

Non-occupational Pesticide Injuries

Implementation Guidance to the
County Agricultural Commissioners
for Senate Bill 391
(Chapter 319, Statutes of 2004)

**Department of Pesticide Regulation
Enforcement Branch
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Non-occupational Pesticide Injuries –

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Non-occupational Pesticide Injuries – Important Links

Department of Pesticide Regulation Publication
Reimbursing Medical Costs of Persons Injured in Pesticide Incidents
<http://www.cdpr.ca.gov/docs/county/sb391.pdf>

Department of Pesticide Regulation Publication
Reembolso de Gastos Medicos a Personas Lesionadas en Incidentes de Pesticidas
<http://www.cdpr.ca.gov/docs/county/sb391sp.pdf>

California Law – Food and Agriculture Code Sections 12996.5, 12997.5, 12997.7
<http://www.cdpr.ca.gov/docs/legbills/opramenu.htm>

Senate Bill 391 (Chapter 913, Statutes of 2004):
http://info.sen.ca.gov/pub/03-04/bill/sen/sb_0351-0400/sb_391_bill_20040930_chaptered.pdf

Office of Emergency Services – Area Plan - Pesticide Drift Protocols
[http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/SB%20391%20Web%20Page%20Bulletin/\\$file/SB%20391%20Web%20Page%20Bulletin.pdf](http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/SB%20391%20Web%20Page%20Bulletin/$file/SB%20391%20Web%20Page%20Bulletin.pdf)

District or City Attorney Participation in Enforcement Cases
Enforcement Letter #2004 – 028
<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2004/2004028.htm>

Additional links, relating to emergency response protocols, are in the “Protocol Development” section on Pages 17-18.

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Non-occupational Pesticide Injuries –

Overview

Background

Food and Agricultural Code (FAC) Section 12997.5 places the financial burden to pay for **acute** medical costs on those businesses that are responsible for the harm caused by their behavior when they commit a violation of certain pesticide laws and regulations. This law, known as Senate Bill 391 (Chapter 913, Statutes of 2004) was prompted by several incidents in which large numbers of persons living near agricultural fields were made ill by pesticide contamination. The medical costs reimbursement provisions of this law apply to non-occupational settings only.

Non-occupational requirement

This law does not apply to pesticide incidents that occur in the workplace. Employers are required to make sure workers that are injured on the job follow the same procedure as before:

- Employers are required to see that injured workers get treatment immediately; and
 - Costs are covered by the worker's compensation system.
-

Intent of the law

When people are injured or made ill by pesticides, it is reasonable for them to seek medical attention. The law is intended to place the financial burden to pay for acute medical costs on the business that is responsible for the harm.

- The law requires violators to pay the medical expenses of people they injure or make ill when their actions were a violation of a pesticide law or regulation.
 - The law encourages the Department of Pesticide Regulation (DPR) and County Agricultural Commissioners (CAC) to complete investigations and take appropriate enforcement actions in a timely manner so victims can be reimbursed for their un-reimbursed medical expenses in a timely manner.
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Non-occupational Pesticide Injuries –

Overview, Continued

Requirements summary for medical costs reimbursement

The minimum criteria that must first be substantiated are:

- The pesticide use was in violation of a law or regulation; and
- The misuse caused an acute illness or injury; and
- The misuse occurred in production of an agricultural commodity.
- The incident occurred in a non-occupational setting
- The affected person(s) sought immediate medical attention.

Additional required criteria are:

- There is a determination of a responsible party for the violation.

Then:

- The violator must reimburse uncompensated medical costs to persons who were injured.
-

Implementation issues

The activities necessary to implement Senate Bill 391 and the recent Enforcement Response Policy (ERP) adopted by DPR and the California Agricultural Commissioners and Sealers Association in 2005, have created procedural challenges for the CAC and DPR pesticide use enforcement systems. Senate Bill 391 and the ERP should work together and compliment each other. During implementation of both projects, additional issues may need to be addressed. Although DPR and the CACs will revisit this document in the next year, none of the changes are expected to reduce the anticipated beneficial effects of either project. Watch for future “Enforcement” or “ENF” letters about this subject. Key search words will be “implementation,” “reimbursement,” “response, ” and “ERP.”

