



December 16, 2024

To: California Agricultural Commissioners

Thank you for your questions regarding the Department of Pesticide Regulation's (DPR) proposed modifications to section 6434 of Title 3, California Code of Regulations (3 CCR) regarding the statewide pesticide application notification system (SprayDays California). The following are answers in response to the questions provided during the CACASA/DPR Notification Regulations Discussion held on June 25, 2024.

### *Question 1*

Will there be contact information posted on the website and/or that the CACs can provide when the CACs refer people to DPR? Will DPR have a help line for members of the public to call: 1) if they have questions about the pesticide NOI information on the SprayDays website? 2) for more information on pesticides? and/or 3) for the information contained in the notification itself?

### *Response 1*

*Yes. DPR will have a staffed phone number and email address that will be posted on the SprayDays California (hereinafter also referred to as SprayDays) website and that CACs can provide when referring people to DPR. DPR will have additional staff available to assist with navigating the SprayDays website and answering questions specific to how to use SprayDays, what information is provided, and how pesticides are regulated in California. A list of FAQs will be available on the SprayDays website, and the SprayDays website will also include information about California's pesticide regulatory system and requirements and how they protect people and the environment from potential pesticide exposure. This information will provide context to the specific NOI information that DPR will make publicly available through the SprayDays website. SprayDays will also include a "Community Health Tips" page, which is intended to be a resource for people to learn about what to do if they are exposed to a pesticide, how to report pesticide incidents, and where to find health and safety information on specific active ingredients through the National Pesticide Information Center as well as best practices for farmworkers and others living or working near pesticide applications. Fielding questions about specific NOIs, local pesticide applications, conditions, or other county-specific communication from the public are CAC-specific activities.*

### *Question 2*

Does the SprayDays website note that notices of intent (NOIs) are for legal pesticide applications?

*Response 2*

*Yes. The SprayDays website will include general information about how pesticides are regulated and evaluated as well as specifically how restricted materials are regulated and requirements to apply them legally.*

*Question 3*

Will DPR offer guidance not to enter fields or other areas immediately after spraying as part of the notification?

*Response 3*

*Yes. The SprayDays website will include a “Community Health Tips” page that specifically guides the public to not enter fields during a pesticide application, to not approach application equipment, and to follow all posted warning signs. The Community Health Tips page also is a resource for people to learn about what to do if they are exposed to a pesticide and how to report pesticide incidents, where to find health and safety information on specific active ingredients through the National Pesticide Information Center, best practices for farmworkers, and others living or working near pesticide applications.*

*Question 4*

If someone knowingly trespasses into a treated field, would that be a use violation? For instance, would an applicator be subject to an ag civil penalty if someone knowingly trespassed into a treated area and, as a result, was exposed to pesticide?

*Response 4*

*The proposed regulatory action is not intended nor expected to affect property operators’ ability to make, or the timing of, lawful pesticide applications.*

*Question 5*

Will the SprayDays website be available to the public ahead of the regulation approval to get feedback?

*Response 5*

*The intent of the beta test conducted in Tulare County from October 2023 through February 2024 was to collect feedback on the functionality, user navigation, and design of the SprayDays California system, including the website. There are no additional beta tests planned prior to statewide launch. A video demonstration of the SprayDays website is currently available on DPR’s website ([https://www.cdpr.ca.gov/docs/pesticide\\_notification\\_network/](https://www.cdpr.ca.gov/docs/pesticide_notification_network/)).*

*Question 6*

Are the CACs part of the group that will evaluate the system in three years? At present, the FAC Committee and EJAC are included in the system evaluation. Can the CACs be included in the system evaluation in three years?

*Response 6*

*DPR has been working on the development of SprayDays California and this proposed regulatory action since 2021, and since then DPR has solicited and received substantial input*

