGENCY'S NAME  
**DEPARTMENT OF PESTICIDE REGULATION**  
 CONTRACTOR'S NAME  
**«CONTRACTOR»**
- The term of this Agreement is: **July 1, 2008 through June 30, 2009**
- The maximum amount of this Agreement is: \$ **«ContractAmount».00** and no cents
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	3 pages
Attachment 1, Data Format	7 pages
Attachment 2, Commodity Codes by Name	7 pages
Exhibit B – Budget Detail and Payment Provisions	2 pages
Exhibit C* – General Terms and Conditions	GTC 307
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement).	1 page
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	

*Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at [www.ols.dgs.ca.gov/Standard+Language](http://www.ols.dgs.ca.gov/Standard+Language)*

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		California Department of General Services Use Only  <b>Approved by</b>  <b>DPR</b>  Date: _____
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>«Contractor»</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS <b>«Address1», «City» «State» «PostalCode»</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME Department of Pesticide Regulation		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Tiffany Donohue, 0 - 74,999.99K, Anise Severns 75 - 199,999.99, JoAnne over 200K		
ADDRESS 1001   Street, P.O. Box 4015, Sacramento, CA 95812-4015		
		<input checked="" type="checkbox"/> Exempt per: DGS Exemption Letter 74.4

## SCOPE OF WORK

The Department of Pesticide Regulation's (DPR) mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management which is mandated under the California Food and Agricultural Code section 11501 sets forth the general purposes of the legal code that fundamentally authorizes the State's pesticide regulatory program:

- To provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber and for protection of the public health and safety.
- To protect the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides.
- To assure agricultural and pest control workers of safe working conditions where pesticides are present.
- To permit agricultural pest control by competent and responsible licensees and permittees under strict control of the Department of Pesticide Regulation and the County Agricultural Commissioners.
- To assure consumers and users that pesticides are properly labeled and appropriate for the use designated by the label and that state or local governmental dissemination of information on pesticidal uses of any registered pesticide product is consistent with the uses for which the product is registered.
- To encourage the development and implementation of pest management systems, stressing application of biological and cultural pest control techniques with selective pesticides when necessary to achieve acceptable levels of control with the least possible harm to the public health, nontarget organisms, and the environment.

Pesticide use reporting is an ongoing program to collect and process data on full use reporting of agricultural and structural pesticide applications, per the Food Safety Act of 1989 (Chapter 1200, AB 2161). Under full use reporting, certain agricultural pesticide uses are required to be reported to the county agricultural commissioner (CAC), who, in turn, reports the data to DPR. DPR also collects reports from structural pest control businesses for pesticide use in schools. Full use reports include the amount and name of the pesticide applied, date and location (section, township, range) of the application, and, if the application was agricultural, the crop. The primary exceptions to the use reporting requirements are home and garden use, and most industrial and institutional use. The pesticide use reports are compiled by DPR and made available on disc and on DPR's Web site. DPR also provides support to the CACs on their administration of the computer systems and applications for the Restricted Material Permit Program, which is used to manage, track, and collect data for permits, operator identifications, and pesticide use reports.

1. This Contract Agreement is entered into by and between the Department of Pesticide Regulation (DPR), Pest Management & Licensing Branch and «Contractor» (Contractor), «Address1», «City», «State» «PostalCode».

There are 2 version for paragraph 2:

*Version 1 is used for Kings County only.*

2. The Contractor shall provide electronic submittal of pesticide use report records and shall provide data to DPR on floppy disc, via electronic mail, or the Internet, which shall meet the criteria outlined in paragraph 5 of this Exhibit. In addition, the Contractor shall provide the same services for Kern County as well as provide the necessary administrative oversight through the term of this agreement.

*Version 2 is used for all other counties*

2. The Contractor shall provide electronic submittal of pesticide use report records and shall provide data to DPR on floppy disc, via electronic mail, or the Internet, which shall meet the criteria outlined in paragraph 5 of this Exhibit.
3. Services shall be provided during the term of July 1, 2008 through June 30, 2009, as identified on the first page of the Agreement.
4. The Project Coordinator during the term of this Agreement will be:
  - A. **Mary Votaw** shall be the Project Coordinator for this agreement.
  - B. All official communications from the Contractor to DPR, shall be directed to the attention of the Project Coordinator or designee at the following address and phone/fax numbers:

Department of Pesticide Regulation  
Pest Management & Licensing Branch  
1001 I Street, MS 3C  
P.O. Box 4015  
Sacramento, CA 95812-4015

Phone (916) 445-3887

Fax (916) 324-9006

Email address: [purdata@cdpr.ca.gov](mailto:purdata@cdpr.ca.gov)

- C. All official communications and payments from DPR to the Contractor shall be directed to the attention of «ContactPerson» or designee at the following address and phone/fax numbers:

«Contractor»  
«Address1»  
«City», «State» «PostalCode»

Phone «WorkPhone»

Fax «FaxPhone»

5. Contractor's Responsibility:

- A. All pesticide use records submitted to the Contractor shall be reviewed against the grower's current permit and shall be reviewed for accuracy of the information. After said review, the Contractor shall submit to DPR, all production agriculture and monthly summary pesticide use report applications for the period July 1, 2008 through June 30,

2009 meeting the data requirements as stated herein on a monthly basis. (CalTrans data should not be sent by the Contractor to avoid duplication.)

- B. Data must be submitted on either 3-1/2" or 5-1/4" floppy disks or via electronic mail or the Internet. A summary of the number of records contained on each file must be included. Each file shall be clearly identified with the following information -- county name, application month and year, file name, number of records, and if it is being sent on a disk it must also include the disk number.
- C. For both production agriculture and monthly summary data, the file name shall consist of eight (8) characters: the first position will be a letter; the second and third positions shall be the county number; the fourth and fifth positions shall be the batch number; the sixth and seventh positions shall be the application year; and the eighth position is the disk sequence number.
- D. Each file shall include data for one calendar year only. Data for overlapping years may be on a single disk, but each year shall be in a separate file and labeled appropriately.
- E. Data must be readable by MS DOS version 2.11 or greater.
- F. Data must be submitted in a flat or ASCII file.
- G. Data must be in the format provided by DPR, as identified in this Exhibit.
- H. Commodity codes must be from the 'Most Common Commodity Codes' list as provided by DPR and identified in this exhibit. As necessary, changes will be made to this list and copies will be forwarded to the Contractor.
- I. All submissions will be verified by DPR. A summary of the accepted data and a listing of the rejected applications will be sent to the County for review. Rejected submissions shall be corrected and resubmitted on hardcopy to DPR. It is understood by DPR that not all rejected submissions are correctable due to product label language vs the label database, and this will be taken into consideration for tracking purposes. Verifications may include, but are not limited to the following:
  - 1) Any appropriate correction to the invalid record;
  - 2) Request to delete the record;
  - 3) Statement that a Notice of Violation was issued; and,
  - 4) Statement of compliance with the label (this will be verified by DPR).

*Use this paragraph for all other counties:*

- J. The amount of the current year Agreement is based on \$.47 per record and is calculated using a rolling three-year (2004 – 2006) average number of pesticide use records received by DPR.

*Use this paragraph for Riverside and San Bernardino County only:*

- J. The amount of the current year Agreement is based on an estimated number of pesticide use records to be submitted to DPR paid at \$.47 per record.

Use the next two paragraphs (K & L) for Kings County only.

K. Kings County shall be reimbursed for administrative oversight and operational costs associated with the data coordination between Kings County and Kern County not to exceed \$5,000.

L. The Contractor shall provide DPR with pesticide use reports for Kern County as described above.

**(Special Instruction for Kings and Merced Counties only)**

***This paragraph must be included when completing the contract for Kings County.***

6. Additional Services to be provided:

In addition the Contractor shall provide DPR with pesticide use reports for Kern County, as described in paragraph 5 of this Exhibit.

A maximum of five thousand (\$5,000) dollars for administrative costs shall be charged under this Agreement for data coordination with Kern County.

Counties Served - Kern County

Job Functions - Administrative costs include the following:

- 1) reimbursement for staffing
- 2) administrative oversight
- 3) operational costs including:
  - i. phone charges
  - ii. copying
  - iii. mailing

***This paragraph must be included when completing the contract for Merced County.***

6. Additional Services to be provided:

**Merced County** - 500 hours: total contractual costs of \$25,000 for support (includes salary, benefits, overhead, travel and per diem, materials, and supplies)

Counties Served - Statewide

Additional Job Functions to be provided - Primarily directed towards support for California Electronic Data Transmittal Systems (CEDTS) focusing on the new centralized Internet website in Merced County.

- A. Installs electronic transfer hardware and software on CAC systems.
- B. Installs communication hardware and software on customers' systems.
- C. Gives presentations and trains commissioners' staffs on programs and communications use.



- D. Sets up Internet CEDTS access on customers' systems to allow utilization of Merced CEDTS data server.
- E. Writes program files to allow easier user interface with commissioners programs.
- F. Assists software companies with their design code and testing for CEDTS.
- G. Updates documentation.
- H. Participates in planning sessions for permit and CEDTS programs.
- I. Provides technical assistance via telephone (10-40 calls per week).

The county will prepare and submit reports that include identification of customers served, type of service provided (i.e. phone vs. on-site, training, presentation, installation/setup of new customers, programming, etc.). These reports shall be submitted and attached to the invoice for services.

**External Interface Data Format**

Job Report (39-025/33-126X) (Type A), Rev. July 1, 2008

Variable	Length	Type	Offset	Comments
RECORD_ID	1	X	1	Transaction type (A).
PROCESS_DT	4	N	2 - 5	MMYY output format.
BATCH_NO	4	N	6 - 9	CCSS (CC: County; SS: Batch Seq.).
REPORT_MONTH	2	N	10 - 11	Optional.
REPORT_YEAR	2	N	12 - 13	Optional.
RESERVED	1	X	14	Reserved for expansion--code as '0'.
COUNTY_CD	2	N	15 - 16	County code 1 to 58.
SECTION	2	N	17 - 18	
TOWNSHIP	2	N	19 - 20	
TSHIP_DIR	1	X	21	'N', 'S'.
RANGE2	N		22 - 23	
RANGE_DIR	1	X	24	'E', 'W'.
BASE_LN_MER	1	X	25	'H', 'M', 'S'.
AER_GND_IND	1	X	26	'A', 'G', 'O', 'F'.
GROWER_ID	11	X	27 - 37	County assigned grower ID code (CCYYCCXXXXX).
CEDTS_IND	1	X	38	'E', ' '.
SITE_LOC_ID	8	X	39 - 46	County assigned code for field.
ACRE_PLANTED	8	N	47 - 54	9(6)V(2).
UNIT_PLANTED	1	X	55	'A', 'T', 'S', 'C', 'K', 'U', 'P'.
APPLIC_DT	6	N	56 - 61	MMDDYY format.
SITE_CODE	6	N	62 - 67	From "Commodity Codes by Name" list.
QUALIFY_CD	2	N	68 - 69	Zero if not used.
PLANTING_SEQ	1	N	70	Zero if not used.
ACRE_TREATED	8	N	71 - 78	9(6)V(2).
UNIT_TREATED	1	X	79	'A', 'T', 'S', 'C', 'K', 'U', 'P'.
MFG_FIRMNO	7	N	80 - 86	EPA Reg. No., part 1.
LABEL_SEQ_NO	5	N	87 - 91	EPA Reg. No., part 2.
REVISION_NO	2	X	92 - 93	California revision code.
REG_FIRMNO	7	N	94 - 100	Subregistration number.
AMT_PRD_USED	10	N	101 - 110	9(6)V(4).
UNIT_OF_MEAS	2	X	111 - 112	'LB', 'OZ', 'GA', 'QT', 'PT', 'KG', 'GR', 'LI', 'ML'
DOCUMENT_NO	8	N	113 - 120	Document sequence number within batch.
LINE_ITEM	4	N	121 - 124	Line Item within document.
APPLIC_TM	4	N	125 - 128	Military time, zero fill if none reported.
FUME_CD	4	N	129 - 132	Fumigation method code, if applicable (Beginning with applications 1/1/09)

- Please Note:**
1. Document number field should be numeric only.
  2. Line Item field should be numeric only.
  3. Line Item fields should be right justified and zero filled, i.e. if the line item is 20, it should be entered as 0020, not \_20.
  4. COMBINATION OF FIELDS: BATCH\_NO + DOCUMENT\_NO + SUMMARY\_CD MUST BE UNIQUE WITHIN A FILE/DISK.

