

Three Party Memorandum of Understanding on Pesticide Episodic Reporting, Investigation, and Enforcement in the State of California

The U.S Environmental Protection Agency, Region IX (hereafter U.S. EPA), Department of Pesticide Regulation (hereinafter DPR), and the California Agricultural Commissioners and Sealers Association (hereinafter CACASA), in order to ensure a unified and coordinated program of pesticide episodic reporting, investigation, and enforcement action in the State of California, hereby enter into this agreement.

The size and diversity of California's agriculture, population, climate and geography has resulted in a unique partnership between state and local pesticide authorities as compared with other states. California is the only state with an Agricultural Commissioner system. As described in Section III.B, below, DPR and County Agricultural Commissioners (CACs) work together to enforce pesticide use requirements in California. DPR is responsible for overall statewide enforcement of pesticide requirements while the CACs are responsible for local administration of the enforcement program under the direction and supervision of DPR. Each CAC is appointed by their respective county's Board of Supervisors. CACs and their staff are responsible for the enforcement of dozens of mandated agricultural and weights and measures programs, in addition to pesticide regulatory oversight. CACs and their staffs (together, about 500 inspectors and biologists) carry out most pesticide use enforcement activities, including conducting thousands of inspections each year to assess compliance and promptly investigating pesticide related incidents. CACs are the lead investigatory authority of pesticide related incidents in California and make determinations of violations based on investigative findings. CACs have the authority to take administrative civil penalties for violations, in accordance with the California Food and Agricultural Code Section 12999.5 and Title 3 of the California Code of Regulations.

I. LIMITATIONS

The terms set forth in this agreement are intended solely for the purpose of memorializing the parties' understanding of their respective roles and commitments in the administration of a coordinated program of pesticide episodic reporting, investigation, and enforcement action in the State of California. They are not intended, and cannot be relied upon, to create any rights, substantive or procedural, enforceable by any person in litigation with any of the parties to this agreement. The parties reserve the right to modify this agreement in accordance with its terms without public notice.

All activities undertaken pursuant to this document are subject to the availability of appropriated funds, personnel and other resources of each party. Nothing in this document obligates a party to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or to incur other financial obligations that would be inconsistent with its budget priorities. All costs that may arise from activities covered by, mentioned in, or pursuant to this document will be assumed by the party that incurs them, unless otherwise expressly agreed in a future written arrangement in accordance with applicable laws. Except as provided in a separate

written agreement between the parties, each party agrees not to submit a claim for compensation for services rendered to the other in connection with any activities it carries out in furtherance of this agreement. This agreement does not exempt DPR and CACASA or the members CACASA represents from U.S. EPA policies governing competition for assistance agreements nor does it restrict in any way the U.S. EPA's authority to fulfill its program administration, oversight, and enforcement responsibilities under FIFRA. Any transaction involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

Nothing in this agreement constitutes an endorsement by any party of the activities, products, or services of any party to this agreement, or any other party. Each of the parties to this agreement is responsible for ensuring that its obligations under law are met. This agreement shall be construed consistent with all applicable laws, and activities undertaken in connection with this agreement shall be subject to, and shall be undertaken in a manner consistent with, all otherwise-applicable laws.

II. DEFINITIONS

A. **“Episode”** means any event, which appears to involve a violation of the pesticide use provisions of FIFRA, or potential or actual illness, damage, harm, loss or contamination where there is a reasonable possibility that the event could have resulted from the use or presence of a pesticide.

B. **“FIFRA”** means the Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. § 136, et seq. FIFRA is the Federal statute that governs the registration, distribution, sale, and use of pesticides in the United States.

C. **“Formal Referrals”** means a formal referral by U.S. EPA to DPR, in accordance with FIFRA Section 27 and the 1983 Final Interpretive Rule.

D. **“Informal Referrals”** means when U.S. EPA refers information of a possible violation of federal or state/tribal laws to DPR for informational purposes and further investigation as deemed appropriate by California, but not as a formal referral in accordance with the 1983 Final Interpretive Rule.

E. **“Reportable Investigation”** means the investigation of an episode that appears to meet one or more of the effects criteria listed in Appendix A of this agreement.

F. **“Three Party MOU”** means this memorandum of understanding (MOU) between the United States Environmental Protection Agency, Region IX, The California Department of Pesticide Regulation, and the California Agricultural Commissioners and Sealers Association. This Three Party MOU is under Section 22(b) of FIFRA.