*from the CACs to inform the development of this regulatory action and the associated electronic system. Feedback and input received from CACs and across all public input opportunities, since 2021 has informed this regulatory action and the SprayDays California system design. In addition, in response to comments received during the 70-day comment period, DPR amended 3 CCR section 6434(h). Under proposed 3 CCR section 6434(h), DPR will be required to issue an annual status update and receive annual feedback on the notification system until DPR issues a report on the system three years after the regulation goes into effect. In addition to receiving public comment on each annual status update for a minimum of 30-days, DPR will be required to receive feedback from and present the annual status update to DPR's Environmental Justice Advisory Committee (EJAC) and the State Board of Food and Agriculture (FAC). Three years after the regulation goes into effect, under proposed 3 CCR section 6434(h), DPR will be required to issue a comprehensive report on the system. DPR will be required to accept public comment for a minimum of 45-days and receive feedback from and present on the comprehensive report to DPR's EJAC and the FAC. CACs and stakeholders will have an opportunity to provide feedback on the system and participate in the system review during the public comment periods outlined in subsection (h). DPR is committed to receiving feedback on the notification system and will contact CACASA directly to get feedback on the system and process.*

*Question 7*

Will DPR create a regular report on the ratio of notifications to actual spraying?

*Response 7*

*SprayDays provides information about intended pesticide applications, and therefore may not reflect actual pesticide applications or align with Pesticide Use Reports (PURs). The SprayDays California website will include information regarding the conditional nature of applications, including expressly stating that the pesticide applications are "intended" or "planned" applications and that they may not occur on the intended date or even at all. In addition, DPR is now discussing with CACASA and Calico, changes in functionality to CalAgPermits to allow for the alignment and tracking of NOIs and PURs.*

*Question 8*

How long will NOI data be maintained in the system? Can it be queried? Will this data be subject to Public Records Act requests?

*Response 8*

*The select NOI data will appear on the SprayDays website for four days following the intended date and time of the application. The system includes information about the conditional nature of the applications, including the ability for a grower or pesticide applicator to begin applications up to four days following the date and time on the NOI. The system does not include a public interface to query the NOI data in the system. Information in SprayDays that is within DPR's possession will be subject to the Public Records Act as required by law.*

*Question 9*

Will DPR respond to Public Records Act requests for NOIs regarding SprayDays?

*Response 9*

*Pursuant to the California Public Records Act, DPR will provide access to public records that are in its possession and not exempt from disclosure, including select NOI information that is submitted to DPR.*

*Question 10*

Are the names or information of the recipients of the notification messages subject to Public Records Act?

*Response 10*

*The SprayDays California system does not require names or home addresses to sign-up for notifications. The public will need to provide an address (any public postal address) and either an email or phone number to receive notifications. The Public Records Act balances the public's right to access public records with the recognized individual right of privacy and the need for government agencies to be able to competently perform their duties. Under the Public Records Act, the release of records that that would constitute an unwarranted invasion of personal privacy are exempt. Accordingly, DPR will release any records within its possession that are not exempt from disclosure (see: <https://www.cdpr.ca.gov/privacy/privacy.htm>).*

*Question 11*

Will DPR be adding a category for CACs to bill additional time related to SprayDays, or should the general public be referred to DPR? The CACs expect parts of 6434 to require additional time and expense.

*Response 11*

*DPR considered the fiscal costs to CACs and to DPR to support this proposed regulatory action. (CDPR, 2023.) Investigating reported pesticide incidents, fielding questions about local pesticide applications or conditions, and other county-specific communication from the public are activities that are covered under current funding mechanisms. DPR recognizes that CACs may need to respond to community questions in their counties related to the system and/or conduct investigations or inspections following public inquiries. DPR also recognizes that CACs will need to consider and may decide to grant undue hardship exemptions that allow for alternative methods to electronic submission for submitting NOIs to CACs. Questions specific to how to use SprayDays, what information is provided, and how pesticides are regulated in California should be directed to DPR and CAC address questions on local pesticide use. Additionally, as noted in DPR's Economic and Fiscal Analysis memo, DPR anticipates the ongoing support of SprayDays California will require a Budget Change Proposal. (CDPR, 2023.) Finally, under modified 3 CCR section 6434(h), DPR is committed to continuing to review its system and process to address concerns, including those regarding CACs' capacity to perform NOI reviews, to conduct field inspections and/or to generally ensure pesticides are used properly and in a manner that mitigates any adverse impacts to the environment and communities that they serve.*

*Question 12*

Does DPR expect CACs to bolster staffing to fully process NOIs submitted outside of normal business hours?