IV-95 Output Data Format  
 Monthly Production Agriculture Summary (33-017) (Type B), Rev. July 1, 2008

Variable	Length	Type	Offset	Comments
RECORD_ID	1	X	1	Transaction type (B).
PROCESS_DT	4	N	2 - 5	MMYY output format.
BATCH_NO	4	N	6 - 9	CCSS (CC: County; SS: Batch Seq.).
REPORT_MONTH	2	N	10 - 11	Report month.
REPORT_YEAR	2	N	12 - 13	Report year.
RESERVED	1	X	14	Reserved for expansion--code as '0'.
COUNTY_CD	2	N	15 - 16	County code 1 to 58.
SECTION	2	N	17 - 18	
TOWNSHIP	2	N	19 - 20	
TSHIP_DIR	1	X	21	'N', 'S'.
RANGE	2	N	22 - 23	
RANGE_DIR	1	X	24	'E', 'W'.
BASE_LN_MER	1	X	25	'H', 'M', 'S'.
AER_GND_IND	1	X	26	'A', 'G', 'O', 'F'
GROWER_ID	11	X	27 - 37	County assigned grower ID code. (CCYYCCXXXXX).
CEDTS_IND	1	X	38	'E', 'I'.
SITE_LOC_ID	8	X	39 - 46	County assigned code for field.
ACRE_PLANTED	8	N	47 - 54	9(6)V(2).
UNIT_PLANTED	1	X	55	'A', 'T', 'S', 'C', 'K', 'U', 'P'.
APPLIC_DT	6	N	56 - 61	MMDDYY format.
SITE_CODE	6	N	62 - 67	From "Commodity Codes by Name" list
QUALIFY_CD	2	N	68 - 69	Zero if not used.
PLANTING_SEQ	1	N	70	Zero if not used.
ACRE_TREATED	8	N	71 - 78	9(6)V(2).
UNIT_TREATED	1	X	79	'A', 'T', 'S', 'C', 'K', 'U', 'P'.
MFG_FIRMNO	7	N	80 - 86	EPA Reg. No., part 1.
LABEL_SEQ_NO	5	N	87 - 91	EPA Reg. No., part 2.
REVISION_NO	2	X	92 - 93	California revision code.
REG_FIRMNO	7	N	94 - 100	Subregistration number.
AMT_PRD_USED	10	N	101 - 110	9(6)V(4).
UNIT_OF_MEAS	2	X	111 - 112	'LB', 'OZ', 'GA', 'QT', 'PT', 'KG', 'GR', 'LI', 'ML'
DOCUMENT_NO	8	N	113 - 120	Document sequence number within batch.
LINE_ITEM	4	N	121 - 124	Line item within document.
APPLIC_TM	4	N	125 - 128	Military time. Zero fill if none reported.
FUME_CD	4	N	129 - 132	Fumigation method code, if applicable (Beginning with applications 1/1/09)

- Please Note:**
1. Document number field should be numeric only.
  2. Line item field should be numeric only.
  3. Line item fields should be right justified and zero filled, i.e. if the line item is 20, it should be entered as 0020; not \_20.
  4. COMBINATION OF FIELDS: BATCH\_NO + DOCUMENT\_NO + SUMMARY\_CD MUST BE UNIQUE WITHIN A FILE/DISK.

Output Data Format

Monthly Summary (30-060) (Type C), Rev. July 1, 2008

Variable	Length	Type	Offset	Comments
RECORD_ID	1	X	1	Transaction type (C).
PROCESS_DT	4	N	2 - 5	MMYY output format.
BATCH_NO	4	N	6 - 9	CCSS (CC: County; SS: Batch Seq.).
REPORT_MONTH	2	N	10 - 11	Optional.
REPORT_YEAR	2	N	12 - 13	Optional.
NURSERY_IND	1	X	14	N/A for this form.
COUNTY_CD	2	N	15 - 16	County code 1 to 58.
SECTION	2	N	17 - 18	N/A for this form.
TOWNSHIP	2	N	19 - 20	N/A for this form.
TSHIP_DIR	1	X	21	N/A for this form.
RANGE2	N		22 - 23	N/A for this form.
RANGE_DIR	1	X	24	N/A for this form.
BASE_LN_MER	1	X	25	N/A for this form.
AER_GND_IND	1	X	26	N/A for this form.
GROWER_ID	11	X	27 - 37	See Type A. (Required if no LICENSE_NO.)
CEDTS_IND	1	X	38	'E', 'I'
SITE_LOC_ID	8	X	39 - 46	N/A for this form.
ACRE_PLANTED	8	N	47 - 54	N/A for this form.
UNIT_PLANTED	1	X	55	N/A for this form.
APPLIC_DT	6	N	56 - 61	MMDDYY input format (use "01" for day). MMDDYY output format.
SITE_CODE	6	N	62 - 67	From "Commodity Codes by Name" list. (if SITE_CODE < 100, do not report ACRE_TREATED and UNIT_TREATED).
QUALIFY_CD	2	N	68 - 69	Zero if not used.
PLANTING_SEQ	1	N	70	Zero if not used.
ACRE_TREATED	8	N	71 - 78	9(6)V(2).
UNIT_TREATED	1	X	79	'A', 'T', 'S', 'C', 'K', 'U', 'P'.
MFG_FIRMNO	7	N	80 - 86	EPA Reg. No., part 1.
LABEL_SEQ_NO	5	N	87 - 91	EPA Reg. No., part 2.
REVISION_NO	2	X	92 - 93	California revision code.
REG_FIRMNO	7	N	94 - 100	Subregistration number.
AMT_PRD_USED	10	N	101 - 110	9(6)V(4).
UNIT_OF_MEAS	2	X	111 - 112	'LB', 'OZ', 'GA', 'QT', 'PT', 'KG', 'GR', 'L', 'ML'
DOCUMENT_NO	8	N	113 - 120	Batch sequence number or press #.
LINE_ITEM	4	N	121 - 124	Line item within document.
APPLIC_CNT	6	N	125 - 130	Number of applications.
LICENSE_NO	13	X	131 - 143	Applicator License #. (Required if no GOWER_ID)

- Please Note:**
1. Document number field should be numeric only.
  2. Line item field should be numeric only.
  3. Line item fields should be right justified and zero filled, i.e. if the line item is 20, it should be entered as 0020, not \_20.
  4. COMBINATION OF FIELDS: BATCH\_NO + DOCUMENT\_NO + SUMMARY\_CD MUST BE UNIQUE WITHIN A FILE/DISK.

Output Data Format  
 Monthly Summary Count of Applications (39-060) (Type D), Rev. July 1, 2008

Variable	Length	Type	Offset	Comments
RECORD_ID	1	X	1	Transaction type (D).
PROCESS_DT	4	N	2- 5	MMYY out.
BATCH_NO	4	N	6 - 9	CCSS (CC: County; SS: Batch Seq.).
REPORT_MONTH	2	N	10 - 11	Optional.
REPORT_YEAR	2	N	12 - 13	Optional.
NURSERY_IND	1	X	14	N/A for this form
COUNTY_CD	2	N	15 - 16	County code 1 to 58.
SECTION	2	N	17 - 18	N/A for this form.
TOWNSHIP	2	N	19 - 20	N/A for this form.
TSHIP_DIR	1	X	21	N/A for this form.
RANGE2	N		22 - 23	N/A for this form.
RANGE_DIR	1	X	24	N/A for this form.
BASE_LN_MER	1	X	25	N/A for this form.
AER_GND_IND	1	X	26	N/A for this form.
GROWER_ID	11	X	27 - 37	N/A for this form.
CEDTS_IND	1	X	38	N/A for this form.
SITE_LOC_ID	8	X	39 - 46	N/A for this form.
ACRE_PLANTED	8	N	47 - 54	N/A for this form.
UNIT_PLANTED	1	X	55	N/A for this form.
APPLIC_DT	6	N	56 - 61	N/A for this form.
SITE_CODE	6	N	62 - 67	N/A for this form.
QUALIFY_CD	2	N	68 - 69	N/A for this form.
PLANTING_SEQ	1	N	70	N/A for this form.
ACRE_TREATED	8	N	71 - 78	N/A for this form.
UNIT_TREATED	1	X	79	N/A for this form.
MFG_FIRMNO	7	N	80 - 86	N/A for this form.
LABEL_SEQ_NO	5	N	87 - 91	N/A for this form.
REVISION_NO	2	X	92 - 93	N/A for this form.
REG_FIRMNO	7	N	94 - 100	N/A for this form.
AMT_PRD_USED	10	N	101 - 110	N/A for this form.
UNIT_OF_MEAS	2	X	111 - 112	N/A for this form.
DOCUMENT_NO	8	N	113 - 120	N/A for this form.
LINE_ITEM	4	N	121 - 124	N/A for this form.
APPLIC_CNT	6	N	125 - 130	Number of applications.

- Please Note:**
1. Document number field should be numeric only.
  2. Line Item field should be numeric only.
  3. Line Item fields should be right justified and zero filled, i.e. If the line item is 20, it should be entered as 0020, not \_\_20.
  4. COMBINATION OF FIELDS: BATCH\_NO + DOCUMENT\_NO + SUMMARY\_CD MUST BE UNIQUE WITHIN A FILE/DISK.

Use Report Data--Key Data Instructions, Rev. July 1, 2008

Variable	Description and Coding Instructions
RECORD_ID	Document type to identify edit criteria for documents. For electronic data, Job Report (39-125/33/126x) is coded as type 'A' and Monthly Agricultural Summary (33-017) is coded as type 'B'.
PROCESS_DT	Month and Year document processed. This is the month the document is encoded and validated. Format is MMYYY.
BATCH_NO	Identify batched groups of documents for a particular month. Four digit code is divided into county number and a two-digit sequence number. This allows up to 100 batches to be processed each month for a county.
REPORT_MONTH	Month of application. This is optional for record type 'A' but is required for record type 'B'. This field and the next are keyed from the boxes for Month(1) and Year(2) on the 33-017.
REPORT_YEAR	Year of application. This is optional for record type 'A' but is required for record type 'B'.
COUNTY_CD	County code number. the assigned numeric code for the county.

**The following fields refer to the location information on the Pesticide Use Report as Township/Range/Section (TRS) data:**

SECTION	Section number in which pesticide was applied. This is a two-digit numeric field, range 1 - 36.
TOWNSHIP	Township number: two digits, range 1 - 43.
TSHIP_DIR	Single character direction indicator for township. Valid values are 'N' and 'S'.
RANGE	Range number: two digits, range 1 - 47.
RANGE_DIR	Single character direction indicator for range. Valid values are 'E' and 'W'.
BASE_LN-MER	Single character for reference origin for TRS data. Valid values are 'H', 'M', and 'S'.
AER_GND_IND	Indicator for application. Listed as 'A' (air), 'G' (ground), 'O' (other), or 'F' (field fumigation). AER_GND_IND of 'F' requires a 4-digit field fumigation method code for field fumigation applications beginning January 1, 2009.
GROWER_ID	County defined code for grower.

Field cannot be blank for record types 'A' and 'B' (Required for type 'C' if no LICENSE\_NO is entered.)