Continued on next page

Non-occupational Pesticide Injuries –

Overview, Continued

Definitions

Acute illness or injury: A medical condition that involves the sudden onset of symptoms due to an illness, injury, or other medical problem that required prompt medical attention and that has a limited duration. *FAC §12996.5*

Employee: Any person who, for any kind of compensation, performs work, services, or activities covered by FAC Division 6. *3 CCR §6000*

Illness: An unhealthy condition of body or mind. *Merriam-Webster's Collegiate Dictionary, 10th Edition*

Injury: An act that damages or hurts. *Merriam-Webster's Collegiate Dictionary, 10th Edition*

Non-occupational: The person exposed to the pesticide was not at the time of exposure performing work as an employee. *FAC §12996.5*

Uncompensated Medical Costs: The cost of care not covered by any other program, such as, (but not limited to) medical insurance, the Healthy Families Program, or Medi-Cal. Medical expense payments shall not be more than 125% of Medi-Cal reimbursement rates. *FAC §12996.5*

Non-occupational Pesticide Injuries – Responsibilities

DPR Responsibilities

DPR is responsible for:

- Providing guidance to the CACs.
- Assisting the CAC to investigate, when necessary.
- Receiving the written reimbursement plans.
- Following-up with enforcement actions, as needed.

DPR will encourage CACs to follow-up with additional enforcement actions when respondents, who have received due process and been found to have been responsible for a violation, do not pay the fine; do not submit a written reimbursement plan; or do not reimburse victims.

CAC Responsibilities

The CAC is required to conduct an investigation and take appropriate action on pesticide episodes in a timely manner. The CAC should attempt to complete the determination within 45 days of the incident.

The CAC is responsible for:

- Properly collecting evidence.
- Identifying violations (and their elements).
- Identifying violators and victims to the best of their ability.

Investigations will probably identify most individuals who were made ill, though it does not require the CAC to determine the amount of uncompensated medical costs or who qualifies for reimbursement.

- The law does not require or authorize the CAC to oversee the reimbursement process.
 - The law does not require the CAC to identify all persons entitled to medical cost reimbursement. However, to facilitate prompt reimbursement, the CAC should notify those individuals who qualify of their right to reimbursement and may provide contact information for those individuals to the violator/respondent after consultation with their County Counsel. *See Release of Victim Contact Information on Pages 7 and 10.*
 - The CAC does not have to consider reducing the proposed penalty of respondents who pay for un-reimbursed medical expenses and then do not either make a timely hearing request and do not appear with evidence of the payment(s) at the hearing.
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Non-occupational Pesticide Injuries – Responsibilities, Continued

Obtain permission for release of personal information

DPR advises the CAC to obtain permission before releasing names and addresses of victims who may be eligible for reimbursement for non-occupational acute pesticide-related illnesses or injuries. Model language is in the “contact permission template” in this document for the convenience of the CAC. CACs should consult with their County Counsel if they wish to use another format or method to obtain release of the victim’s name and address. *See “Contact permission template” on Page 10.*

Interagency discussions

In cases where there is likely to be a significant proposed fine or penalty, the CACs are encouraged to contact DPR’s Enforcement Branch Chief to discuss the matter.

Some cases may meet the criteria for referral or participation of a District or City Attorney, or Circuit Prosecutor. The contact with the Enforcement Branch Chief should be in addition to the “District and City Attorney Participation in Cases” policy found in Enforcement Letter, ENF 2004 – 028. *See “Important Links” on Page 2.*

Notice to violator requirement

The CAC, when issuing the penalty action, must also provide the violator/respondent with a statement notifying the violator of their responsibility to pay uncompensated medical costs of those who suffered acute illness or injury in a non-occupational situation and sought immediate medical treatment. *FAC §12997.5 A template Notice of Proposed Action (NOPA is attached).*

The CAC must issue an order to pay the fine along with an order to the violator/respondent to submit a written reimbursement payment plan to DPR (if reimbursements have not already been paid) after hearing or stipulation to the violation.

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Non-occupational Pesticide Injuries – Responsibilities, Continued

Violator responsibilities

The violator is ultimately responsible for paying the uncompensated medical costs of those affected by the pesticide misuse and must compensate injured individuals or their medical providers, such as ambulance companies, doctors, and hospitals.

The violator is responsible for presenting evidence of their offer to reimburse the victim(s), or evidence of the reimbursement, at the hearing if they want the CAC to consider reducing the proposed penalty.