*Response 12*

*DPR does not expect the CACs to bolster staffing. The proposed regulatory action and SprayDays are not expected to impact CACs processing of NOIs as, when an NOI is submitted via CalAgPermits, CalAgPermits will automatically submit the NOIs to the appropriate CAC and the select NOI information to DPR. In addition, approximately 89 percent of the 86,567 agricultural use NOIs received by CACs in fiscal year 2020-2021 were submitted electronically. If the CAC decides to grant an undue hardship exemption from the electronic submission requirement, under 3 CCR section 6434(e)(2), the CAC shall require the NOI to be submitted earlier to provide adequate time for the CAC to submit the select NOI information electronically to DPR.*

*Question 13*

Will DPR offer counsel or support to CACs against litigation using SprayDays as evidence against CACs?

*Response 13*

*DPR is limited in its ability to respond to this question given that the facts and nature of the litigation the question alludes to are unclear. DPR will assist CACs and their county counsel as appropriate. DPR respectfully requests to be made aware of any litigation involving SprayDays.*

*Question 14*

Regarding features of the system, is there a way to “check boxes” when reviewing an NOI? Will a waiver request have a flag or feature notification in the system showing the importance and need for quick review?

*Response 14*

*At this time, CalAgPermits does not have a “check boxes” feature for CACs to complete while reviewing NOIs or for submitters to check to identify NOIs that are requesting an emergency exemption from the timing requirements or an exemption to submit an NOI in a non-electronic format. Additionally, under proposed subsection 6434(e), when the CAC decides, at their discretion, to find an undue hardship and receive an NOI submitted in a non-electronic format, the CAC will still need to submit the select NOI information to DPR electronically on CalAgPermits. In this instance, the CAC shall require the NOI to be submitted earlier than the time requirements outlined in 3 CCR section 6434(c) to enable the CAC adequate time to review, process, and timely submit the select NOI information to CalAgPermits. DPR welcomes a discussion with CACASA about future improvements to the system.*

*Question 15*

Commissioners have the authority to waive the NOI electronic submission requirement due to “undue hardship”. Has DPR prepared any guidance regarding what an undue hardship is? Can DPR provide more guidance as to what undue hardship means? There is a need for more clarity

around “significant difficulty or expense” and guidance to ensure consistency between counties. Is there a dollar amount for undue hardship?

*Response 15*

*Proposed subsection 6434(e) states that “An undue hardship may be a situation in which compliance with section 6434(b) [the requirement that NOIs be submitted electronically via CalAgPermits] is not possible without significant difficulty or expense.” Examples of possible undue hardship could be situations where an NOI submitter does not have reliable access to high-speed internet, lacks access to electricity, or could be subject to a declared state of emergency that affects internet or electricity access. DPR provided these examples as guidance for the types of situations that could constitute undue hardship and is open to discussing future changes in the system to support statewide consistency. Additionally, under proposed section 6434(e), when the CAC finds, at their discretion, an undue hardship, the CAC shall require the NOI to be submitted earlier than the time requirements outlined in 3 CCR section 6434(c) to enable the CAC adequate time to review, process, and timely submit the select NOI information to CalAgPermits.*

*Question 16*

Do growers who have to file NOIs on paper due to economic reasons qualify for an undue hardship? Under the proposed system, all NOIs must be submitted on paper or electronically. Can the CACs no longer take NOIs by phone?

*Response 16*

*Under proposed subsection 6434(e), a CAC may allow an NOI to be submitted in a non-electronic format when the CAC finds there is an undue hardship. Under 3 CCR section 6424(b), when an NOI is not submitted electronically, the NOI must be submitted on a form either provided or approved by the director. Granting an undue hardship exemption is discretionary, although DPR acknowledges CACs’ intent to assist operators in complying with this regulatory action (CDPR, 2023.) Should the CACs find an undue hardship and receive an NOI submitted in a non-electronic format, the CAC will still need to submit the select NOI information to DPR electronically on CalAgPermits pursuant to 3 CCR section 6434(e). Additionally, under proposed subsection 6434(e), when the CAC decides, at their discretion, to find an undue hardship, the CAC shall require the NOI to be submitted earlier than the time requirements outlined in 3 CCR section 6434(c) to enable the CAC adequate time to review, process, and timely submit the select NOI information to DPR.*

*Question 17*

Are all the NOIs that are submitted reflected in the system? Is the public unaware of the status of a given NOI?