Format: CC YY CC XXXXX

CC	-	reporting county
YY	-	application year
CC	-	county of origin
XXXXX	-	five-digit grower/permit number

Variable	Description and Coding Instructions
CEDTS_IND	Indicator for records submitted electronically through any program including but not limited to California Electronic Data Transmission System (CEDTS), PRe Data, RMMS web, etc. Valid values are 'E' or ' ' (blank).
SITE_LOC_ID	Code assigned by county for field identifier for grower. Field cannot be blank
ACRE_PLANTED	Total number of units for the location identified by SITE_LOC_ID. Alternate units may be used for applications which do not allow reporting in acres.
UNIT_PLANTED	Single character code to identify the type of units reported in the ACRE_PLANTED field. Valid values include 'A' (acres), 'T' (tons), 'S' (square feet), 'C' (cubic feet), 'K' (thousand cubic feet), 'U' (miscellaneous units).
APPLIC_DT	Date of application. Format is MMDDYY. Reject is month greater than 12, day greater than last day of the subject month, or year is prior to 1990.
SITE_CODE	Numeric code for commodity/site. Must be consistent with Department's list of "Commodity Codes by Name" (Rev. 1/2008). It is checked to ensure it is on the site code table and on the product label.
QUALIFY_CD	Numeric code for special qualification of use for SITE_CODE. Code as zero if not used.
PLANTING_SEQ	Numeric sequence for multiple plantings in single field. Code as zero if not used.
ACRE_TREATED	Total number of units treated at the location identified by SITE_LOC_ID.
UNIT_TREATED	Alternate units may be used for applications which do not allow reporting in acres. Single character code to identify the type of units reported in the ACRE_TREATED field. Valid values include 'A' (acres), 'T' (tons), 'S' (square feet), 'C' (cubic feet), 'K' (thousand cubic feet), 'U' (miscellaneous units).

The following four fields comprise the product registration number. MFC\_FIRMNO and LABEL\_SEQ\_NO make up the EPA Reg. No. REVISION\_NO is the alphabetic revision code assigned by the Department. REC\_FIRMNO is the subregistration number, if present. The registration number is valid if a current or inactive product is on file.

MFG_FIRMNO	Numeric seven digits.
LABEL_SEQ_NO	Numeric five digits.
REVISION_NO	Alphabetic two characters.
REC_FIRMNO	Numeric seven digits. Code as zero if not used.

<b>Variable</b>	<b>Description and Coding Instructions</b>
AMT_PRD_USED	Reported number of units used. Ten digits with implied four decimals.
UNIT_OF_MEAS	Two character code to identify type of units reported used. Valid values include 'GA' (gallons), 'QT' (quarts), 'PT' (pints), 'LB' (pounds), 'OZ' (ounces), 'KG' (kilograms), and 'GR' (grams), 'L' (liters), 'ML' (milliliters).
DOCUMENT_NO	Numerical sequence for document within batch. This is used to identify separate documents. Must be numeric and cannot be blank or zeros.
LINE_ITEM	Sequence number for application within the document. This allows identification of a particular application for error correction.
APPLIC_TM	Numeric four digits. Time of application (military time)
LICENSE_NO	PCO license number. (Required for type 'C' records only...needed if GROWER_ID is blank.)
FUME_CD	Field fumigation method code. Used beginning with January 1, 2009 applications for field soil fumigations. Also use 'F' as the application method in the AER_GND_IND field.



**Commodity Codes By Name for Permit/PUR Programs**

NAME	NUMBER	NAME	NUMBER
AIRPORT	67001-00	BOAT/PIER	69000-00
ALFALFA	23001-00	BOK CHOY (LOOSE LEAF)	13502-00
ALFALFA, SEED	23001-04	BOYSENBERRY	1003-00
ALFALFA SPROUT	15021-00	BROCCOFLOWER	13525-00
ALMOND	3001-00	BROCCOLI	13005-00
ALOE VERA	27502-00	BROCCOLI, PROCESS	13005-89
AMARANTH, EDIBLE (CHINESE SPINACH)	13033-00	BROCCOLI, SEED	13005-04
ANIMAL PREMISE	61001-00	BRUSSELS SPROUT	13006-00
ANISE	8004-00	BRUSSELS SPROUT, SEED	13006-04
ANISE, SEED	8004-04	BUSHBERRY	1023-00
APPLE	4001-00	CABBAGE	13007-00
APRICOT	5001-00	CABBAGE, NAPPA	13010-00
ARRUGULA	13056-00	CABBAGE, SEED	13007-04
ARTICHOKE	13018-00	CABBAGE, SAVOY	13505-00
ARTICHOKE, SEED	13018-04	CACTUS LEAF	13048-00
ASIAN PEAR	4501-00	CACTUS PEAR	6028-00
ASPARAGUS	16002-00	CANOLA (RAPE)	28051-00
ASPARAGUS, SEED	16002-04	CANTALOUPE	10002-00
AVOCADO	28000-00	CARDOON	13032-00
BAMBOO SHOOT	13051-00	CARROT	29111-00
BANANA	6002-00	CARROT, FOR/FOD	23025-00
BARLEY	29103-00	CARROT, PROCESS	29111-89
BARLEY, FOR/FOD	22008-00	CARROT, SEED	29111-04
BARLEY, SEED	29103-04	CASABA MELON	29122-10
BASIL, SWEET	8006-00	CASHEW	3003-00
BEAN, DRIED	15001-00	CASTORBEAN	27001-00
BEAN, DRIED SEED	15001-04	CASTORBEAN, SEED	27001-04
BEAN, FAVA	28059-00	CATTLE	52003-00
BEAN, GARBANZO	15032-00	CAULIFLOWER	13008-00
BEAN, LIMA	15003-10	CAULIFLOWER, PROC	13008-89
BEAN, SPROUT	15013-00	CAULIFLOWER, SEED	13008-04
BEAN, SUC SEED	15003-04	CELERIAC	14004-00
BEAN, SUCCULENT	15003-00	CELERY	29113-00
BEAN, UNSPEC SEED	28001-04	CELERY, SEED	29113-04
BEAN, UNSPECIFIED	28001-00	CHAYOTE	10030-00
BEEHIVE	61008-00	CHERIMOYA	6030-00
BEET	29109-00	CHERRY	5002-00
BEET, FOR/FOD	23036-00	CHERVIL	13055-00
BEET, SEED	29109-04	CHESTNUT	3004-00
BERMUDAGRASS	22017-00	CHICKEN	55001-00
BERMUDAGRASS, SEED	22017-04	CHICORY	28034-00
BEVERAGE CROP	7000-00	CHINESE GREENS	13999-00
BIRDSFT TREFOIL	23011-00	CHINESE GREEN SEED	13999-04
BITTER MELON	10017-00	CHINESE SPINACH (EDIBLE AMARANTH)	13033-00
BLACKBERRY	1002-00	CHIVE	14005-00
BLDG/AG FARM	64000-00	CHIVE, SEED	14005-04
BLDG/NON-AG OUTDR	67003-00	CHRISTMAS TREE	30005-00
BLUEBERRY	1009-00	CILANTRO	13501-00

**Commodity Codes By Name for Permit/PUR Programs**

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NAME	NUMBER	NAME	NUMBER
CITRUS	2000-00	FIG	6005-00
CLOVER	23003-00	FLAX	28009-00
CLOVER, SEED	23003-04	FLAX, SEED	28009-04
COCONUT	28004-00	FLOWER EDIBLE	29008-00
COLE CROP	13004-00	FOOD PROC PLANT	71000-00
COLLARD	13009-00	FORAGE HAY/SILAGE	22000-00
COLLARD, SEED	13009-04	FOREST/TIMBERLAND	30000-00
COMM FUMIGATION	90-00	FRUIT, DRIED	43026-00
COMM FUMIG/PARK	90-20	FRUIT (SMALL) & BERRY	1000-00
CORN, FOR/FOD	22005-00	FUMIGATION, OTHER	91-00
CORN, GRAIN	24002-00	FUMIGATION, OTHER/PARK	91-20
CORN, HUMAN CONSUMPTION	29119-00	GAI CHOY (LOOSE LF)	13509-00
CORN, HUMAN CONS. SEED	29119-04	GAI LON (TIGHT HD)	13903-00
CORN SALAD	13013-00	GARBANZO BEAN	15032-00
CORN, SWEET	29119-01	GARLIC	14007-00
COTTON	29121-00	GF-AZALEA	151-30
COTTON, FOR/FOD	23005-00	GF-BULB	151-31
COTTON, PIMA	29121-10	GF-CACTUS	151-32
COTTON, SEED	29121-04	GF-CARNATION	151-33
COTTONSEED OIL	27003-00	GF-CHRSTMS TREE	151-34
COUNTY AG COMM	60-00	GF-CHRYSANTHMUM	151-35
CRANBERRY	1010-00	GF-CONIFER	151-36
CRENSHAW MELON	29122-11	GF-DEC. SHRUB	151-37
CUCUMBER	10010-00	GF-DEC. TREE	151-38
CURRANT	1011-00	GF-EVG. SHRUB	151-39
DAIKON	14023-00	GF-EVG. TREE	151-40
DAIRY EQUIPMENT	60000-00	GF-FERN	151-41
DANDELION GREENS	13014-00	GF-FLOWER SEED	151-44
DATE	6004-00	GF-FLOWERING PLANT	151-42
DEWBERRY	1004-00	GF-FLOWERING TREE	151-43
DILL	8015-00	GF-FOLIAGE PLANT	151-45
DITCH BANK	65021-00	GF-GROUND COVER	151-46
DRIED FRUIT	43026-00	GF-HOUSE PLANT	151-47
DUCK	55002-00	GF-ICEPLANT	151-48
EGG	55501-00	GF-IVY	151-49
EGGPLANT	11001-00	GF-JUNIPER	151-50
EDIBLE FLOWER	29008-00	GF-PALM	151-51
ENDIVE (ESCAROLE)	13015-00	GF-PINE TREE	151-52
ENDIVE, SEED	13015-04	GF-ROSE	151-53
FARM/AG BLDG	61000-00	GF-SUCCULENT	151-54
FAVA BEAN	28059-00	GF-TURF	151-55
FENNEL	28008-00	GF-VINE	151-56
FIBER CROP	21000-00	GINGER	8019-00

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NAME	NUMBER	NAME	NUMBER
GOOSEBERRY	1013-00	GT-CHRYSANTHMUM	155-35
GOURD	10026-00	GT-CONIFER	155-36
GP-AZALEA	153-30	GT-DEC. SHRUB	155-37
GP-BULB	153-31	GT-DEC. TREE	155-38
GP-CACTUS	153-32	GT-EVG. SHRUB	155-39
GP-CARNATION	153-33	GT-EVG. TREE	155-40
GP-CHRSTMS TREE	153-34	GT-FERN	155-41
GP-CHRYSANTHMUM	153-35	GT-FLOWER SEED	155-44
GP-CONIFER	153-36	GT-FLOWERING PLANT	155-42
GP-DEC. SHRUB	153-37	GT-FLOWERING TREE	155-43
GP-DEC. TREE	153-38	GT-FOLIAGE PLANT	155-45
GP-EVG. SHRUB	153-39	GT-GROUND COVER	155-46
GP-EVG. TREE	153-40	GT-HOUSE PLANT	155-47
GP-FERN	153-41	GT-ICEPLANT	155-48
GP-FLOWER SEED	153-44	GT-IVY	155-49
GP-FLOWERING PLANT	153-42	GT-JUNIPER	155-50
GP-FLOWERING TREE	153-43	GT-PALM	155-51
GP-FOLIAGE PLANT	153-45	GT-PINE TREE	155-52
GP-GROUND COVER	153-46	GT-ROSE	155-53
GP-HOUSE PLANT	153-47	GT-SUCCULENT	155-54
GP-ICEPLANT	153-48	GT-TURF	155-55
GP-IVY	153-49	GT-VINE	155-56
GP-JUNIPER	153-50	GUAVA	6006-00
GP-PALM	153-51	GUAYULE	26015-00
GP-PINE TREE	153-52	HEMP	21003-00
GP-ROSE	153-53	HERB/SPICE	8000-00
GP-SUCCULENT	153-54	HONEY	25501-00
GP-TURF	153-55	HONEYBALL MELON	29122-12
GP-VINE	153-56	HONEYDEW MELON	29122-13
GRAIN	28078-00	HOPS	8020-00
GRANARY	46502-00	HORSE	56005-00
GRAPE	29141-00	HORSERADISH	28011-00
GRAPE, RAISIN	29141-89	HORSERADISH, SEED	28011-04
GRAPE, WINE	29143-00	HOSPITAL	74000-00
GRAPEFRUIT	2002-00	HOUSEHOLD	63000-00
GRAPEFRUIT, PROC	2002-89	INDUSTRIAL SITE	77000-00
GRASS SEED	28066-00	JICAMA	14024-00
GREENHOUSE FUM	61006-00	JICAMA, SEED	14024-04
GT-AZALEA	155-30	JOJOBA BEAN	27018-00
GT-BULB	155-31	JUJUBE	6504-00
GT-CACTUS	155-32	KALE	13011-00
GT-CARNATION	155-33	KALE, SEED	13011-04
GT-CHRSTMS TREE	155-34	KIWI	6018-00

