



August 1, 2024

Ms. Lauren Otani, Senior Environmental Scientist (Specialist)
Department of Pesticide Regulation
1001 I Street
P.O. Box 4015
Sacramento, California 95812-4015

Subject: Agriculture industry coalition comments on the Department of Pesticide Regulation's 30-day notice of modifications to the proposed restricted material use notification regulations.

Dear Ms. Otani:

This coalition, representing a variety of agricultural stakeholders, appreciate this opportunity to comment on the Department of Pesticide Regulations' (DPR) NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED CHANGES IN THE REGULATIONS PERTAINING TO STATEWIDE NOTIFICATION OF AGRICULTURAL USE OF RESTRICTED MATERIALS, dated July 2, 2024.

This coalition generally supports the proposed modifications that provide clarity to growers regarding the required timeframes for submitting notice of intent (NOI) information to DPR depending on the type of pesticide being applied (e.g., fumigant pesticides applied to soil). We also support the proposed 30-day extension of the effective date of the proposed regulations to

provide sufficient time for DPR to address potential “technological issues” with the electronic notification system, which seem likely given that the current version is untested at scale.

However, we are concerned that the additional information required by the proposed modifications moves the notification system one step closer to identification and targeting of individual growers prior to intended application of restricted use materials, regardless of whether those applications actually occur, and regardless of growers’ compliance with applicable regulations and permit conditions. While we appreciate that DPR may not intend for the system to be misused in this manner, it is important to recognize the potential for such misuse, which has been demonstrated in counties with similar systems, and DPR should be prepared to take any action that may be necessary to protect growers acting in good faith and operating within the confines of applicable statutory and regulatory requirements.

In particular, we believe the new requirement to disclose product names and active ingredients, coupled with information on the number of acres treated, allows those that would misuse the notification system to draw inferences regarding the exact location of the proposed application and by extension, the responsible grower. In the absence of context regarding mitigation measures required to protect potentially exposed individuals, and how those measures reduce potential health and ecological risks - especially risks associated with off-site exposures - this additional information could be used as the basis for organized efforts to obstruct legal applications of restricted materials. We remain concerned that such actions would place grower owners, employees, and members of the public at greater risk of harm, without providing any additional public health benefit. Beyond the potential for physical harm, misuse of the system to share personal information with the public will likely result in increased baseless appeals of NOIs, thereby postponing essential applications. This sequence of events may lead to significant crop loss, further pest outbreaks, more frequent legal reviews by DPR and slower response times. The provisions of AB 2113 (Garcia, Chapter 60, Statutes of 2024) that allow for any “interested person” to appeal an NOI will surely increase the probability of these outcomes. We also ask the Department to consider potential state liability for releasing sensitive personal information. For all of these reasons, we encourage DPR to resist pressure to continue down the path of requiring additional information that spotlights specific locations and growers.

We are also concerned about how DPR has framed the public engagement process regarding the potential need for notification system “improvements.” The proposed modifications specifically require that DPR consult with, and receive feedback from, the DPR Environmental Justice Advisory Committee and the State Board of Food and Agriculture on: 1) annual status updates of the system and the process of making information about intended applications available to the public, and changes to the current system and process, and 2) a comprehensive three-year report reviewing the entire system and process, “including improvements made to the system, over time.” These proposed changes inappropriately elevate the concerns and priorities of the identified stakeholders over all other stakeholders. We question the necessity of identifying these groups in the regulation, since they would have the same opportunity to participate in the system review process as any other stakeholder. Moreover, it is inappropriate to direct input from one subset of stakeholders intended for DPR through a separate agency (the California Department of Food and Agriculture) and a governing board made up of gubernatorial appointees. However, if DPR chooses to retain these specific consultation requirements, then it should expand the current

list to include other stakeholder groups with relevant experience and expertise, such as the Agricultural Pest Control Advisory Committee or the Office of Pesticide Consultation and Analysis.

Furthermore, these proposed changes appear to contemplate periodic course corrections within the three-year timeframe for system and process review, but there is no language in the proposed regulations describing the process for such periodic updates. We expect that any adjustments to the notification mechanisms, content, or process that depart in any way from the requirements in the final regulations would need to be implemented through subsequent amendments to the regulations, which would entail a formal rulemaking process. We ask that DPR confirm our interpretation in its responses to public comments on the proposed regulations and propose additional language in a 15-day notice describing the process for updating the regulations.

Finally, we would be remiss to not express concerns about the ongoing staff and financial resources that will be required at the state and local levels to implement the existing system, provide system updates, and respond to the aforementioned consultation requirements. We are of the strong opinion that additional and ongoing costs should be borne by the State General Fund through budget change proposals, rather than at the expense of DPR's tax and fee payers. We would also caution that a public notification system of this scale, without proper context regarding how the public should interpret a notice, will likely be met with a hyperbolic public response. County Agricultural Commissioners will be the first point of contact for label interpretations, public inquiries and expressions of concern, and confusion about notification requirements and system functionality. The resources they will need to expend to respond to these, and other issues, will mean less resources for use enforcement, education, pest detection and community engagement.

We request that DPR address the above issues and recommendations in a subsequent public notice of modifications to the proposed regulation.

Sincerely,



Will Scott, Jr., President
African American Farmers of California



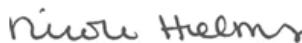
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Cc: Julie Henderson, Director – Department of Pesticide Regulation
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