- Violators who refuse to comply with their legal responsibility are subject to additional enforcement actions by DPR, as needed.
 - The reimbursement activity does not protect the violator from persons seeking additional civil damages in a private lawsuit.
-

Victim rights and responsibilities

Victims have a right to contact the violator to claim medical reimbursement. If the victim wants reimbursement, it is their responsibility to contact the violator, if they don't, they might not receive reimbursement for their uncompensated medical costs.

Question: Can victims file a civil suit for damages if they have accepted payment for medical costs?

Response: Yes. The law says that accepting payment for emergency medical costs does not affect a victim's right to file suit. However, any damages awarded by a court must be reduced by the amount the victim received in medical reimbursement from the violator.

FAC §12997.5

Non-occupational Pesticide Injuries –

Qualifications

Who qualifies for reimbursement, and when?

Individuals who are injured or suffered an acute illness or injury because of a violation of pesticide laws or regulations may be qualified to be reimbursed for medical costs if:

- There was an acute illness or injury.
- The misuse of the pesticide occurred in the production of an agricultural commodity.
- The incident occurred in non-occupational settings, i.e., *not* at the workplace and the victim was *not* performing compensated work at the time of the incident.
- They seek immediate medical attention for their illness or injuries.
- The CAC establishes that a violation occurred.

The reimbursement provision cannot be applied when:

- An illness or injury is not acute.
 - The incident did not involve the production of an agricultural commodity.
 - The victim didn't incur medical costs that were not reimbursed.
 - There hasn't been a determination of a violation.
-

Non-occupational Pesticide Injuries –

Victim Contact Permission for Medical Costs Reimbursement

**Obtaining
release for
victim’s name
and address**

The following template statement may be used by investigators during a pesticide illness or injury investigation to facilitate timely reimbursement for each person who appears to meet criteria for reimbursement pursuant to FAC sections 12996.5 and 12997.5 (non-occupational pesticide injuries). *This information may be translated into other languages. See “CAC responsibilities” on Pages 6 and 7.*

**Contact
Permission
Template**

You may have the right to receive payment for your un-reimbursed medical costs from the person responsible for your pesticide-related illness or injury.

Do you wish to have your name and address released to the person who made the application that may have caused your symptoms, illness, or injuries so they may contact you about your un-reimbursed medical costs?

Yes Initials _____ Date _____ No Initials _____ Date _____

If you indicated “Yes” you are giving permission for the alleged violator, or his or her representative(s), to contact you about your medical expenses for acute non-occupational pesticide-related illness or injury.

If you indicated “Yes”, please write, or ask the investigator to write, your full name and complete address below:

Name _____ Address _____

City, State _____

If you indicated “Yes”, please sign your name below to verify that it is permissible for the County Agricultural Commissioner to release your name and address to the alleged violator, and his or her representative(s).

If you do not provide permission, it is up to you to contact the alleged violator to obtain reimbursement for your non-occupational acute pesticide illness or injury.

The name and address of the alleged violator is:

Name _____ Address _____

City/State _____

Non-occupational Pesticide Injuries – Investigations

How do we know who is made ill?

Determining the scope of the incident and interviewing victims is part of an investigation. By the time an investigation is complete and an enforcement order issued, the CAC usually knows the names of those made ill by the illegal pesticide application.

However, under the law, it is not the responsibility of the CAC to identify all persons entitled to medical costs reimbursement. If additional individuals who suffered acute illness and sought immediate medical care are identified later, they can contact the alleged violator to claim medical reimbursement.

Question: Can the CAC release a list of victims before the investigation is complete?

Response: Yes, contact information of victims who qualify for reimbursement (suffered acute illness or injury outside the scope of their employment and sought immediate medical attention) may be provided. However, to avoid issues related to the invasion of personal privacy, the CAC should notify the qualified individuals of their right to reimbursement for uncompensated medical expenses and request permission to release their contact information to the respondent/violator as soon as practical during the course of the investigation. See “*CAC responsibilities*” on Pages 6-7, and the “*Contact permission template*” on Page 10.

This may be the only practical way for persons entitled to medical reimbursement to be reimbursed in a timely manner. The law is specific about encouraging the CAC to complete investigations of, and taking appropriate enforcement actions in, a timely manner.

DPR strongly encourages the CAC to consult with their County Counsel about the release of certain personal information.