*Response 17*

*Yes, all intended applications that DPR receives select NOI information for will be reflected in the system. There is no status update associated with any given NOI. SprayDays explicitly states that applications are “intended” or “planned”, may start up to four days following the intended application date, or may not occur at all. Furthermore, under existing 3 CCR section 6000’s*

*definition of “time specific,” a restricted material application may occur up to four days after the intended start date specified in the NOI.*

*Question 18*

Is it the intent that DPR and the CAC receive an electronic NOI simultaneously? What is the effective notification time to the public that DPR is striving for? Will there be a disclaimer for the grower or person submitting an NOI via CalAgPermits, informing them about the instant posting of this information on the SprayDays website?

*Response 18*

*SprayDays will check CalAgPermits by the hour, not instantaneously. Therefore, SprayDays will not receive the select NOI information instantaneously upon it being submitted into CalAgPermits. When DPR receives select NOI information, the system will publicly post the information on SprayDays no less than the 24- or 48-hour mark depending on the type of application. Should DPR receive select NOI information less than the 24- or 48-hour mark due to an exemption of the time requirement, the system will publicly post the information on SprayDays as soon as it is received.*

*Question 19*

When an NOI is submitted, will it automatically be displayed, or will it be posted at a given time in the system? Will there be a time limit for the CACs to approve an NOI? If an NOI is not approved by the CAC 24 hours prior to an application, will it still show on SprayDays?

*Response 19*

*This regulatory action is not imposing a time limit for the CAC to approve an NOI since this regulatory action and SprayDays are intended to make information about intended applications publicly available in a more timely, accessible, and equitable manner. Following early discussions with the CAC notification workgroup, it was decided that posting NOIs should not be contingent on CAC review in order to avoid impacting the timing of when NOIs must be submitted. Accordingly, SprayDays will include intended applications that are not approved by CACs. The SprayDays website will indicate that applications are intended and may not take place. When DPR receives select NOI information, the system will publicly post the information on SprayDays no less than the 24- or 48-hour mark depending on the type of application. Should DPR receive select NOI information less than the 24- or 48-hour mark due to an exemption of the time requirement, the system will publicly post the information on SprayDays as soon as it is received. Select information from NOIs will display in the system as proposed applications, including NOIs that are not approved by the CAC by the 24- or 48-hour mark. SprayDays makes clear that the information is for intended or planned applications and that the applications may not occur.*

*Question 20*

At times, there is a back and forth between the submitter and staff regarding an NOI. Will there be an opportunity to return the NOI for amendment? For instance, if an NOI application date is updated, how will that change to the original application date be managed by the system?

*Response 20*

*The current system will include select NOI information for all NOIs for the production of an agricultural commodity that are entered into CalAgPermits, whether or not they are approved. The SprayDays California website includes information on the intended nature of the applications, including the possibility that they may not be approved by the CAC and may not occur. What occurs between CACs and the submitter following the initial NOI submission will not be reflected by the system. If a new NOI is entered into CalAgPermits, this will be presented as a new/different planned application. DPR is aware of the concern regarding the posting of original and updated NOI information and welcomes continued discussions with CACASA and Calico about changes in system functionality to reflect updated NOI information.*

*Question 21*

If someone submits an NOI with an error, and it needs to be revised, does SprayDays still send a notification even if the NOI has been removed? Will CACs be able to delete NOIs when they are submitted in error? Mistaken NOIs remaining in the system will make the number of applications look much higher than what actually occur. If multiple potential applications are listed, it could easily be perceived as overuse.

*Response 21*

*The current system will include select NOI information for all NOIs for the production of an agricultural commodity that are entered into CalAgPermits, whether or not they are entered in error and/or subsequently deleted. The SprayDays California website includes information on the intended nature of the applications, including the possibility that they may not be approved by the CAC and may not occur. If a new NOI is entered into CalAgPermits, this will be presented as a new/different planned application. DPR is aware of the concern regarding the posting of original and updated NOI information and welcomes continued discussions with CACASA and Calico about changes in system functionality to reflect updated NOI information.*

*Question 22*

The notifications and NOIs will likely be under increased scrutiny. A blanket statement from DPR of “potential applications” is insufficient. The CACs are already seeing increased public scrutiny on the state pesticide regulatory programs. How will DPR react to this increased scrutiny? The CACs do not have the resources to respond to complaints regarding incorrect/corrected NOIs each time a notification goes out. The system adds workload to the CACs to verify incorrect application notifications. Is there a plan for challenges to (inaccurate) NOIs?