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NAME	NUMBER	NAME	NUMBER
KOHLRABI	13012-00	N-OUTDOOR FLOWER	152-00
KOHLRABI, SEED	13012-04	N-OUTDOOR PLANT	154-00
KUMQUAT	2003-00	N-OUTDOOR TRANSPL	156-00
LAMB/SHEEP	52013-00	NAPPA CABBAGE	13010-00
LANDSCAPE MAIN	30-00	NECTARINE	5003-00
LANDSCAPE/PARK	30-20	NEW ZEALAND SPINACH	13044-00
LEEK	14010-00	NURSERY SOIL	40501-00
LEGUME, FOR/FOD	23000-00	NUTS	3000-00
LEMON	2004-00	OAT	29125-00
LETTUCE, HEAD	13045-00	OAT, FOR/FOD	22006-00
LETTUCE, HEAD SEED	13045-04	OAT, SEED	29125-04
LETTUCE, LEAF	13031-00	OF-AZALEA	152-30
LETTUCE, LEAF SEED	13031-04	OF-BULB	152-31
LETTUCE, ROMAINE	13031-10	OF-CACTUS	152-32
LIME	2005-00	OF-CARNATION	152-33
LITCHI NUT	6017-00	OF-CHRSTMS TREE	152-34
LIVESTOCK	52000-00	OF-CHRYSANTHMUM	152-35
LOGANBERRY	1005-00	OF-CONIFER	152-36
LOQUAT	6008-00	OF-DEC. SHRUB	152-37
LOTUS ROOT	14025-00	OF-DEC. TREE	152-38
LUMBER, TREATED	64500-00	OF-EVG. SHRUB	152-39
MACADAMIA NUT	3007-00	OF-EVG. TREE	152-40
MALABAR SPINACH	13516-00	OF-FERN	152-41
MANGO	6007-00	OF-FLOWER SEED	152-44
MELON	29122-00	OF-FLOWERING PLANT	152-42
MELON, CASABA	29122-10	OF-FLOWERING TREE	152-43
MELON, CRENSHAW	29122-11	OF-FOLIAGE PLANT	152-45
MELON, HONEYBALL	29122-12	OF-GROUND COVER	152-46
MELON, HONEYDEW	29122-13	OF-HOUSE PLANT	152-47
MELON, PERSIAN	29122-15	OF-ICEPLANT	152-48
MELON, SANTA CLARA	29122-16	OF-IVY	152-49
MELON, SEED	29122-04	OF-JUNIPER	152-50
MELON, SHARLYN	29122-17	OF-PALM	152-51
MINT	28012-00	OF-PINE TREE	152-52
MIZUNA	13504-00	OF-ROSE	152-53
MUSHROOM	16003-00	OF-SUCCULENT	152-54
MUSHROOM HOUSE	61007-00	OF-TURF	152-55
MUSHROOM SOIL	40011-00	OF-VINE	152-56
MUSKMELON	29122-14	OILSEED	27000-00
MUSTARD	29123-00	OKRA	15015-00
N-GRNHS FLOWER	151-00	OLIVE	28014-00
N-GRNHS PLANT	153-00	ONION, DRY	14011-00
N-GRNHS TRANSPL	155-00	ONION, DRY SEED	14011-04

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NAME	NUMBER	NAME	NUMBER
ONION, GREEN	16004-00	OT-EVG. SHRUB	156-39
ONION, GREEN SEED	16004-04	OT-EVG. TREE	156-40
OP-AZALEA	154-30	OT-FERN	156-41
OP-BULB	154-31	OT-FLOWER SEED	156-44
OP-CACTUS	154-32	OT-FLOWERING PLANT	156-42
OP-CARNATION	154-33	OT-FLOWERING TREE	156-43
OP-CHRSTMS TREE	154-34	OT-FOLIAGE PLANT	156-45
OP-CHRYSANTHMUM	154-35	OT-GROUND COVER	156-46
OP-CONIFER	154-36	OT-HOUSE PLANT	156-47
OP-DEC. SHRUB	154-37	OT-ICEPLANT	156-48
OP-DEC. TREE	154-38	OT-IVY	156-49
OP-EVG. SHRUB	154-39	OT-JUNIPER	156-50
OP-EVG. TREE	154-40	OT-PALM	156-51
OP-FERN	154-41	OT-PINE TREE	156-52
OP-FLOWER SEED	154-44	OT-ROSE	156-53
OP-FLOWERING PLANT	154-42	OT-SUCCULENT	156-54
OP-FLOWERING TREE	154-43	OT-TURF	156-55
OP-FOLIAGE PLANT	154-45	OT-VINE	156-56
OP-GROUND COVER	154-46	PAPAYA	6010-00
OP-HOUSE PLANT	154-47	PARSLEY	13022-00
OP-ICEPLANT	154-48	PARSLEY, SEED	13022-04
OP-IVY	154-49	PARSNIP	14012-00
OP-JUNIPER	154-50	PARSNIP, SEED	14012-04
OP-PALM	154-51	PASTURELAND	28035-00
OP-PINE TREE	154-52	PEACH	5004-00
OP-ROSE	154-53	PEACH, PROCESSING	5004-89
OP-SUCCULENT	154-54	PEANUT	29126-00
OP-TURF	154-55	PEAR	4003-00
OP-VINE	154-56	PEAR, ASIAN	4501-00
ORANGE	2006-00	PEAR, PROCESSING	4003-89
ORANGE, PROCESSING	2006-89	PEAS	29127-00
ORCHARD FLOOR	28509-94	PEAS, FOR/FOD	23008-00
ORCHARDGRASS	22028-00	PEAS, PROCESSING	29127-89
OREGANO	8026-00	PEAS, SEED	29127-04
OT-AZALEA	156-30	PECAN	3008-00
OT-BULB	156-31	PEPPER, FRUITING	11003-00
OT-CACTUS	156-32	PEPPER, FRUITING SD	11003-04
OT-CARNATION	156-33	PEPPER, SPICE	8050-00
OT-CHRSTMS TREE	156-34	PEPPER, SPICE SEED	8050-04
OT-CHRYSANTHMUM	156-35	PERSIAN MELON	29122-15
OT-CONIFER	156-36	PERSIMMON	6012-00
OT-DEC. SHRUB	156-37	PIG	52018-00
OT-DEC. TREE	156-38	PIMA COTTON	29121-00

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NAME	NUMBER	NAME	NUMBER
PIMENTO	11004-00	RYEGRASS	22035-00
PIMENTO, SEED	11004-04	SAFFLOWER	29129-00
PINEAPPLE	6013-00	SAFFLOWER, SEED	29129-04
PISTACHIO	3011-00	SAGE	8035-00
PLUM	5005-00	SALSIFY	28504-00
PLUOT	5505-00	SANTA CLARA MELON	29122-16
POME FRUIT	4000-00	SAVOY CABBAGE	13505-00
POMEGRANATE	6015-00	SESAME SEED	28018-00
POMELO	2012-00	SEWAGE SYSTEM	65026-00
POTATO	14013-00	SHALLOT	14017-00
POTATO, SEED	14013-04	SHARLYN MELON	29122-17
POTATO, SWEET	14018-00	SHEEP/LAMB	52013-00
POULTRY	55000-00	SHINGI KU	13046-00
PREPLANT/SOIL FUM	40008-00	SMALL FRUIT/BERRY	1000-00
PRUNE	5006-00	SOD/TURF	33008-00
PUBLIC HEALTH	50-00	SOIL FUM/PREPLANT	40008-00
PUBLIC HEALTH/PARK	50-20	SORGHUM, FOR/FOD	22004-00
PUMPKIN	10011-00	SORGHUM MILO	29131-00
QUINCE	4004-00	SORGHUM, SEED	29131-04
RADICCHIO	13524-00	SOYBEAN	28023-00
RADISH	14014-00	SOYBEAN, GRAIN	15010-00
RADISH, SEED	14014-04	SOYBEAN, OIL	27010-00
RAMIE	21005-00	SOYBEAN, SEED	28023-04
RANGELAND	28045-00	SOYBEAN SPROUT	15029-00
RAPE (CANOLA)	28051-00	SPICE/HERB	8000-00
RAPPINI	13052-00	SPINACH	13024-00
RASPBERRY	1006-00	SPINACH, MALABAR	13516-00
RECREATION AREA	67002-00	SPINACH, NEW ZEALAND	13044-00
REG PEST CONTROL	100-00	SPINACH, SEED	13024-04
REG PEST CTL/PARK	100-20	SQUASH	10012-00
RESEARCH COMMODITY	99-00	SQUASH, SUMMER	10013-00
RESEARCH COMM/PARK	99-20	SQUASH, WINTER	10014-00
RESIDENTIAL	68002-00	SQUASH, ZUCCHINI	10015-00
RESTAURANT	72000-00	STONE FRUIT	5000-00
RHUBARB	13023-00	STORAGE AREA/BOX	46000-00
RICE	28072-00	STRAWBERRY	1016-00
RICE, WILD	24013-00	STRAWBERRY, PROC	1016-89
RIGHTS-OF-WAY	40-00	STRUCT PEST CNTL	10-00
RIGHTS-OF-WAY/PARK	40-20	STRUCT PEST/PARK	10-20
ROSEMARY	8032-00	SUDANGRASS	22011-00
RUTABAGA	14015-00	SUDANGRASS, SEED	20011-04
RYE	28064-00	SUGARBEET	29135-00
RYE, SEED	28064-04	SUGARBEET, FOR/FOD	23009-00

**Commodity Codes By Name for Permit/PUR Programs**

Universal qualifiers:

- 04 can be used with any commodity to denote "grown for seed"
- 07 can be used do denote "seedless variety"
- 20 can be used with any commodity to denote an application in a state park
- 60 can be used with any commodity to denote "grown organically"
- 89 can be used with any commodity to denote "grown for processing"

NAME	NUMBER	NAME	NUMBER
SUGARCANE	25003-00	TURNIP, SEED	29137-04
SUNFLOWER	29133-00	UNCULTIVATED, AG	66000-00
SUNFLOWER, SEED	29133-04	UNCULTIVATED, NON-AG	67000-00
SWEET BASIL	8006-00	UNDECLARED COMM	99999-00
SWEET POTATO	14018-00	VEGETABLE	28024-00
SWIMMING POOL	65011-00	VEGETABLE, FRUITING	11000-00
SWISS CHARD	13025-00	VEGETABLE, LEAFY	13000-00
TAT SOI (SPINACH MUSTARD)	13515-00	VEGETABLE, ROOT	28061-00
TANGELO	2007-00	VEGETABLE, SEED	28024-00
TANGERINE	2008-00	VEGETABLE, STEM	13043-00
TARO ROOT	28047-00	VERTEBRATE CONTROL	80-00
TARRAGON	8041-00	VETCH	23010-00
THYME	8042-00	WALNUT	3009-00
TIMOTHY	22029-00	WATER AREA	65000-00
TOBACCO	26003-00	WATER FILTER	65015-00
TOMATILLO	11008-00	WATER, INDUSTRIAL	65503-00
TOMATO	11005-00	WATERCRESS	13027-00
TOMATO, PROCESSING	29136-00	WATERMELON	10008-00
TOMATO, SEED	11005-04	WHEAT	29139-00
TRITICALE	24011-00	WHEAT, FOR/FOD	22007-00
TROP/SUBTROP FRUIT	6000-00	WHEAT, SEED	29139-04
TURF/SOD	33008-00	WILD RICE	24013-00
TURKEY	55008-00	YAM	14021-00
TURNIP	29137-00	ZUCCHINI SQUASH	10015-00
TURNIP, FOR/FOD	23501-00		

## BUDGET DETAIL AND PAYMENT PROVISIONS

### 1. Invoicing and Payment

- A. In no event shall the Contractor request reimbursement from the State for obligations entered into or for costs incurred prior to the commencement date or after the expiration of this Agreement.
- B. For services satisfactorily rendered, and upon receipt and approval of the invoices, DPR agrees to compensate the Contractor for actual expenditures incurred in accordance with the rate specified in paragraph 5 of this Exhibit.
- C. The Contractor shall submit, in arrears, no less than quarterly, an invoice to DPR for costs incurred pursuant to this Agreement. Payments will be made in arrears upon receipt and approval of invoice as stated below. If it is noted that a county is deficient in sending the PUR data, payment will be withheld until receipt of said data.