III. LEGAL AUTHORITY

A. Federal Authority

U.S. EPA is responsible for administering and enforcing FIFRA.

FIFRA section 26 specifies that for the purposes of FIFRA a State has primary enforcement responsibility for pesticide use violations (primacy) as specified in FIFRA sections 26(a) and (b), 7 U.S.C. Section 136w-1(a) and (b). See also FIFRA Section 19(f)(2), 7 U.S.C. Section 136a(f)(2) (conditioning primacy on an Administrator determination that the State is carrying out an adequate program to ensure compliance with the pesticide residue removal regulations of FIFRA Section 19(f)). FIFRA section 27 addresses failure of a State to assure enforcement of State pesticide use regulations and authorizes U.S. EPA to override or rescind a grant of primacy in certain situations. Per Section 27(a) of FIFRA, U.S. EPA refers to the appropriate state officials any complaint or other information it receives indicating a significant violation of pesticide use provisions of FIFRA.

The Final Interpretive Rule (48 FR 404 published in the Federal Register on January 5, 1983) (1983 Final Rule), clarifies U.S. EPA's interpretation of FIFRA section 26 and FIFRA section 27 regarding procedures for issuing, overseeing, and rescinding a State's primacy over pesticide use violations. This rule outlines under what conditions U.S. EPA may act upon pesticide use complaints. Appendix B of this agreement contains the 1983 Final Interpretive Rule.

Per Part I.A (Procedures governing Referrals) of the 1983 Final Interpretive Rule, U.S. EPA in consultation with DPR identifies in writing criteria for priority areas and therefore U.S. EPA determines on a case-by-case basis which allegations in these priority areas involve sufficiently "significant" violations to be formally referred to the State and tracked.

FIFRA section 12(a)(2)(G) sets forth as an unlawful act the use of any federally registered pesticide in a manner inconsistent with its labeling. FIFRA section 9(c)(3) and FIFRA section 14 provide for written warnings, and for civil and criminal penalties for violations of FIFRA provisions.

FIFRA section 23, 7 U.S.C. §136u, empowers the Administrator to enter into cooperative agreements with States. FIFRA Section 22(b), 7 U.S.C. § 136t(b), authorizes the Administrator to cooperate with any State or any political subdivision thereof in carrying out the provisions of FIFRA and in securing uniformity of regulations. The authority to enter into such agreements has been delegate to the Regional Administrator.

B. State Authority

DPR and CACs are responsible for administering and enforcing the provisions of Division 6 and Division 7, of the California Food and Agricultural Code (hereinafter FAC) (FAC section 1 et seq.)

DPR, a department within the California Environmental Protection Agency (CalEPA), has been vested with broad duties, powers, purposes, and responsibilities, relating the regulation of pesticides in California. (Governor's Reorganization Plan No. 1 of 1991, § 27, eff. July 17, 1991, as amended; FAC §§ 11456 and 12781) The CAC of each county is responsible for local enforcement of pesticide use requirements under the direction and supervision of DPR. (FAC §§ 11501.5, 12982, 15201.) DPR is responsible for overall statewide enforcement of pesticide requirements and issues instructions and makes recommendations to the CACs. (FAC § 2281.) Under the FAC, CACs have authority to impose administrative civil penalties for violations of Division 6 and certain specified provisions of Division 7 of the FAC. (FAC § 12999.5.) When taking an administrative civil penalty action on incidents or violations related to agricultural or structural use of pesticides and all uses of fumigants pursuant to FAC section 12999.5, CACs are required to comply with DPR's enforcement response regulations to determine the violation class and fine amount. (Cal. Code Regs., Tit. 3, §§ 6128, et seq.) Under the FAC, DPR has authority to impose civil penalties for violations of pesticide requirements. (FAC §§ 12998; 12999.4; 12999.6.) DPR may also discipline licensees for violations of pesticide requirements. (FAC §§ 11708, 11910, 12023, 12113, 12205, 12257, 12408, 14098.)

FAC sections 481 and 482 empower the Director of DPR to enter into agreements with CACASA for the purpose of enforcing FAC Divisions 6 and 7.

Business and Professions Code (hereinafter B&P Code) sections 8616, 8616.4, and 8616.5 designates DPR and CACs as the lead in the investigation of the structural use of pesticides.

California Government Code (Cal. Gov't Code) sections 11135 et seq. protects against unlawful discrimination and denial of full and equal access.

C. CACASA

FAC section 2003 recognizes CACASA as the official representative body on behalf of county agricultural commissioners and sealers.

