

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED CHANGES
IN THE REGULATIONS PERTAINING TO
NEONICOTINOID PESTICIDE EXPOSURE PROTECTION**

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), the Department of Pesticide Regulation (DPR) is providing notice of changes made to the proposed text of sections 6990, 6990.3, 6990.9, 6990.12, 6990.14, and 6690.16 of Title 3, CCR. These changes are in response to comments and for the reasons stated below. The public comment period on the originally proposed regulatory action closed on April 26, 2022. The Director finds that the modifications are sufficiently related to the original text of the proposed action. The modified text is being made available to the public for 15 days, during which written comments on the modifications will be received as provided in Government Code section 11346.8(c).

DPR will accept written comments relevant to the modifications between October 5, 2022, and 5:00 p.m. on October 21, 2022. Written comments relevant to the modifications may be sent via e-mail <dpr22001@cdpr.ca.gov>; or may be directed to Ms. Lauren Otani, Senior Environmental Scientist (Specialist), Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento, California 95812-4015. FAX: (916) 324-1491. Comments that are submitted via U.S. mail must be postmarked no later than October 21, 2022. Comments regarding this proposed action that are transmitted via e-mail or fax must be received no later than 5:00 p.m. on October 21, 2022.

- DPR proposes to amend the definition of “crop group” in subsection 6990(a)(2) to add a reference to Volume 87, Issue 57627 of the Federal Register published on September 21, 2022. As mentioned in the initial statement of reasons (ISOR), the United States Environmental Protection Agency (U.S. EPA) establishes a list of crop groups, identifying each crop group by a name and listing all commodities included in that crop group for purposes of tolerance establishment. Incorporating U.S. EPA’s established crop groups by reference streamlines and simplifies the regulations by organizing the restrictions into recognized crop-specific sections. On September 21, 2022, U.S. EPA finalized amendments to its pesticide tolerance crop grouping regulations for Crop Group 6 (Legume Vegetables), Crop Group 7 (Foliage of Legume Vegetables), Crop Group 15 (Cereal Grains), and Crop Group 16 (Forage, Fodder and Straw of Cereal Grains). These amendments take effect on November 21, 2022. In these finalized amendments, U.S. EPA added minor specialty commodities to each crop grouping, modified subgroups within the crop group, made changes to representative commodities for each subgroup, and made changes to terminology/definition (such as clarifying commodity sub-species). DPR’s originally proposed regulations apply to the crop grouping as a whole, and thus, U.S. EPA’s modifications made within the crop group originally incorporated by reference, including clarifying subspecies, re-distributing the sub-crop groups, and changing the representative crops, have no impact on DPR’s originally proposed regulations. Only the addition or removal of a commodity from a crop group by U.S. EPA could potentially impact DPR’s originally proposed regulations. While U.S. EPA added minor specialty crops to these crop groups, the added crops are not currently listed on neonicotinoid pesticide labels in California, and thus are not approved for use in California. Although neonicotinoids are not used in California on any of the added crops at this time, the proposed regulations may impact the added crops, should neonicotinoids be approved for use on the crops in the future. DPR

determined that these additional crops and subspecies are taxonomically and botanically similar to other commodities already in the legume vegetables or cereal grains crop groups and thus appropriate for inclusion in the respective crop groups. Additionally, DPR has determined that the proposed mitigation for the legume vegetables and cereal grains crop group is appropriate to bridge to the added commodities. In making these determinations, DPR used the bridging strategies of relying on data from one crop as a surrogate for another crop within the same crop group for the same active ingredient. This is consistent with the bridging strategies used to establish the regulatory requirements for other crops that are currently subject to the proposed regulation as previously described in the ISOR and a document relied upon titled, “Additional Information Related to the Department of Pesticide Regulation’s (DPR’s) 2018 California Neonicotinoid Risk Determination and Addendum” (Tafarella, 2020). It is necessary to incorporate these crop grouping updates by reference to remain consistent with federal regulations and provide clarity for compliance and enforcement, currently and in the future.

- In subsection 6990(b)(3) and 6990(b)(9), DPR proposes to revise the listed crop group numbers to include new revised crop group numbering “15-22” and “16-22.” This change is necessary to remain consistent with the proposed definition of “crop group” and for the reasons stated above regarding the definition of “crop group.”
- DPR proposes to add an exemption in subsection 6990(c)(4) for certain neonicotinoid applications allowed under an active Section 18 emergency exemption issued pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (Title 7, United States Code, section 136p). Section 18 emergency exemptions are governed under Title 40, Code of Federal Regulations (40 CFR) part 166 and Title 3, California Code of Regulations (3 CCR) section 6206. Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes the United States Environmental Protection Agency (U.S. EPA) to allow an unregistered use of a pesticide for a limited time if U.S. EPA determines that an emergency condition exists. Under such an exemption, U.S. EPA allows limited use of the pesticide in defined geographic areas for a finite period once they confirm that the situation meets the statutory definition of "Emergency Condition." An “Emergency Condition” is defined, in part, as an urgent, non-routine situation that requires the use of a pesticide (40 CFR section 166.3). FIFRA Section 18 also authorizes U.S. EPA to allow a federal or state agency the ability to grant the use of a pesticide product without registration if an emergency condition exists. The agency issuing the exemption must conduct assessments of potential risks to human health and the environment to confirm the pesticide use meets any required safety standards. In addition, any pesticide used under an emergency exemption is designated as a restricted material (3 CCR section 6400(b)), which requires additional regulatory controls, including a restricted materials permit. California requires permits for the purchase or use of restricted materials so the local County Agricultural Commissioner (CAC) can assess, in advance, the potential effects of the proposed application on human health and the environment and establish site-specific requirements or restrictions over and above state regulations, if needed. In this case, the grower would need to obtain a permit from the local CAC to apply a neonicotinoid in addition to complying with the restrictions identified in the issued emergency exemption. DPR issued no neonicotinoid Section 18s in the last 5 years. Therefore, this exemption from the proposed regulations would only apply under limited circumstances and is unlikely to pose significant

risks to pollinators. During the 60-day comment period, DPR received comments regarding the need to clarify how the proposed regulations will intersect with existing Section 18 emergency exemption regulations (3 CCR section 6206). DPR determined that this proposed exemption is necessary to ensure that the proposed regulations will not impact necessary emergency programs under the existing regulations. This proposed exemption is also consistent with the intent of the proposed exemptions in subsections 6990(c)(2) and (c)(3), which allow for timely control of pests in a declared emergency.