Non-occupational Pesticide Injuries – Investigation Policy and Procedure Resources

Investigation Resources

Guidelines for Responding to Non-Occupational Pesticide Use Related Pesticide Exposure Incidents, Enforcement Letter ENF 2003–044:
<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2003/2003044.htm>

Pesticide Episode Exposure Questionnaire
<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2003/2003044.htm>

Pesticide Exposure Investigation Non-Occupational Exposure Supplement (also known as DPR form #PR-ENF-128)
<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2003/2003atch/attach44/pr-enf-128.pdf>

Pesticide Drift Incident Response Policy – Enforcement Letter ENF 2000-034
<http://www.cdpr.ca.gov/docs/enfcmpli/penfltrs/penf2000/2000034.pdf>

Investigation Procedures, Pesticide Use Enforcement Program Standards Compendium - Volume 5. (available on website in 2006)

- Review Jurisdiction; specifically, “Human Effects Episodes”
 - Review Investigative Plan; specifically, “Formulate Plan”
 - Review Human Effects Episodes; specifically “Field Worker Cluster Episodes” and “Public Exposure Episodes Involving Large Numbers of People”
 - Review Timely Submission of Human Effects Episode Investigations
-

Non-occupational Pesticide Injuries – Separate Violations

Separate violations per injured person provision

FAC §12996.5(b) states, “The exposure of each person to a pesticide resulting from the violation of Section 12972 or 12973, or any regulation adopted pursuant to Section 12976, 12981 or 14005, that causes acute illness or injury, shall constitute a separate violation of the statute or regulation.”

Summary of the aforementioned sections:

FAC §12972 – Prevention of substantial drift to non-target areas

FAC §12973 – Use to not conflict with label or permit conditions

FAC §12976 – Possession, sale, or pesticide use requirements

FAC §12981– Pesticides and worker safety requirements

FAC §14005 – Restricted materials possession and use requirements

Question: CACs can now levy a separate penalty for each person who is injured or made ill by a pesticide violation. Does this mean that a separate penalty can be issued for each worker injured as well as a separate penalty for each non-occupational person injured?

Response: If the injury is a result of a violation, each person injured constitutes a separate violation (of the section cited as ‘the violation’). The difference is in the authority you cite as the basis for the “separate violations” or multiple counts of the same violation. For example:

- For worker safety injuries, you would cite FAC section 12985 and 12996.5 (b) as the basis for citing multiple violations of a specific code section.
- For non-occupational injuries, you would cite FAC section 12996.5(b) as the basis for citing multiple violations of a specific code section.

Citation strategy

The CAC should consult with DPR and/or the District or City Attorney when multiple violations seem either ineffective or excessive after thoughtful analysis of all of the factors of the situation.

Non-occupational Pesticide Injuries – Penalty Reductions

**Incentive to
reduce penalty
for immediate
medical costs
reimbursement**

The law provides an incentive for persons, who made the application resulting in the acute illness or injury, to pay medical costs before an investigation is complete. If the responsible party pays medical costs immediately, the law gives the CAC the option of reducing penalties, for violations specific to the illness or injury, by as much as fifty percent for the specific violation penalty. *FAC section 12997.5(g)*

Utilization of this option is at the discretion of the CAC (the CAC may or may not be the hearing officer in this matter). The penalty reduction may be calculated in any manner considered appropriate and fair by the CAC, as long as reduction does not exceed 50 percent of the proposed aggregate penalty.

The respondent must timely request a hearing and bring evidence of the prompt reimbursement of uncompensated medical costs to the hearing before the CAC can consider reducing a penalty.

**Payment is not
an admission of
guilt**

Payment of emergency medical costs shall not be held against the person in any action to determine whether the person violated those provisions. That is, for purposes of implementing the medical reimbursement incentive portion of this law, payment of the un-reimbursed medical costs does not constitute an admission of guilt or stipulation to the charges.

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Non-occupational Pesticide Injuries –

Penalty Reductions, Continued

**Penalty
reduction
strategies for
immediate
medical costs
reimbursement**

The fines for most violations in which pesticide incident reimbursement for medical cost provisions would apply, will probably fall under Class A, “violations which created an actual health or environmental hazard . . .” or Class B, “violations which posed a reasonable possibility of creating a health or environmental effect . . .” 3 CCR §6130

Question: Under the new law, CACs may reduce a fine up to 50% "if the person responsible for the application pays medical costs before an investigation is complete." What recourse does this person have if, after paying medical costs, the investigation finds no violations can be proven?