There are 2 versions for "Payment Schedule" below:

***Version 1 is used for Riverside and San Bernardino Counties only.***

Payment Schedule:

- 1) 1st payment will be payable by January 1 based on the number of records times \$.47 with application dates for July, August, and September of the previous year.
  - 2) 2nd payment will be payable by April 1 based on the number of records times \$.47 with application dates for October, November, and December of the previous year.
  - 3) 3rd payment will be payable by June 15 based on the number of records times \$.47 with application dates for January, February, and March of the same year.
  - 4) 4th payment will be payable by September 1 based on the number of records times \$.47 with application dates for April, May, and June of the same year.
- D. Each invoice shall contain the following information:
- 1) The Agreement number;
  - 2) The dates or time period during which the invoiced costs were incurred;
  - 3) The total number of records submitted during the billing quarter at \$.47 per record.
  - 4) Expenditures for the current invoice and cumulative expenditures to date; and,
  - 5) The signature of an authorized representative of the Contractor.

***Version 2 is used for all other Counties.***



Payment Schedule:

- 1) 1st payment will be one fourth of the Agreement amount payable by January 1 of the year following the applications for July, August, and September.
- 2) 2nd payment will be one fourth of the Agreement amount payable by April 1 of the year following the applications for October, November, and December.
- 3) 3rd payment will be one fourth of the Agreement amount payable by June 15 of the same year following the applications for January, February, and March.
- 4) 4th payment will be one fourth of the Agreement amount payable by September 1 of the same year following the applications for April, May, and June.

D. Each invoice shall contain the following information:

- 1) The Agreement number;
- 6) The dates or time period during which the invoiced costs were incurred;
- 3) Expenditures for the current invoice and cumulative expenditures to date; and,
- 4) The signature of an authorized representative of the Contractor.

E. Invoices shall be submitted in triplicate on printed letterhead identified by a control number to:

Department of Pesticide Regulation  
Pest Management and Licensing Branch  
Attn: Mary Votaw  
P.O. Box 4015, MS 3C  
Sacramento, CA 95812-4015

- F. DPR agrees to make payment as promptly as fiscal procedures permit, upon receipt of the invoice(s), subject to approval of the Project Coordinator, and contingent upon satisfactory completion of the terms of this agreement.
- G. "Satisfactory completion" as used in this Agreement means that the Contractor has complied with all terms, conditions and performance requirements of this Agreement.

**2. Budget Contingency Clause**

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Contractor to reflect the reduced amount.

**3. Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

**4. Miscellaneous Payment**

The Contractor shall not use State funds allocated under this Agreement for any of the following purposes:

- A. Travel;
- B. Entertainment expenses;
- C. Professional dues for the Contractor's staff or officials; and,
- D. Purchase, construction, renovation, alteration, improvement, or repair of capital assets, such as real estate and vehicles.

*There are 2 version to paragraph 4. Budget:*

~~Version 1 is used only for Riverside and San Bernardino Counties only.~~

**5. Budget**

- A. The total amount of the Agreement shall not exceed \$«ContractAmount».00. The total amount of this Agreement is based on an estimated number of pesticide use records to be submitted to the Contractor times \$.47 per record: \$«ContractAmount».00, as described in paragraph 5.J of Exhibit A of this Agreement.
- B. The Contractor shall not receive additional compensation for reimbursement or for costs not identified in this Agreement and shall not decrease the work to compensate therefore.

~~Version 2 is used for all other Counties~~

5. **Budget**

- A. The total amount of the Agreement shall not exceed \$«ContractAmount».00. The total amount of this Agreement is based on a rolling three-year average number of pesticide use records submitted to the Contractor (2004 – 2006) times \$.47 per record: \$«ContractAmount».00, as described in paragraph 5.J of Exhibit A of this Agreement.
- B. The Contractor shall not receive additional compensation for reimbursement or for costs not identified in this Agreement and shall not decrease the work to compensate therefore.

## SPECIAL TERMS AND CONDITIONS

### 1. Approval

This Agreement shall be in full force or effect pursuant to the commencement date identified on the signature page of this Agreement.

### 2. Cancellation Clause

This Agreement may be amended or canceled at any time by either party in writing within thirty (30) calendar days advance notice. If canceled final payment shall be made to the Contractor only for performance and costs authorized up to the date of cancellation upon receipt of the final invoice.

### 3. Amendment

- A. No variation of the terms or conditions of this Agreement shall be valid without a written amendment to this Agreement. No oral understanding or agreement is binding on any of the parties.
- B. The Contractor shall submit a formal request for each amendment, including a revised Scope of Work, Budget, and Line item, if applicable, to the Project Coordinator. Unless waived for good cause by the Project Coordinator, all requests for amendments shall be received by the Project Coordinator a minimum of seventy-five (75) calendar days prior to the expiration date of this Agreement.

### 4. Resolution of Disputes

- A. DPR reserves the right to issue an order to stop work in the event that a dispute should arise, or in the event that the DPR gives the performing agency a notice that this Agreement will be terminated. If DPR exercises this right, the stop-work order will be in effect until the dispute has been resolved or this Agreement has been terminated.
- B. Any dispute concerning a question of fact arising under the terms of this Agreement which is not disposed of within a reasonable period of time by agency employees normally responsible for the administration of this agreement, shall be brought to the attention of the Executive Officer or designated representative of each agency for joint resolution.
- C. The Contractor shall continue with the responsibilities under this agreement during any dispute until the expiration of this Agreement or notified to stop work.



Hearing: May 29, 2009  
j: mandates/2006/PGA/06pga02/FSA

**ITEM 9**  
**FINAL STAFF ANALYSIS**  
**PROPOSED AMENDMENTS TO**  
**PARAMETERS AND GUIDELINES**

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

California Code of Regulations, Title 3, Sections 6000, 6393 (c),  
6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628  
(Register 90, No. 1)

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

Department of Pesticide Regulation, Requestor

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**Executive Summary**

This is a request filed by the Department of Pesticide Regulation (DPR) pursuant to Government Code section 17557, subdivision (d) to amend the original parameters and guidelines for the *Pesticide Use Reports* Program (CSM-4420). If the Commission on State Mandates (Commission) approves DPR's request, the amendments would be effective for costs incurred beginning July 1, 2005.

DPR requests that the parameters and guidelines be amended so mandate reimbursement guidelines will be conformed to current law and implementing regulations. The Department of Finance (DOF), the County of San Bernardino, and the State Controller's Office (SCO) filed comments on DPR's original proposal and subsequent modifications.

In the original proposal, the DPR proposed to update the existing parameters and guidelines with "current" Commission "boilerplate" language and to clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. DPR also proposed to include mill disbursement, and unclaimed gas tax funds received by the claimant as offsetting revenues and other reimbursements, and to notify claimants that DPR developed an Offsetting Revenue Worksheet to help the counties identify the appropriate amounts to apply as an offset to a reimbursement claim. DPR also proposed adding a new Section VIII on Payment of Claims.

The parties have had full and fair opportunity to discuss and brief the issues of the original proposal. The request to amend the parameters and guidelines was issued for comment and comments were filed by the DOF. The DPR modified the Proposed Amendment on March 22, 2007, and on May 9, 2008, DPR clarified the proposed amendments to address audit issues. The County of San Bernardino and DOF filed comments on the modified proposal, and DPR filed rebuttal comments.

Finally, the SCO filed comments, and DPR filed rebuttal comments. During the course of the review and comment period, Commission staff convened two pre-hearing conferences to assist staff and the parties in understanding each party's position, including staff's position reflected in the draft staff analysis. The draft staff analysis identified 10 proposed amendments to the parameters and guidelines. Comments on the draft staff analysis were filed by the DPR, DOF, and the County of San Bernardino.

There is only one issue that remains in dispute for the County of San Bernardino:

- Should the Offsetting Revenues and Reimbursements section be amended to add language requiring the deduction of unclaimed gas tax revenues as an offset?

Staff finds that unclaimed gas tax revenues received by claimant pursuant to Food and Agricultural Code section 224 are not required to be used toward paying the cost for reimbursable activities mandated by Food and Agricultural Code section 12979. However, to the extent that unclaimed gas tax revenues are used by a claimant toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset.

Therefore, staff recommends approval of the following language to replace DPR's proposal:

Specifically, the following revenues and reimbursements must be deducted from any ~~cost claim~~ costs claimed:

The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

### **Conclusion and Staff Recommendation**

Staff recommends that the Commission approve the proposed amendments to the parameters and guidelines, as modified by staff, beginning on page 25.

Staff further recommends that the Commission authorize staff to make technical non-substantive changes or corrections upon adoption.



## Chronology

01/21/1993 Commission adopts Statement of Decision

02/23/1995 Commission adopts parameters and guidelines

01/12/2007 Department of Pesticide Regulations (DPR) files proposed amendment to parameters and guidelines

02/20/2007 Department of Finance (DOF) files comments

03/22/2007 DPR modifies proposed amendment to parameters and guidelines

04/22/2008 Commission requests comments from the County of San Bernardino, original claimant

05/09/2008 DPR makes clarifications to proposed amendments to address audit issues

06/23/2008 DOF files comments on proposed amendments

06/23/2008 County of San Bernardino requests extension of time to submit response

06/25/2008 Commission staff approves request for extension of time

07/11/2008 County of San Bernardino files comments on proposed amendments

08/01/2008 DPR files rebuttal comments

09/18/2008 State Controller's Office (SCO) files comments

09/26/2008 Pre-hearing conference held and new schedule established

10/31/2008 DOF files comments

01/15/2009 DPR files rebuttal comments

02/24/2009 Commission staff issues draft staff analysis

03/26/2009 Pre-hearing conference held

04/09/2009 DOF files comments on draft staff analysis

04/15/2009 County of San Bernardino and DPR file comments on draft staff analysis

05/14/2009 Final staff analysis issued

## STAFF ANALYSIS

### Background

This is a request filed by the Department of Pesticide Regulation (DPR) to amend the original parameters and guidelines for the *Pesticide Use Reports Program* (CSM-4420).

If the Commission on State Mandates (Commission) approves DPR's request, the amendments would be effective for costs incurred beginning July 1, 2005.