IV. COORDINATION

A. Each party to this agreement will designate an individual whose function shall be to coordinate the activities set forth in this MOU.

B. Any party to this agreement may request a meeting for purposes of consulting by contacting the other parties to the agreement.

V. EPISODE REFERRAL

A. U.S. EPA, DPR, and CACASA, by signing this document, each agree to promptly report, as outlined below, all episodes meeting, or appearing to meet, one or more of the Reportable Investigation efforts criteria listed in Appendix A.

<u>Identifying Party</u>	<u>Will Notify</u>
U.S. EPA	DPR who will notify CAC
DPR	CAC and U.S. EPA
CAC	DPR who will notify U.S. EPA

B. This agreement reflects the intent of the parties regarding procedures for reporting Reportable Investigations, Section 27 Formal Referrals, Informal Referrals, including cases identified by U.S. EPA on a case-by-case basis for tracking:

1. Reportable Investigations: Pesticide incidents that appear to meet one or more of the Reportable Incidents Criteria listed in Appendix A of this agreement.

2. Formal Referrals: Pesticide incidents that are the subject of formal referrals from U.S. EPA to DPR are formally tracked by U.S. EPA Region 9. A formal referral may also be a reportable incident.

3. Informal Referrals: Per the 1983 Final Interpretive Rule, informal referrals are when U.S. EPA refers cases which are unlikely to cause significant harm to DPR for informational purposes and further investigation as deemed appropriate by the State. EPA's FIFRA Cooperative Agreement Guidance states that informal referrals from U.S. EPA to a State contain information of a possible violation of federal or state/tribal laws that may or may not result in the State conducting an inspection. *An informal referral may lead to a Formal Referral or a Reportable Investigation as information becomes available. Tracking of informal referrals is determined on a case-by-case basis by U.S. EPA Region 9.*

An informal referral that U.S. EPA determines does not need to be tracked by U.S. EPA, and investigations of episodes that do not meet criteria to be a Reportable Investigation, are investigated and reported as appropriate under California law but are not Reportable Investigations under this MOU.

Communication may, and in some instances must, happen in multiple directions.

VI. INVESTIGATIONS

A. The party normally responsible for the investigation of an episode shall be the CAC where the event occurred. For episodes that involve more than one county, or where it is not appropriate for the CAC of occurrence to investigate, DPR may designate the agency that will conduct the investigation.

B. DPR will advise the CAC in the investigation upon request from the CAC. DPR may elect to become involved and/or take the lead role in an investigation after consulting with the CAC.

C. The U.S. EPA will assist, advise, or conduct investigations or inspections only after consulting with DPR and the involved CAC.

D. Reportable investigations will commence immediately, whenever possible, but in no event will the investigation commence later than three working days from when the CAC learns of the episode.

E. The U.S. EPA may participate in reportable investigations in cooperation with DPR and CACs.

VII. INVESTIGATION REPORTS

A. The CAC conducting the field investigation will keep DPR apprised of the major developments in all reportable investigations. DPR will, in turn, keep U.S. EPA apprised of the major developments in all reportable investigations.

B. Section X – Implementation Plan (below) describes the manner in which CACs will provide information and DPR will track and report to U.S. EPA on reportable investigations, including the use of Pesticide Episode Notification Record, Pesticide Episode 45-day Report, and the Pesticide Episode Closing Report.

C. The reports and summaries, and any enforcement action resulting from any reportable investigations, will be promptly filed with DPR, and the U.S. EPA upon conclusion of the investigation. The investigative reports will contain all available evidence to support state and federal enforcement action when violations are indicated.

VIII. INFORMATION MANAGEMENT

The parties agree to act in accordance with, as applicable, FIFRA, the Freedom of Information Act (5 U.S.C. 552) and EPA's regulations at 40 C.F.R. Part 2, the California Public Records Act (Cal. Gov't. Code §§ 7920 et seq.) and the Information Practices Act (Cal. Civ. Code §§ 1798, et seq.), or as otherwise required by law in collecting, managing, sharing with other parties to this MOU, and making decisions regarding disclosure to other parties, and disposal of information.

IX. ENFORCEMENT

A. Nothing in this agreement will preclude DPR and/or the CAC from undertaking any enforcement action with respect to any act that constitutes a violation of State law. Nothing in this agreement will preclude the U.S. EPA from undertaking any enforcement action with respect to any act that constitutes a violation of FIFRA.