*Response 22*

*DPR will continue its outreach to explain that SprayDays is intended to increase the transparency of intended restricted material applications and that applications posted on SprayDays are intended or planned and may not occur at all. DPR will also have staff available to assist the public with navigating the SprayDays website and answering questions about the notification information. As noted above, we are aware of the concern regarding the posting of original and updated NOI information and welcome continued discussions with CACASA and Calico about changes in system functionality to reflect updated NOI information.*

*Question 23*

Is DPR aware that some growers err on the side of caution and submit additional NOIs should they feel they need to make an additional application or that some applications may take a number of days? For example, there have been cases where growers submit a daily NOI in order to have the flexibility to make an application should pest pressure rapidly increase.

*Response 23*

*DPR is aware of this practice and did not change the current NOI submission time requirements or the emergency exemption from the timing requirements. The SprayDays California website makes clear that the select NOI information is for intended or planned applications and that the applications may not occur at all.*

*Question 24*

When applications are planned to occur over a few days, sometimes a family decides to vacate while the application is happening. Will DPR assume any liability for incorrect notifications?

*Response 24*

*SprayDays is not an alert or warning system and does not require the public to take any particular action upon receipt of a notification. SprayDays states that it is an information resource that provides advance information about intended restricted material pesticide applications. The goal of SprayDays California is to increase transparency and access to information in advance of restricted material pesticide applications, complementing the current and existing regulatory system that strictly evaluates and regulates pesticide use in California. The information and community health tips on the SprayDays website does not recommend that people vacate their premises due to an intended restricted material application.*

*Question 25*

Given AB1864, does the notification system include only restricted materials pesticides?

*Response 25*

*SprayDays will include select NOI information for restricted material applications that require a permit for the production of an agricultural commodity. AB 1864 does not affect the scope of pesticide applications included in SprayDays.*

*Question 26*

Regulation states that the NOI form must be approved by the director. The most recent NOI form that is available from DPR is from 2007. Is DPR planning to provide an updated form to be used?

*Response 26*

*The regulation directs entry of NOI information into CalAgPermits. When a CAC grants an undue hardship exemption, under 3 CCR section 6424(b), an NOI shall be submitted on a form provided or approved by the Director so that under 3 CCR 6434(e), the CAC can enter the select NOI information into CalAgPermits for transmittal to DPR. This regulatory action is consistent with the existing NOI form, and it should be used.*

*Question 27*

Is the State using any equity impact tools to review these regulation packages?

*Response 27*

*Since 2021, DPR has received substantial public input from a wide range of stakeholders to inform the development of this regulatory action and the associated electronic system, SprayDays California. In 2021, DPR held four focus group sessions to gather input from stakeholders about the potential benefits and challenges of a statewide pesticide notification system and potential system design parameters. (Focus Groups Summary, 2022.) In November 2021, DPR hosted two virtual webinars and received public comments regarding guiding principles and practical considerations to inform the design of the system. (Webinar Summary, 2022.) In 2022, DPR contracted with the UC Davis Center for Regional Change (UC Davis) to facilitate three virtual workshops and a public comment period to further inform the design of SprayDays California. UC Davis also facilitated three workshops and a public comment period to receive feedback regarding four county-led pilot projects. UC Davis summarized the feedback received from stakeholders in two Summary Reports. (UC Davis, June 2022; UC Davis, November 2022.) DPR incorporated many suggestions received from a variety of stakeholders into the proposed regulatory text and into the design of its overall notification system. DPR also considered alternatives to this regulatory action. However, none of the alternatives would minimize any environmental impact or economic impact while still achieving the purpose of the regulatory action. DPR will continue to evaluate its system and process for providing advance public information regarding restricted material pesticide applications by collecting annual public feedback, issuing an annual status update, and issuing a three-year comprehensive report on the system and accepting public comment on that report. Furthermore, under proposed 3 CCR section 6434(h) the public, including CACs and stakeholders, will have an opportunity to provide feedback on the statewide electronic notification system and participate in the system review.*

*Question 28*

Is DPR aware there is a terminology error in the proposed regulations? The correct way to refer to "base, meridian" (as in proposed regs) is "baseline and meridian".

*Response 28*

*Thank you. This terminology will be corrected in the regulation.*

Sincerely,



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