- DPR proposes to add subsection 6990(c)(5) which provides an exemption for an application of any neonicotinoid authorized for research purposes in order to support potential amendments to these regulations. This exemption is being proposed in response to comments received requesting a method to develop data in support of potential future proposed changes to these regulations. The data used to support the proposed application rates and timing in this rulemaking are based on current neonicotinoid pesticide labels. However, pest management practices and strategies to control agricultural pests may change over time. Thus, there may be a need for different application rates or different application timings than are currently on California-registered pesticide labels. Additionally, as mentioned in the ISOR, residue data are not available for every crop grown in California, thus DPR used crop groups to bridge data from one crop to another crop that lacks sufficient residue data. Residue studies on certain crops would need to be conducted to inform and support any potential proposed amendment to these regulations based on study results. This exemption would allow for these future-described studies. The proposed exemption requires that before using a neonicotinoid in this manner, a written authorization for research must be obtained from the Director. This requirement allows DPR to review any research proposal and is necessary to ensure potential risks to human health and the environment are assessed in advance of a proposed application. DPR may specify conditions under which the research must be conducted, including required safety and/or other standards in the written authorization. The exemption also provides that the Director may terminate, amend, or refuse to issue an authorization for research if the Director makes any of the following determinations: (A) The research may involve a hazard to human health or the environment, (B) The research may be used for purposes unrelated to pesticide data development, or (C) A violation of the authorization for research, prior authorization for research, or Divisions 6 or 7 of the Food and Agricultural Code (FAC), or a regulation adopted pursuant to them, has occurred in connection with the research. The ability for the Director to terminate, amend, or refuse to issue an authorization for research based upon (A) through (C) is necessary to ensure that DPR can continuously protect human health and the environment. This is also consistent with 3 CCR section 6260 and FAC section 12978.7(e)(7), which authorize the Director to terminate, amend, or refuse to issue an authorization for research for similar reasons as stated above. DPR's research authorization regulations under 3 CCR section 6260 are only applicable for research on unregistered pesticide uses. This exemption language is necessary for DPR to consider requests for neonicotinoid research on both registered and unregistered uses.
- In subsection 6990.3, DPR proposes to revise the section header to include new revised crop group numbering "15-22" and "16-22." This change is necessary to remain consistent with the proposed definition of "crop group" and for the reasons stated above regarding the definition of "crop group."

- In subsection 6990.9, DPR proposes to correct typographical errors. The text, “legumes vegetable” is being corrected to “legume vegetables.” Additionally, in subsection 6990.9(c), “legume vegetable crop group” is being corrected to “legume vegetables crop groups.” These are nonsubstantive changes.
- DPR also proposes to revise the section header in 6990.9 to include new revised crop group numbering “6-22” and “7-22.” This change is necessary to remain consistent with the proposed definition of “crop group” and for the reasons stated above regarding the definition of “crop group.”
- DPR also proposes to amend the application rate and timing restrictions in subsection 6990.9(c) when managed pollinators are used for crops in the legume vegetables crop groups. Previously, DPR proposed to prohibit applications of thiamethoxam to crops in the legume vegetables crop groups. Now, upon further analysis, DPR is proposing to allow foliar applications of thiamethoxam up to a maximum application rate of “0.126 pounds of active ingredient per acre per growing season” with a required timing of “apply only from pre-planting until bloom.” During the 60-day comment period, DPR received a comment noting that there was contamination in a set of samples DPR used to assess risks for the legume vegetables crop groups. DPR reviewed the original study report and confirmed that the data from these samples should not be included in its assessment of risk. As such, DPR recalculated the data used to assess risks for legumes and found that thiamethoxam could be applied to legumes under the application rate and timing restrictions described above. DPR documented its analysis in a September 2022 memorandum titled, “Updated Calculations for Conversion Factor Method to Use Bee-collected Soybean Nectar Residues in Neonicotinoid Risk Determination.” This memorandum is being added as a document relied upon in support of this revision.
- In subsection 6990.12(a), DPR proposes to correct a typographical error. The text, “arracha,” is being corrected to “arracacha.” This is a nonsubstantive change.
- In section 6990.14, DPR proposes to correct a typographical error. The text, “gingko,” is being corrected to “ginkgo.” This is a nonsubstantive change.
- In subsection 6990.16(b), DPR proposes to add a space between “crops” and “is.” This is a nonsubstantive change to correct a typographical error.

Current wording of the regulations is indicated by regular type. Originally proposed deletions are indicated by ~~strikeout~~. Originally proposed additions are indicated by underline. New proposed deletions are indicated by *italics and strikeout*. New proposed additions to the text of the originally proposed regulations are indicated by **bold double underline**.

All written comments received by 5:00 p.m. on October 21, 2022, which pertain to the indicated changes, will be reviewed and considered in this rulemaking. Please limit your comments to the modifications of the text.

This Notice of Modifications to Text of Proposed Changes and the text of modified regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.