B. The U.S. EPA will discuss with DPR and the CAC involved the appropriateness of initiating federal enforcement action against pesticide users alleged to be in violation of FIFRA section 12(a)(2)(G). Any enforcement action that may be taken by the U.S. EPA will conform to the

guidance of the Final Interpretive Rule pertaining to State primacy for use enforcement responsibility.

X. IMPLEMENTATION PLAN

A. When U.S. EPA Region 9 is the first party to learn of an episode that appears to meet one or more of the reportable investigation criteria, it will refer the episode to DPR as either a formal Section 27 referral or an informal referral. DPR will then complete the Pesticide Episode Notification Record and send it to the U.S. EPA, the appropriate CAC(s), and other agencies as appropriate as soon as possible.

Alternatively:

(1) when DPR is the first party to learn of an episode that meets one or more of the reportable investigation criteria, DPR will consult with the responsible CAC to complete the Pesticide Episode Notification Record and send it to the U.S. EPA and other agencies as appropriate as soon as possible.

(2) When a CAC is the first party to learn of an episode that meets one or more of the reportable investigation criteria, the CAC will complete the Pesticide Episode Notification Record and send it to DPR and DPR will forward it to U.S. EPA. The CAC will notify DPR and other agencies as appropriate as soon as possible.

When U.S. EPA deems a reportable episode to be a significant incident, U.S. EPA will provide a formal referral to DPR, which DPR will convey to the appropriate CAC(s), acknowledging receipt of the notification and the commencement of formal episode tracking.

B. Within 45 days of receipt of the Pesticide Episode Notification Record, DPR will prepare the Pesticide Episode 45-Day Report containing the CAC's preliminary findings and forward it to U.S. EPA. This report should include an update of the initial information reported, the CAC's projected completion date of the investigation and any contemplated enforcement action.

C. U.S. EPA will notify DPR of episodes for which additional status updates are desired. DPR, in cooperation with the CACs, will provide either oral or written updates of the investigation findings, suspected violations, and contemplated enforcement actions, including penalty amounts under consideration. The frequency of the additional updates will be mutually agreed upon by U.S. EPA, DPR, and CAC on a case-by-case basis and will depend, in part, upon how the investigation is proceeding.

D. The CAC shall submit the completed investigation report, including all supporting documents, to DPR within 45 days of completion of the investigation.

For each episode that resulted in a reportable investigation, DPR will provide a final Pesticide Episode Closing Report summarizing the CAC's finding and enforcement action to the U.S. EPA within 30 days of receipt of the completed investigation based on the information available at that time. The report form may be submitted indicating pending enforcement action.

E. In reporting pesticide incidents and conducting inspections, investigations, and taking enforcement actions—including investigations of suicides, suicide attempts, accidents, and special incidents—CACs follow the investigation procedures and guidance per California laws and regulations.

XI. DISPUTE AND CONFLICT RESOLUTION

It is the desire of all parties to establish a speedy, efficient, and informal method for the resolution of conflicts. In the event of a disagreement about the interpretation or implementation of any section of this agreement, that cannot be resolved informally, a joint meeting of the U.S. EPA Region 9 Managers of the Pesticide Office and the Enforcement & Compliance Assurance Division Toxics Section, the DPR Deputy Director over Enforcement, and the CAC involved and CACASA leadership if appropriate, will be convened to resolve the conflict. If the conflict is not resolved at this level, the issue will be elevated to the next level of management at U.S. EPA, DPR, including CACASA leadership as appropriate.

XII. TERMS

This agreement shall become effective on the date when signed by the last party to the agreement.

This agreement may be modified at any time, by the mutual written consent of all parties, or terminated by any party upon a 30-day advance written notice to the other parties. Any party may initiate a review of the agreement, for the purpose of modification, at any time.

The initial period of this agreement is **until December 31, 2032** and the duration may be extended by the mutual written consent of all parties. Before the end of **2030** the parties shall begin a process to review and discuss modifications and extension of this agreement. This extension process can be part of the review process convened by DPR pursuant to Section XIV, below.

This document replaces the April 2005 Cooperative Agreement between the United States Environmental Protection Agency, Region IX, the California Department of Pesticide Regulation, and the California Agricultural Commissioners and Sealers Association.