Response: An alleged violator may pay before a final determination that there was a violation. There is no recourse through the CAC if it is later determined that there was no violation or that the victim did not meet all the criteria necessary to be reimbursed for uncompensated medical costs.

An alleged violator may reimburse victims before the investigation is completed or before a Notice of Proposed Action is sent. Their prompt reimbursement might be because they wish to build community good will, or they are sure they will be held in violation if the matter goes to a hearing, or they wish to be considered for a lesser fine at a hearing.

Non-occupational Pesticide Injuries – Uncompensated Medical Costs

**Unreimbursed
medical cost
questions
submitted by
CACs**

Question: The law covers "uncompensated medical costs," which is defined as "the cost of care not covered by any other program." If, as a result of a violation by an agricultural pesticide applicator, a person suffers a non-occupational pesticide illness or injury and has personal medical insurance coverage, but the person's insurance company refuses to pay for the medical treatment, that is also an "uncompensated medical cost." How about individuals who do not receive full reimbursement for treatment, even though he/she is insured?

Response: The intent of the statute was to cover any costs to the injured person that are "out-of-pocket." So, if insurance does not cover everything, or they have a co-payment, they can submit a claim to the violator/respondent to be reimbursed for the excess.

Non-occupational Pesticide Injuries – Protocol Development

Protocol development for emergency responses

During the first half of 2005, Cal/EPA, DPR, CACs, local health officers, other local government agencies, and affected community members worked together to develop better response mechanisms for emergency agencies.

Primary goal

The primary goal was to establish standard protocols and operating procedures for pesticide incidents. This effort has been effective; many of the following goals have been met. These goals, while not yet requirements, will likely be developed into specific requirements in the future.

Local agencies

Local agencies are encouraged to consider how they might best improve procedures used to:

1. Request and provide access to specific information to help emergency responders identify pesticides involved in a drift incident, as well as appropriate treatments.
2. Define specific agency responsibilities and the process for responding to calls, notifying residents, and coordinating evacuation, if needed.
3. Establish emergency shelters, if needed.
4. Provide access services in languages “known to be spoken” in the affected area.
5. Ensure access to health care within 24 hours of the exposure and up to one week afterwards.
6. Notify medical providers regarding their eligibility for reimbursements.

CACs are encouraged to coordinate responsibility planning with their local appropriate agencies.

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Non-occupational Pesticide Injuries – Protocol Development, Continued

**Protocol
resources**

For more information, please refer to the California Environmental Protection Agency Proposed Pesticide Drift Protocols, located at:
<http://www.calepa.ca.gov/LawsRegs/proposedRegs/PesticideDrift.htm>
and

The Office of Emergency Services SB 391 Web Page Bulletin (pdf format) also known as “Area Plan - Pesticide Drift Protocols” located at:
[http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/SB%20391%20Web%20Page%20Bulletin/\\$file/SB%20391%20Web%20Page%20Bulletin.pdf](http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/SB%20391%20Web%20Page%20Bulletin/$file/SB%20391%20Web%20Page%20Bulletin.pdf)

Non-occupational Pesticide Injuries – Exceptions

Activities that do not qualify

This law does not apply in all pesticide incidents in which persons are injured.

This law does not apply in other cases in which pesticides might have been used, for example:

- Other agricultural use activities that do not involve the “production” of an agricultural commodity, i.e., golf courses, rights-of-way, cemeteries, etc
- Structural pest control activities.
- Home use applications.
- Industrial or institutional pest control activities.
- State or county insect or pest eradication activities.
- Mosquito or vertebrate pest eradication activities.

Who cannot be reimbursed?

This law does not apply to:

- Persons who were injured in incidents occurring before January 2005.
 - Employees who suffer illness or injuries (as employees are covered by the employer).
-

Template for Notice of Proposed Action (NOPA)

NOPA basics

The following is both a description of and a template or sample of a Notice of Proposed Action (NOPA) for pest control violations initiated pursuant to FAC section 12999.5. This template may be used to address various notification requirements.

Italicized information in the template is intended to advise the notice preparer – it should not be included verbatim in the final version of the NOPA.