### Test Claim Decision

Statutes 1989, chapter 1200 added Food and Agricultural Code section 12979, which states:

A pesticide use report shall be submitted to the commissioner or director on a form and in a manner prescribed by the director. The data from the pesticide use reports shall be considered in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest control research, public health monitoring and research, and similar activities by the department, or by the department in cooperation with other state, regional, or local agencies with appropriate authority.

In 1991, the County of San Bernardino filed a test claim on this statute. In 1993, the Commission adopted a Statement of Decision on this test claim, finding that the provisions of Food and Agriculture Code section 12979, and its related regulations in Title 3 of the California Code of Regulations, increased the level of service to be provided by the county agricultural commissioners.<sup>1</sup>

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Food and Agriculture Fund in section 12846 of the Food and Agricultural Code which specified that it be used, upon appropriation, for the purposes of a number of sections, including 12979. Moreover, the Commission found that the Food Safety Account was created and an existing mill assessment that is imposed on counties was increased to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.

Former section 6393, subdivision (c) of Title 3, California Code of Regulations, which addressed the mill assessments, was amended to include new criteria for reimbursing counties for additional work related to the expansion of pesticide use reporting requirements for all agricultural uses. However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission found that to the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17556, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.

The Commission further found that any costs incurred as a result of the increased pesticide reporting requirements, that are not reimbursed by the Food Safety Account, and the increased mill assessment, are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provisions of Government Code section 17556, subdivision (e).

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<sup>1</sup> See Exhibit A, Statement of Decision.

## Parameters and Guidelines

The parameters and guidelines include the following limiting language under “Scope of Mandate:”

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979 of Chapter 1200 Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

And, specify the following reimbursable activities:

1. Issuing operator identification numbers pursuant to 3 CCR section 6622.
2. Issuing site identification numbers pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in V.A. above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

### **Department of Pesticide Regulation’s Request to Amend Parameters and Guidelines**

DPR requests that the parameters and guidelines be amended so mandate reimbursement guidelines will be conformed to current law and implementing regulations.<sup>2</sup> The Department of Finance (DOF), the County of San Bernardino, and the State Controller’s Office (SCO) filed comments on DPR’s original proposal and subsequent modifications.

In the original proposal, the Department of Pesticide Regulation proposed to update the existing parameters and guidelines with “current” Commission “boilerplate” language and to clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. DPR also proposed to include mill disbursement, and unclaimed gas tax funds received by the claimant as offsetting revenues and other reimbursements, and to notify claimants that DPR developed an Offsetting Revenue Worksheet to help the counties identify the appropriate amounts to apply as an offset to a reimbursement claim. DPR also proposed adding a new Section VIII on Payment of Claims and later withdrew this request.

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<sup>2</sup> See Exhibit B, Department of Pesticide Regulation’s Original Request and Comments, dated January 12, 2007, March 22, 2007, May 9, 2009, August 1, 2008, and January 15, 2009.

On January 16, 2009, DPR filed rebuttal comments and modified its last proposed amendments by accepting many of the SCO recommendations.

On April 15, 2009, DPR commented on the draft staff analysis. DPR's suggested technical corrections are reflected in the final staff analysis. One substantive comment regarding Issue 8, Offsetting Revenue Worksheet, is addressed in the analysis below. With these changes, DPR accepts all other staff recommendations in the draft staff analysis.

### **County of San Bernardino's Comments**

The County of San Bernardino, test claimant, concurred with all of DPR's proposed amendments except for the specific identification of offsetting revenues.<sup>3</sup> The County disagreed with the inclusion of unclaimed gas taxes that were established as a funding mechanism to reimburse counties for the costs of performing Food and Agricultural Code programs prior to the enactment of the mandated duties related to pesticide use reports. The County also argued that DPR should clarify that the offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the test claim statutes (Stats. 1989, ch. 1200). As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

The test claimant filed comments dated April 14, 2009, on the draft staff analysis which raised arguments similar to those raised in the test claimant's comments to DPR's proposed amendments. The substantive comments are discussed below.

### **State Agency Comments**

The DOF agreed with DPR's original proposed amendments to identify the specific revenues available to offset claims; concurred with the technical amendments clarifying the mandated activities and technical changes to the boilerplate to be consistent with current law; and found that the requested amendment to use current Commission boilerplate language is unnecessary as some of the provisions may not be applicable to the program.<sup>4</sup>

DOF also concurred with the SCO's comments and continued to recommend listing all state funds available to offset the cost of the mandate.

The SCO provided several comments to the proposed amendments and recommended making clarifying technical changes to conform to the boilerplate and format of current parameters and guidelines; making clarifying edits to one reimbursable activity; adding a new section for non-reimbursable activities; and deleting a new Section VIII, Payment of Claims.<sup>5</sup> The substantive comments are discussed below.

### **Discussion**

The proposed parameters and guidelines amendments and comments raise the following issues for determination by the Commission:

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<sup>3</sup> See Exhibit B, County of San Bernardino's Comments dated July 11, 2008.

<sup>4</sup> See Exhibit B, DOF Comments dated February 20, 2007, June 23, 2008, and October 31, 2008.

<sup>5</sup> See Exhibit B, State Controller's Office Comments dated September 18, 2008.

Should the parameters and guidelines be amended to:

1. Update the format and add the Commission's current "boilerplate" language?
2. Clarify that the mandate refers to *use reports for pesticides that are not classified by the state as restricted materials*?
3. Add a separate section identifying Non-Reimbursable Activities?
4. Update citation to OMB Circular A-87 for calculation of indirect costs?
5. Add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
6. Update the language regarding reimbursements that are based on the DPR contract for electronic submission of pesticide use reports?
7. Add *unclaimed gas tax funds* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
8. Add language informing claimants that the DPR has developed an Offsetting Revenue Worksheet to help counties identify appropriate amounts to apply as an offset to a county's reimbursement claim?
9. Add language to clarify documentation requirement to support pro-rata offsets?
10. Add new section on "Payment of Claims"?

**Issue 1            Should the parameters and guidelines be amended to update the format and add the Commission's current "boilerplate" language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI?**

The current parameters and guidelines for this program were adopted on February 23, 1995. Since that date, there have been many changes made to the format and the boilerplate language used in the parameters and guidelines. Except for one comment from the DOF, that the requested amendment to use current boilerplate is unnecessary as some provisions may not apply to the program, there is no disagreement among the other parties to update the format of, or the boilerplate language in the parameters and guidelines. Therefore, staff has modified the proposed amendments to the parameters and guidelines to conform with the format and current boilerplate language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI.

**Issue 2            Should Section IV, Reimbursable Activities, Paragraphs 1, 2, 3, and 6 be amended to clarify that the reimbursable activities include pesticides that are not classified by the state as restricted materials"?**

The Commission's Statement of Decision denied reimbursement for "... pesticides that are classified by the state as restricted materials." Prior to the enactment of the test claim statute and adoption of the implementing regulations, reports on pesticides classified by the state as restricted materials were filed with counties. The current parameters and guidelines include limiting language in Section IV Reimbursable Activities that is being moved to Section I.

DPR proposes amendments to paragraphs 1, 2, and 6 to add language specifying that reimbursement is limited to activities related to the use of pesticides that are not classified by the state as restricted materials. Also, the SCO proposes an amendment to paragraph 3, to clarify the

reimbursable activity of reviewing and filing pesticide use reports with the DPR. There is no opposition to these proposed amendments.

Staff finds that the DPR's proposed language is consistent with the Statement of Decision and recommends approval of the following proposed language in Section IV, Reimbursable Activities, Paragraphs 1, 2, and 6:

1. Issuing operator identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6622.
2. Issuing site identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6623.
- ...
6. Audit the sales records of pesticide dealers as specified in 3 CCR section 6352, for the sale of pesticides that are not classified by the state as restricted materials which are prepared and maintained by pesticide dealers who are licensed by the state.

Staff also finds that the SCO's proposed language to modify Section IV Reimbursable Activities, Paragraph 3 is also consistent with the Statement of Decision. Therefore, staff recommends approval of the following proposed language with technical modifications proposed by staff:

3. Reviewing and filing with the Department of Pesticide Regulation (~~Department of Food and Agriculture until July 17, 1991~~) or the use of pesticides that are classified by the state as restricted materials) pesticide use reports other than those specified in V A above below. Note: Only costs incurred to review and file with the Department of Pesticide Regulation pesticide use reports other than those specified in V below may have components (e.g., data entry) which may be performed by unlicensed staff.

### Issue 3            **Should a new Section V. Non-Reimbursable Activities be added?**

The existing parameters and guidelines include a description of non-reimbursable activities in Section V Reimbursable Activities, A. Scope of the Mandate. However, this language is being moved to Section I. Summary of the Mandate to be consistent with the current format.

The State Controller's Office proposes that existing text description of non-reimbursable activities and language originally proposed by DPR regarding reimbursement of travel costs, be moved to a new Non-Reimbursable Activities section. Staff finds that this is a non-substantive, clarifying change. Therefore, staff recommends approval of the following proposed language:

#### V.     Non-Reimbursable Activities

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

If travel costs are incurred and the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion may be claimed.

**Issue 4      Should Section VII, Claim Preparation and Submission, B. Indirect Costs be amended to update a citation?**

The current boilerplate language allows claimants to utilize the procedure provided in “Office of Management and Budget (OMB) Circular A-87 Attachments A and B” for the calculation of indirect costs.

In comments filed by the County of San Bernardino,<sup>6</sup> we learned that this document is now cited as 2 CFR Part 225, Appendix A and B (OMB Circular A-87). The CFR citation has been verified and staff recommends updating this citation throughout Section VII, Claim Preparation and Submission, B. Indirect costs. The SCO’s agrees with DPR’s comments.

**Issues 5-8      Should Section VIII, Offsetting Revenues and Reimbursements be amended?**

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Agriculture Fund (Food & Agr. Code, § 12846) and changed the pesticide mill assessment from .008 mills per dollar to .009 mills per dollar (amendment to Food & Agr. Code, § 12841). However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission made the following findings in the Statement of Decision:

- The reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.<sup>7</sup>
- To the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17557, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.
- Any costs incurred as a result of the increased pesticide reporting requirements that are not reimbursed by the Food Safety Account and the increased mill assessment are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provisions of Government Code section 17556, subdivision (e).

The existing parameters and guidelines do not specifically identify the mill assessments in Section VIII, which was then named “Offsetting Savings and Other Reimbursements.”

This section of the parameters and guidelines currently includes the following language:

**VIII.    Offsetting Savings and Other Reimbursements**

Any offsetting savings the claimant experiences as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

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<sup>6</sup> See Exhibit B, letter from County of San Bernardino, Department of Agriculture/Weights and Measures, dated July 9, 2008.

<sup>7</sup> See Exhibit A, Statement of Decision.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR and the DOF<sup>8</sup> propose updating this section to make substantive and technical amendments that specifically add language describing mill disbursements and gas taxes as offsets, and language to assist claimants in applying offsets.

The current proposal would replace Section VIII as follows:<sup>9</sup>

#### VIII. Offsetting Revenues, Savings and Other Reimbursements

Any offsetting revenues or reimbursements the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim. [First Paragraph]

Specifically, the following reimbursements must be deducted from any cost claim:[Second Paragraph]

1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations;
2. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines; and
3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines.

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/preffirm/> htm. [Third Paragraph]

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata

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<sup>8</sup> See Exhibit B, DOF letter dated February 20, 2007.

<sup>9</sup> See Exhibit B, DPR's Response to California State Controller Comments – proposed amendment to parameters and guidelines, dated January 9, 2009, pages 10-11.



portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval. [Fourth Paragraph]

The SCO proposes an alternative Fourth Paragraph, as follows:

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified in Section V.C.), etc. that show evidence of validity of claimed costs. If source documents do not specifically identify 100% use reporting, mandated records or activities vs. previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years<sup>10</sup> based on actual data submitted or collected during that interval. [SCO proposed language on September 18, 2009.]