XIII. PROGRAM EVALUATION

The U.S. EPA and DPR will review Pesticide Episode Notification Records, 45-day Reports, Pesticide Episode Closing Report and other available enforcement response documents and summary information periodically through the year. The focus of this evaluation will be on investigative techniques and resultant enforcement action to assure U.S. EPA that the State is meeting the requirements of Section 26 of FIFRA. The U.S. EPA may request a copy of the complete investigation and/or inspection file for any episode. U.S. EPA may also review DPR county oversight activities when appropriate. DPR will identify relevant correspondence related

to this program evaluation to send to, and may seek input from, the CAC involved, and CACASA leadership if appropriate.

XIV. REVIEW

Annually, DPR will initiate a meeting of U.S. EPA, DPR, and CACASA to review the performance of all parties to the agreement and discuss issues pertaining to the agreement and any desired modifications.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

AMY MILLER-
BOWEN

Digitally signed by AMY MILLER-
BOWEN
Date: 2024.12.13 08:17:25 -08'00'

By:

AMY C. MILLER-BOWEN

Date

Director

Enforcement and Compliance Assurance Division

U.S. Environmental Protection Agency,

Region IX

CLAIRE TROMBADORE

Digitally signed by CLAIRE
TROMBADORE

Date: 2024.12.13 08:23:22 -08'00'

By:

CLAIRE TROMBADORE

Date

Director

Land, Chemicals and Redevelopment Division

U.S. Environmental Protection Agency,

Region IX

FOR THE CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

By:



12/6/24

JULIE HENDERSON

Date

Director

FOR THE CALIFORNIA AGRICULTURAL COMMISSIONERS AND SEALERS ASSOCIATION

By:



12/10/24

JUAN HIDALGO

Date

President

Appendix A

REPORTABLE INCIDENTS CRITERIA

HUMAN EFFECTS RELATED TO PESTICIDE EXPOSURE

- Death
- Any episode involving schools or school property (including school buses) resulting from agricultural use
- Serious injury or illness (any injury or illness requiring hospitalization due to pesticide exposure)
- Any single injury or illness episode involving five or more persons

ENVIRONMENTAL EFFECTS

Water

- Contamination of drinking water supply affecting 10 or more households.

Air

- Contamination of air resulting in official evacuation (i.e. by law enforcement or emergency services) of any area.

Land

- Contamination of land or soil resulting in one-half (1/2) acre or more not usable for intended purposes for one year or more.

Animals and Wildlife

- Any episode with an associated level of mortality, estimated by an appropriate agency or official, that exceeds the following:
 - Any episode involving death to livestock or another domestic animal
 - Any episode known to involve ten hives of managed pollinators
 - Raptors (e.g., eagles, hawks and owls) - 3
 - Non-target non-raptor birds - 10
 - Non-target fish or aquatic animals – 100
 - Game fish - 25
 - Large mammalian or reptilian predator(s) (e.g., wolf, coyote, mountain lion) or megafauna species (e.g., bison, elk) – 1
 - Non-target mammals, reptiles, or terrestrial amphibians of types other than large predators or megafauna - 5
 - Any episode involving a federally listed species
 - State listed endangered or threatened species – 1 (to be determined on a case by case basis as described under the SPECIAL INCIDENTS section of this document.)

ECONOMIC LOSS

- Damage that is estimated to represent a 20% or greater crop yield loss

SPECIAL INCIDENTS

Episodes occurring within Oregon, Nevada, Arizona, or tribal land that have effects in California that meet reportable incident criteria. Episodes occurring within California that have effects in Oregon, Nevada, Arizona, or tribal land that meet applicable criteria in this Appendix A for reportable incidents. The appropriate agency to investigate these special incidents shall be determined pursuant to Section VI, INVESTIGATIONS, paragraph A of this agreement.

Any pest control equipment accidents that occur while handling pesticides and result in serious injury or illness, death, environmental effects, or economic loss (not including the involved equipment) exceeding the amounts shown above.

Any episode which, through discussion among the parties of this agreement, is determined to be an Appendix A reportable incident, including those involving state endangered or threatened species or unusually large and unexpected number of incidents involving a certain active ingredient (AI) or product reported within a short time span.

Episodes involving:

- California-grown raw agricultural commodities with illegal pesticide residues
- significant fire, spill, or improper disposal involving pesticides (EPA, DPR or CACs may identify significant episodes based on pesticide amount, toxicity, involvement of first responders and/or potential for human exposure or release to the environment);
- Homeland Security issues (e.g., pesticides implicated in a situation impacting a large population, food/water supply or livestock; or pesticides needed to control a pathogen, virus or bacteria)