A NOPA for a hearing authorized by FAC section 12999.5, should have the following basic components:

- Opening
 - Right to Review Evidence
 - Right to Request a Hearing/Failure to Request Hearing
 - Stipulation and Waiver to Order
 - Appeal Notice
 - Factual Circumstances of Violations
 - Enclosures (code text)
 - Hearing Request (form)
 - Order - Stipulation and Waiver (form)
 - Closing
-

NOPAs that involve FAC sections 12999.7, 12999.6 and/or 12999.5(b)

For purposes of implementing the provisions of the new laws involving non-occupational pesticide injuries, and to impart greater understanding about the penalty process to the respondent, this NOPA template has expanded the portion pertaining to the “Right to Request a Hearing/Failure to Request Hearing”.

In addition, the CAC is required to provide certain notices when implementing the provisions of FAC sections 12997.5 and 12996.5, therefore, the template provides additional information:

- Pesticide Incident Reimbursement Notice
- Timely Reimbursement – Penalty Offset and Proof Notice

Also, in some “drift” cases involving schools, or when implementing the provisions of FAC section 12999.5(b), the following notice might be applicable as well, therefore the template provides an optional

- Schools Notice
-

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Template for Notice of Proposed Action (NOPA), Continued

**Opening and
Right to Review
Evidence**

County Letterhead

Date

Information in italics is intended to advise the notice preparer – it should not be included verbatim in the final version of the NOPA.

FILE NO.

(county abbreviation, fiscal year, case number)

**NOTICE OF PROPOSED ACTION,
NATURE OF VIOLATION, AND
RIGHT TO REQUEST HEARING**

TO: Respondent's Name *(business or individual – one entity per notice)*
License Number *(if applicable)*
Attn: *(individual's name if first line is a business)*
Address
City, State, Zip Code

You are hereby notified that the Agricultural Commissioner for the County of _____ proposes that you be fined the amount of \$ _____ as a civil penalty for violating California's pesticide law(s) as explained below. The authority for this action is granted to the County Agricultural Commissioner pursuant to the provisions of section 12999.5 of the Food and Agricultural Code (FAC) *(and/or 12997.5) – whichever is most appropriate for the action (you should note additional sections ONLY if they specifically apply to the case.)* The amount of this fine was determined by applying the circumstances of the violation to the fine regulations adopted for use in these actions. These regulations are found in Title 3, California Code of Regulations (3CCR), section 6130, a copy of which is enclosed with this Notice of Proposed Action.

You may review the evidence against you

You are entitled to review the Commissioner's evidence supporting these charges during regular business hours at the office of the _____ County Agricultural Commissioner, located at _____ in _____, California. We will provide one copy of the case file available to you free of charge. We may charge you reasonable costs for additional copies.

Continued on next page

Template for Notice of Proposed Action (NOPA), Continued

Right to Request a Hearing/ Failure to Request Hearing; Stipulation and Waiver to Order; and Appeal Notice

You may request a hearing

You may request a hearing to review the Commissioner's evidence, and to present any evidence, oral or written, on your behalf, as to why the Commissioner should not take the proposed action. You are not required to be represented by legal counsel at the hearing, but your attorney may accompany you and represent you if you wish. You will be provided a written decision of the Commissioner's finding. A tape-recording will be made of the entire hearing proceedings and will be available for your review.

How you request a hearing and impact of failure to request a hearing – FAC Section 12999.5

Information in italics is intended to advise the notice preparer – it should not be included verbatim in the final version of the NOPA.

A hearing in this matter will be scheduled and held at the office of the County Agricultural Commissioner, located at the above noted address, if you request a hearing by signing, dating and returning the enclosed Hearing Request within 20 days of receipt of this Notice of Proposed Action. Failure to timely request a hearing is a waiver of the right to a hearing, and the Commissioner may take the action proposed in this notice without a hearing. Further, failure to request a hearing is a waiver of your right to appeal the Commissioner's decision (see Appeal Notice below). Failure to timely request a hearing and/or failure to attend the hearing, is a waiver of the Commissioner's need to consider reducing the aggregate penalty for any reimbursements you may have already made.

Stipulation and Waiver to Order – FAC Section 12999.5

If you do not wish to request a hearing to contest the charges and proposed action, you may stipulate (agree) to the enclosed Order by dating, signing, and returning the enclosed Stipulation and Waiver to Order within 20 days of receipt of this notice.