The proposed language is reviewed below under Issues 5-8.

**Issue 5      Should the Offsetting Revenues and Reimbursements Section be amended to add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require claimants to report and deduct them?**

The Statement of Decision includes a Commission finding that “[t]he reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.” Although the Commission made this finding, the parameters and guidelines do not include a specific reference to deduction of mill assessments as offsetting reimbursements.

DPR proposes an amendment to specifically identify “the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations.”<sup>11</sup> The applicable regulations specify the criteria used by the Department of Pesticide Regulation in allocating pesticide mill assessment funds to counties based on each county’s costs, pesticide regulatory activities, workload, and performance, pursuant to section 12844 of the Food and Agriculture Code.

The Department of Pesticide Regulation/Mill Assessment Branch defines the pesticide “mill assessment” as a fee assessed on all pesticide sales, levied at the point of first sale into the state. A “mill” is equal to one-tenth of a cent. In 2004, this “mill assessment” was 21 mills, or 2.1 cents per dollar of sales. The mill rate is set in regulation by DPR at a level adequate to support the Department’s annual expenditures authorized by the Legislature and to provide a prudent reserve.<sup>12</sup> “Mill assessment revenues are placed in a special fund used to pay for the State’s

<sup>10</sup> SCO’s comment is based on and responds to an earlier DPR proposal.

<sup>11</sup> This refers to Title 3, Division 6, Chapter 2, Subchapter 3, Article 2, section 6390, et seq. of the Department of Pesticide Regulation’s regulations.

<sup>12</sup> In 1997, Statutes 1997, chapter 695 changed the amount of funds disbursed to the counties and required DPR and the county agricultural commissioners to jointly develop regulations specifying the criteria to be used in allocating the mill assessment funds to the counties based

pesticide regulatory program. DPR's programs are funded primarily from fees and from the mill assessment.<sup>13</sup>

According to DPR, California Code of Regulations, Title 3, section 6393, Criteria Items and Apportionments, was amended in 2004 to establish a more appropriate and equitable method for reimbursing the counties for all Pesticide Use Enforcement activities they perform.

Each month, counties report to the Department of Pesticide Regulation all their pesticide use enforcement activities on the Pesticide Regulatory Activities Monthly Report (PRMAR). The amount of apportionment of each criteria item is a percentage of the total mill assessment funds available for reimbursement to counties [less the amount specified in section 6395 (b) of the regulations].

DPR concludes that mill assessment funds received by the counties for six of nine apportionment activities need to be reported as reimbursement, thus offsetting the costs for these activities. (The six apportionment activities are in bold text below.) California Code of Regulations, title 3, section 6393, subdivision (b), Criteria Items and Apportionments follows with DPR's comments in italicized text<sup>14</sup> and staff's findings;

- (1) **Apportionment, 3 percent:** The total number of Pesticide Use Enforcement Program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans.<sup>15</sup> (Emphasis added by DPR.)

*DPR: This apportionment addresses reimbursable component number 3 from the SCO's claim form (PUR-1) allowing reimbursement for inspecting pesticide use records of growers, auditing pest use records of growers, and auditing pesticide dealer sales records.*

Based on the Commission's Statement of Decision, staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activities 4, 5, and 6. Therefore, staff finds that the apportionment must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(1).)

- (2) **Apportionment, 3 percent:** The total number of: licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control

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upon each county's pest control activities, cost, workload, and performance. In 2001, California Code of Regulations sections 6391 and 6393 were amended and section 6397 was adopted establishing the disbursement criteria to be used to allocate mill assessment funds to the counties. The revised CCR 6393 criteria ultimately established specific apportionments to address the increased cost associated with full pesticide use report activities. Again in 2004, section 6393 was again amended.

<sup>13</sup> See Exhibit E, Department of Pesticide Regulation/Mill Assessment Branch, "Information for Retailers About Selling Pesticides and Paying Mill Assessment."

<sup>14</sup> See Exhibit B, Department of Pesticide Regulation Request to Amend Parameters and Guidelines, "Historical Background," dated January 12, 2007.

<sup>15</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(1).

operators providing notice of work in each county; active operator identification numbers in each county; and additional similar workload activities approved jointly by the Director and the commissioners.<sup>16</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 1 from the SCO's claim form PUR-1 allowing reimbursement for issuing operator IDs.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 1. Therefore, it must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(2).)

- (3) **Apportionment, 3 percent:** The total number of private applicator certificate holders certified in each county.<sup>17</sup>

*DPR: This apportionment does not pertain to pesticide use report activities.*

Based on the Commission's Statement of Decision, staff agrees with DPR that this apportionment does not pertain to pesticide use report activities and is not an offset.

- (4) **Apportionment, 3 percent:** Work hours expended on pesticide related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license.<sup>18</sup> (Emphasis added by DPR.)

*DPR: The apportionment directly pertains to pesticide use reports activities.*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(4).)

- (5) **Apportionment, 3 percent:** Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners.<sup>19</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to pesticide use report activities, but does have some indirect linkages (e.g. increased expenditures reported results in an increased share of the mill assessment revenues).*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-

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<sup>16</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(2).

<sup>17</sup> California Code of Regulations, title 3, section 6383, subdivision (c)(3).

<sup>18</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(4).

<sup>19</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(5).

mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal.Code Regs., tit. 3, § 6393, subd. (b)(5).)

- (6) **Apportionment, 3 percent:** The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979. (Cal.Code Regs., tit. 3, § 6394, subd. (b)(6).)<sup>20</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to PUR [pesticide use report] activities but does have some indirect linkages (e.g. an increase in total pounds of pesticides reported results in an increased share of the mill assessment revenues).*

Staff finds that to the extent that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(6) is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset.

- (7) **Apportionment 21 percent:** The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and notices of intent reviewed by each county.<sup>21</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision which denied reimbursement for activities related to restricted materials, staff finds that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(7) is not an offset.

- (8) **Apportionment, 21 percent:** Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information. Counties receiving funding under the provisions of section 8698.5 of the Business and Professions Code for structural fumigation enforcement shall only receive funds from this apportionment after deducting the amount of funds received pursuant to section 8698.5 of the Business and Professions Code.<sup>22</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision, staff finds that the requirements related to non-agricultural labeled pesticides and structural fumigation enforcement are not reimbursable, so the apportionment established by California Code of Regulations, title 3, subdivision (b) (8) is not an offset.

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<sup>20</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(6).

<sup>21</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(7).

<sup>22</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (8).

(9) **Apportionment, 40 percent:** Based on each county's pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties.<sup>23</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 2 from the SCO's claim form PUR-1, allowing reimbursement for reviewing and filing with the DPR pesticide use reports.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 3 and must be deducted as an offset. However, since the calculation of this apportionment includes non-reimbursable pesticide use report data records, staff concludes that only the portion of this apportionment that is based on Reimbursable Activity 3 must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(9).)

There is no opposition to the proposed amendment to specify the offset of "the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations." The County of San Bernardino finds that mill assessments qualify for the offset of local agencies' mandated costs.<sup>24</sup>

Staff finds that the mill disbursements received by claimants that are based on the reimbursable activities identified in Section IV of the parameters and guidelines in accordance with current applicable regulations (Cal. Code of Regs., tit. 3, § 6393, subdivision (b), (1), (2), and (9)) must be identified and deducted from any costs claimed.

Staff further finds that the mill disbursements received by claimants in accordance with California Code of Regulations, title 3, section 6393, subdivisions (b) (4), (5) and (6) that are used to offset the reimbursable activities identified in Section IV of the parameters and guidelines must be identified and deducted from any costs claimed.

Therefore, staff recommends the Commission approve the following language:

Specifically, the following revenues and reimbursements must be deducted from any costs claimed:

1. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (1), (2), and (9) that are based on the reimbursable activities in Section IV of the parameters and guidelines.
2. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (4), (5) and (6) that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

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<sup>23</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (9).

<sup>24</sup> See Exhibit B, County of San Bernardino's letter dated July 9, 2008.

**Issue 6      Should the Offsetting Revenue and Reimbursements Section be amended to update the language regarding reimbursements that are based on the DPR contract for electronic submission of pesticide use reports?**

Section VIII of the Parameters and Guidelines currently addresses offsetting revenue from the contract for electronic submission of *Pesticide Use Reports*:

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR's proposed amendment would update and replace the original paragraph with the following language:<sup>25</sup>

Specifically, the following reimbursements must be deducted from any cost claim:

...

funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines, and ....

The County of San Bernardino finds that contract revenue funds qualify for the offset of local agencies' mandated costs.<sup>26</sup> However, the County argues that DPR should clarify that offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the mandates of Chapter 1200, Statutes of 1989. As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

DPR's proposed amendment is limited to revenue received for "activities identified as reimbursable in Section IV of the parameters and guidelines." Section IV of the parameters and guidelines sets forth the reimbursable activities resulting from the test claim statute. Thus, the scope of the increased costs for reimbursable activities and any offsetting revenues resulting from the contract for the electronic submittal of pesticide use reports between the county and DPR are already limited by the identified reimbursable activities imposed by Statutes 1989, chapter 1200.

However, staff finds that clarifying language is necessary. DPR's proposed amendment does not track the language of the reimbursable activity – "reviewing and filing with the Department of Pesticide Regulation pesticide use reports." Therefore, staff recommends modifying DPR's proposed amendment to clarify this description of the reimbursable activity by inserting the words "reviewing and filing" and making other clarifying edits, as follows:

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<sup>25</sup> See Exhibit B, Department of Pesticide Regulation Memoranda, dated January 9, 2009.

<sup>26</sup> See Exhibit B, County of San Bernardino's letter dated July 9, 2008.

Specifically, the following revenues and reimbursements must be deducted from any cost-claim costs claimed:

...

The payments received under each county's contract with DPR for the review and filing of pesticide use reports (electronic submittal to DPR) that are identified as reimbursable in Section IV of the parameters and guidelines.

**Issue 7      Should the Offsetting Revenues and Reimbursements section be amended to add language requiring the deduction of unclaimed gas tax revenues as an offset?**

The Commission's Statement of Decision and parameters and guidelines do not mention the application of unclaimed gas tax revenues received by counties as an offset.

However, DPR has proposed to include unclaimed gas tax revenues received by counties, pursuant to Food and Agricultural Code section 224, as offsetting revenues and other reimbursements, stating:

[S]ince unclaimed gas tax allotment revenues are allocated by the California Department of Food and Agriculture based on total agricultural program costs reported by counties statewide, the [State Controller's Office] has determined that when a county reports its mandated costs within total agricultural program costs, it increases its share of statewide revenue allocations.<sup>27</sup>

DPR asserts that the inclusion of unclaimed gas tax revenues as offsetting revenues ensures that counties account for the receipt of all offsetting funds. According to DPR, between 1989-90 and 1993-94, the gas tax refund rate doubled (from 9 cents to 18 cents), and the amount of unclaimed gas tax distributed to fund Food and Agricultural Code (FAC) section 224, subdivision (c) programs (which included all pesticide use report activities, including those under the state mandate) nearly tripled. In October 1996, the California Department of Food and Agriculture (CDFA) updated its County Agricultural Commissioners Annual Financial Statement Procedures Manual to specifically include review of pesticide use reports (PUR) and issuance of operator identification numbers as reportable Pesticide Use Enforcement Program activities. Because unclaimed gas tax funds are distributed based on these financial statements, a portion of these funds are for the mandated activities. DPR explains:<sup>28</sup>

Several times since 1989-90, CDFA has also successfully negotiated with the Department of Transportation to increase the formula to determine the amount transferred to CDFA and available for all FAC section 224(c) programs. For example, in 2003-04, the unclaimed gas tax distributed to the counties reflected an increase of about 38 percent over the previous year. CDFA's March 30, 2004 letters to the counties that accompanied the disbursement stated that "the additional unrefunded gas tax your county receives is intended to augment your existing agriculture programs." Those existing agriculture programs include all PUR activities.