Appeal Notice– FAC Section 12999.5 Should you disagree with the Commissioner's decision, you may request an appeal to the director of the Department of Pesticide Regulation. However, you waive these appeal rights if you do not request and attend the hearing at the scheduled time and date.

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Template for Notice of Proposed Action (NOPA), Continued

Incorporate Pesticide Incident Reimbursement Notice; Timely Reimbursement – Penalty Offset and Proof Notice; and Schools Notice, if applicable

The following three notices may or may not apply to the circumstances of this Notice of Proposed Action – use only those notices (more than one is possible) that apply to the particular situation:

Pesticide Incident Reimbursement Notice - FAC Section 12997.5

Any person who is found in violation of pesticide laws and regulations that resulted in illness or injury requiring emergency medical transport or emergency medical treatment of any individual in a non-occupational setting from a pesticide used in the production of an agricultural commodity shall be liable to the individual harmed or to the medical provider for the immediate costs of uncompensated medical care from acute injuries and illnesses of the exposed individual.

Information in italics is intended to advise the notice preparer – it should not be included verbatim in the final version of the NOPA.

Timely Reimbursement - Penalty Offset and Proof Notice – FAC Sections 12996.5 and 12997.5

If you offer to reimburse, or reimburse, the immediate medical costs for acute medical illnesses and injury, the Commissioner may reduce the proposed administrative civil penalty by an amount up to fifty percent. You must request a hearing and provide proof at the hearing of immediate reimbursement in order for the Commissioner to consider reducing the penalty.

Schools notice – FAC Section 12999.5(b)

If you receive a civil penalty for pesticide drift in a school area subject to FAC section 11503.5 that results in a serious (Class A) violation as defined in 3 CCR section 6130, the Commissioner shall charge a fee, not to exceed fifty dollars (\$50), for processing and monitoring each subsequent pesticide application that may pose a risk of drift, until the you have completed 24 months without another serious violation (as defined by 3 CCR, section 6130).

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Template for Notice of Proposed Action (NOPA), Continued

**Factual
Circumstances
of Violation(s);
Enclosures;
Hearing
Request (form);
and Stipulation
and Waiver
(form)**

Continue with the standard NOPA format

FACTUAL CIRCUMSTANCES OF VIOLATION(S)

You are charged with violating California's pesticide laws and regulations as cited below. A brief description of the nature of each violation, the facts of each violation, and an explanation of how the fine level was determined follows:

Count 1, Violation and Fine Explanation

Count 2, Violation and Fine Explanation *(if applicable)*

Additional Counts, Violations and Fine Explanations *(if applicable)*

Information in italics is intended to advise the notice preparer – it should not be included verbatim in the final version of the NOPA.

ENCLOSURE(S)

List the enclosures of code text:

A copy of the text of 3 CCR, section 6130, and/or FAC section _____ and/or 3CCR section(s) _____ is enclosed for your convenience, *(again, enclose only those which apply to this case.*

The most likely code sections you will need to provide are the specific violation codes, 3 CCR section 6130, and FAC section 12999.5, and/or 12996.5, and/or 12997.5.

Continued on next page

Template for Notice of Proposed Action (NOPA), Continued

Hearing
Request (form)

County Letterhead

*Consider making
this separate
page within the
NOPA.*

HEARING REQUEST

ACKNOWLEDGMENT OF RECEIPT OF PROPOSED NOTICE OF ACTION AND REQUEST FOR HEARING

*Information in
italics is
intended to
advise the notice
preparer – it
should not be
included
verbatim in the
final version of
the NOPA.*

FILE NO.

(county abbreviation, fiscal year, case number)

Important: The Hearing Request must be submitted to the Agricultural Commissioner within 20 days of receipt of the Notice of Proposed Action.

TO: *(Respondent's Name)*
(Address)

I, the undersigned respondent in this proceeding, hereby acknowledge receipt of a copy of the Notice of Proposed Action.

I hereby request a hearing to permit me to have an opportunity to present my defense to the violations contained in the Notice of Proposed Action.

Respondent's Signature

Date : _____

Respondent's Name (printed)

Telephone: () _____

Mail this form to:

*Commissioner's Official Title
Address
Telephone Number*

Continued on next page

Template for Notice of Proposed Action (NOPA), Continued

Order -
Stipulation and
Waiver to
Order (form)

County Letterhead

ORDER

FILE NO.