<sup>27</sup> See Exhibit B, Department of Pesticide Regulation proposed amendment to Parameters and Guidelines, dated January 12, 2007, p. 2.

<sup>28</sup> See Exhibit B, Department of Pesticide Regulation Memorandum, dated August 1, 2008.



DPR fully supports the idea that only a small portion of the unclaimed gas tax relates to the mandated PUR activities. DPR further suggests that “when submitting a claim, a county should document the ratio of mandated PUR activities to total pesticide use enforcement activities and apply this ratio to the total unclaimed gas tax they receive for pesticide use enforcement to determine the amount to include as offsetting reimbursement on the claim.”<sup>29</sup>

The SCO and DOF agree with DPR’s proposed amendment.

The County of San Bernardino disagrees with the inclusion of unclaimed gas tax revenues as offsetting revenues. The County argues: (1) a pre-existing revenue stream is inappropriate to use as a funding mechanism unless there was some specific increase to the revenue source to fund the mandate and that there has been no specific increase in unclaimed gas tax to fund this mandate; (2) if the state fully funds the costs incurred for the mandates of Statutes 1989, chapter 1200, there is no local cost and therefore no unclaimed gas tax revenue associated with the performance of these mandated activities; and (3) use of unclaimed gas tax revenue as a funding source for this mandate decreases the available funding for all other pre-existing Food and Agricultural Code programs resulting in additional local costs to the counties related to these programs, effectively shifting the costs of a new mandate to pre-existing programs.<sup>30</sup>

Revenue and Tax Code section 8101, allows individuals who have paid a tax for motor vehicle fuel and have used that fuel for particular purposes to be reimbursed and repaid the amount of the tax. The remaining money from the vehicle fuel tax, including unclaimed amounts available for reimbursement, are deposited into the Motor Vehicle Fuel Account. Revenue and Tax Code section 8352.5 provides that the Director of Transportation and the Director of Food and Agriculture shall jointly prepare a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel subject to refund pursuant to section 8101 less the gross refunds paid by the Controller. An amount equal to this estimate shall be transferred from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund.

Food and Agricultural Code section 224 (as added by Stats.2001, ch. 145) provided that money transferred to the Food and Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Revenue and Tax Code section 8352.5, less specified amounts for state use (Food & Agr. Code § 224 subds. (a) and (b)), is appropriated to be paid to counties as partial reimbursement for county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code that are supervised by the Department of Food and Agriculture. Payments to counties are apportioned to counties in relation to each county’s expenditure to the total amount expended by all counties for the preceding fiscal year for agricultural programs authorized by the Food and Agricultural Code.<sup>31</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> See Exhibit B, Claimant response to Department of Pesticide Regulation proposed amendment to parameters and guidelines, dated July 9, 2008.

<sup>31</sup> Food and Agricultural Code section 224 was amended by Statutes 2007, chapter 421, operative July 1, 2008, to reflect changes that occurred in 1991 when then-Governor Wilson created the California Environmental Protection Agency and moved DPR into it from the Department of Food and Agriculture. Since the relocation of CDR, the Department of Food and Agriculture has



When analyzing statutory language, the rules of statutory construction provide:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. ... If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.<sup>32</sup>

Also, in *People v. Knowles* the California Supreme Court held:

If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.<sup>33</sup>

Here, the statute in question is Food and Agricultural Code section 224, which apportions unclaimed gas tax funds to county agricultural commissioners. The plain language of section 224 does not require county agricultural commissioners to use any apportionments received pursuant to section 224 for the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). Rather, the stated purpose of apportionments received by county agricultural commissioners pursuant to section 224 is to reimburse county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code, including the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200).<sup>34</sup> As a result, although a county may have reported mandated costs within total agricultural program costs resulting in an increase of a county's share of statewide revenues allocated pursuant to section 224, the increased revenue attributable to the mandated activities is not required to be spent on the mandated activities. Therefore, if the claimant does not spend any of the revenue allocated pursuant to section 224 on the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the revenue cannot be counted as offsetting revenue. If, however, claimant uses unclaimed gas tax revenue to cover the costs of the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the amount used must be counted as offsetting revenues.

Staff finds that unclaimed gas tax revenues received by claimant pursuant to Food and Agricultural Code section 224 do not constitute state-mandated offsetting revenues that must be deducted from any cost claimed for reimbursement if the revenue is not used toward paying the

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continued to reimburse county agricultural commissioners for activities that are under DPR. The amendment authorized \$ 9 million in funding of DPR for the purpose of reimbursing county agricultural commissioners activities that are under the purview of DPR. Reimbursement is apportioned to counties in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for pesticide use enforcement programs "or with the collective agreement of the agricultural commissioners, disbursement to counties for a current fiscal year according to criteria developed in work plans, or any combination of reimbursement and disbursement as agreed upon by the director and the commissioners."

<sup>32</sup> *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

<sup>33</sup> *People v. Knowles* (1950) 35 Cal.2d 175, 183.

<sup>34</sup> Food and Agricultural Code section 224, subdivision (c) (Stats. 2001, ch. 145). See footnote 1 regarding amendment by Statutes 2007, chapter 421.

cost for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). However, to the extent that unclaimed gas tax revenues are used toward reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), then that amount must be deducted from any cost claimed for reimbursement as an offset.

Therefore, staff recommends approval of the following language to replace DPR's proposal:

Specifically, the following revenues and reimbursements must be deducted from any ~~cost claim~~ costs claimed:

The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

**Issue 8      Should the Offsetting Revenues and Reimbursements Section be amended to add language informing claimants that the DPR has developed an Offsetting Revenue Worksheet that may be used to calculate offsetting revenues and reimbursements?**

The existing parameters and guidelines do not identify any worksheets or forms that may be used to calculate offsetting savings [revenues] and other reimbursements.

DPR proposed that the following language be added to Section V, Offsetting Revenues and Reimbursements”:

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at [http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/\\_\\_\\_\\_.htm](http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/____.htm).

DPR developed the Offsetting Revenue Worksheet to “assist” counties in identifying all reimbursement for the costs of the mandated activities.<sup>35</sup> However, the plain language of the parameters and guidelines does not require the use of the Offsetting Revenue Worksheet to make a claim for reimbursement for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200).

Claimant has not commented on the inclusion of the above language or the use of the Offsetting Revenue Worksheet.

DOF believes that this worksheet will assist claimants in preparing accurate claims for reimbursement. The SCO does not object to the inclusion of the proposed language.

Staff notes that the use of Offsetting Revenue Worksheet is one approach to calculating offsetting revenues and reimbursements to deduct from claimed costs.

There is no requirement for claimants to use this worksheet. However, as originally proposed, this worksheet was inconsistent with the draft staff analysis. DPR has revised this worksheet to be consistent with Section VIII of the parameters and guidelines as reflected in the draft staff analysis. In addition DPR met with SCO staff to discuss this issue. According to DPR, SCO has indicated that Claiming Instructions can be revised to advise counties that they may contact DPR (via website) if they want assistance in calculating offsetting revenues and reimbursements.

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<sup>35</sup> See Exhibit B, DPR's proposed amendment to parameters and guidelines, dated March 22, 2007.

Based on this information, DPR is now willing to remove the reference to the Offsetting Revenue Worksheet from the parameters and guidelines, as originally proposed.<sup>36</sup>

Therefore, staff recommends denial of the proposed language described above.

**Issue 9            Should the Offsetting Revenues and Reimbursements Section be amended to add language to clarify documentation requirement to support pro-rata offsets?**

The existing parameters and guidelines do not provide any guidance as to how pro-rata portions of offsetting revenues and other reimbursements can be supported by source documents.

DPR proposes the addition of the following language in Section VIII:

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted.<sup>37</sup>

SCO proposes the inclusion of the following language in Section VIII:

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified above in Section V.C.), etc. that show evidence of validity of claimed costs.

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval.

It appears that the purpose of both proposals is to assist claimants in applying a pro-rata portion or default ratio to the calculation of offsets and to describe acceptable documentation. However, staff finds both proposals difficult to understand. Although there is no opposition from the County of San Bernardino, staff recommends denial of both the DPR proposal and the SCO proposal until either version is clarified and proposed. Otherwise, inclusion of either proposal will not help claimants in calculating pro-rata offsets for deduction based on inadequate source documents; nor will staff understand how to apply this provision in reviewing incorrect reduction claims that may be filed on this program.

Therefore, staff recommends denial of the proposed language described above.

**Issue 10:            Should a new Section VIII – Payment of Claims be added to the parameters and guidelines?**

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<sup>36</sup> See Exhibit B, DPR's memorandum, "Comments on Draft Staff Analysis," dated April 13, 2009.

<sup>37</sup> See Exhibit B, DPR's Response to SCO Comments – proposed amendment to parameters and guidelines, dated January 9, 2009. In this letter, DPR changed the last phrase in the original proposed language from "is updated at least every five years" to "... three years."

The Department of Pesticide Regulation proposed adding new Section VIII. Payment of Claims to the Parameters and Guidelines. This section, as proposed, would state:

All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.

After this proposed amendment was opposed by the SCO and DOF, DPR deleted the proposed language in its January 2009 comments.

Staff agrees with the SCO and DPR for the following reasons:

The Legislature adopted the 2005-2006 Budget Act<sup>38</sup> and appropriated funds from the Department of Pesticide Regulation Fund for payment of the *Pesticide Use Reports* program. The decision to pay mandate reimbursement claims from this special fund was made by the Legislature and enacted into law through this and subsequent budget acts. In future years, the Legislature could appropriate funds for this program from the General Fund or another special fund. The power to make appropriations is reserved for the Legislature. Executive power over appropriations is limited and is set out in the state Constitution which provides that each year the Governor shall submit a proposed budget to the Legislature (Cal. Const. art. IV, 12) and that each bill, including the budget bill shall be presented to the Governor for his or her signature or veto (Cal. Const., art. IV, 10). Legislative determinations relating to expenditures in other respects are binding upon the executive who, in expending public funds may not disregard legislatively prescribed directives and limits pertaining to the use of such funds.

The budget language (Provision 1) adopted by the Legislature recognized the authority and constitutional duty of the State Controller to audit, verify, and pay mandate reimbursement claims and exercised the power to appropriate funds.

Schedule 1 identifies the program, *Pesticide Use Reports* (Ch. 1200, Stats. 1989) (CSM-4420). Provision 1 states:

Allocations of funds provided in this item to the appropriate local entities shall be made by the State Controller in accordance with the provisions of each statute or executive order that mandates the reimbursement of the costs, and shall be audited to verify the actual amount of the mandated costs in accordance with subdivision (d) of Section 17561 of the Government Code. Audit adjustments to prior year claims may be paid from this item. Funds appropriated in this item may be used to provide reimbursement pursuant to Article 5 (commencing with Section 17615) of Chapter 4 of Part 7 of Division 4 of Title 2 of the Government Code.

The 2006 Budget Act, Item 8885-295-0106, adopted the same language as 2005 and appropriated \$162,000; likewise, the 2007 Budget Act in Item 8885-295-0106 appropriated \$666,000 for costs incurred in fiscal years 2001-2002 through 2004-2005, inclusive, and the 2008 Budget Act in Item 8885-295-0106, appropriated \$160,000 for costs incurred in fiscal years 2005-2006 and 2006-2007.

Staff finds that adoption of the proposed amendment is inconsistent with existing law, including prior state budgets and laws governing mandate reimbursement. Therefore, staff recommends denial of this proposed amendment.

<sup>38</sup> See Statutes 2005, chapter 38; Statutes 2006, chapter 47; Statutes 2007, chapter 171.

## **Conclusion and Recommendation**

Staff recommends that the Commission approve the proposed amendments to the parameters and guidelines, as modified by staff, beginning on page 25.

Staff further recommends that the Commission authorize staff to make technical non-substantive changes or corrections upon adoption.