(county abbreviation, fiscal year, case number)

*Consider making
this separate
page within the
NOPA.*

TO: *(Respondent's Name)*
(Address)

*Information in
italics is
intended to
advise the notice
preparer – it
should not be
included
verbatim in the
final version of
the NOPA.*

ORDER: It is hereby ordered that *(name)* is fined *(amount)*. The fine is due now and payable.

Commissioner's Signature
Commissioner's Official Title
Address
Telephone Number

Instructions to Respondent:

If you wish to pay the fine and not request (waive) a hearing, you may sign the Stipulation and Waiver to Order below. By doing so, you also waive your right to an appeal or any other review in this matter. If you wish to sign the Stipulation and Waiver to Order, you must submit it to the Agricultural Commissioner within 20 days of receipt of this notice.

STIPULATION AND WAIVER TO ORDER

I hereby stipulate that the Agricultural Commissioner's Notice of Proposed Action in the above-entitled matter states grounds for civil penalty action based on the evidence now before the Commissioner.

Without admitting to the violations alleged in the Notice of Proposed Action, I stipulate to the Commissioner's Order, as set forth above, and I waive all rights to a hearing and appeal or any other review in this matter.

DATED: _____

(Respondent's Signature)
Respondent

Continued on next page

Template for Notice of Proposed Action (NOPA), Continued

Closing

Commissioner's Signature
Commissioner's Official Title
Address
Telephone Number

Separate Counts for Exposed Persons (Acute) –

Quick Reference

The following is a list of "citeable" regulations found in Title 3 of the California Code of Regulations (3CCR) that can be used when applying the authority of Food and Agricultural Code (FAC) section 12996.5(b), for a separate count for each exposed person, when the exposure causes an acute illness or injury

12996.5(b) states, "The exposure of each person to a pesticide resulting from the violation of section 12972 or 12973, or any regulation adopted pursuant to section 12976, 12981, or 14005, that causes acute illnesses or injury shall constitute a separate violation of the statute or regulation."

When appropriate, these sections may be cited in administrative civil penalty actions taken pursuant to the authority of Food and Agricultural Code section 12999.5.

Check the Citeable Sections Report to determine whether certain subsections are "citeable" as well. The Citeable Sections Report is available online at:
<http://www.cdpr.ca.gov/docs/enfcmpli/admnacts/citsec.pdf>

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Quick Reference, Continued

FAC §12972 Drift Prevention	FAC §12973 Conflict with Label or Permit	FAC §12976 Recommendations and Usage		FAC §12981 Pesticides and Worker Safety			FAC §14005 Restricted Materials and Permits	
6460	None	6260	6601	6140	6600	6736	6406	6462
		6264	6602	6141	6601	6738	6412	6464
<p>It is possible to cite FAC §§12972 or 12973 as the "violations" and impose the "separate count" provision (from FAC §12996.5) for each exposed person, when the exposure causes an acute illness or injury - provided there is sufficient evidence to prove the violation.</p> <p>However, it is a better strategy to cite a specific regulation, instead of FAC §§12972 or 12973, <u>when the regulation is more specific to the violation.</u></p>		6266	6604	6260	6608	6740	6414	6466
		6270	6608	6264	6609	6742	6416	6470
		6272	6614	6266	6610	6744	6420	6474
		6450	6618	6270	6612	6746	6426	6476
		6450.1	6619	6272	6614	6760	6428	6488
		6450.2	6622	6361	6616	6760.1	6434	6489
		6450.3	6623	6414	6618	6761.1	6443	6622
		6452	6624	6416	6619	6762	6450	6623
		6454	6625	6450	6670	6764	6450.1	6624
		6458	6626	6450.1	6672	6766	6450.2	6625
		6440	6627	6450.2	6674	6768	6450.3	6626
		6464	6628	6450.3	6676	6769	6452	6627
		6466	6630	6452	6680	6770	6454	6628
		6470	6632	6454	6682	6771	6460	
		6474	6634	6458	6684	6772		
	6476	6670	6460	6686	6774			
	6487.1	6672	6462	6702	6776			
	6487.2	6674	6464	6720	6780			
	6487.3	6676	6466	6723.1	6782			
	6487.4	6680	6470	6724	6784			
	6487.5	6682	6474	6726	6792			
	6544	6684	6476	6728	6793			
	6562	6686	6489	6730	6795			
	6600		6544	6732	6910			
				6734	6920			

January 2006