

**ITEM 9**  
**FINAL STAFF ANALYSIS**  
**PROPOSED AMENDMENTS TO**  
**PARAMETERS AND GUIDELINES**

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

California Code of Regulations, Title 3, Sections 6000, 6393 (c),  
6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628  
(Register 90, No. 1)

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

Department of Pesticide Regulation, Requestor

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**Executive Summary**

This is a request filed by the Department of Pesticide Regulation (DPR) pursuant to Government Code section 17557, subdivision (d) to amend the original parameters and guidelines for the *Pesticide Use Reports* Program (CSM-4420). If the Commission on State Mandates (Commission) approves DPR's request, the amendments would be effective for costs incurred beginning July 1, 2005.

DPR requests that the parameters and guidelines be amended so mandate reimbursement guidelines will be conformed to current law and implementing regulations. The Department of Finance (DOF), the County of San Bernardino, and the State Controller's Office (SCO) filed comments on DPR's original proposal and subsequent modifications.

In the original proposal, the DPR proposed to update the existing parameters and guidelines with "current" Commission "boilerplate" language and to clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. DPR also proposed to include mill disbursement, and unclaimed gas tax funds received by the claimant as offsetting revenues and other reimbursements, and to notify claimants that DPR developed an Offsetting Revenue Worksheet to help the counties identify the appropriate amounts to apply as an offset to a reimbursement claim. DPR also proposed adding a new Section VIII on Payment of Claims.

The parties have had full and fair opportunity to discuss and brief the issues of the original proposal. The request to amend the parameters and guidelines was issued for comment and comments were filed by the DOF. The DPR modified the Proposed Amendment on March 22, 2007, and on May 9, 2008, DPR clarified the proposed amendments to address audit issues. The County of San Bernardino and DOF filed comments on the modified proposal, and DPR filed rebuttal comments.

Finally, the SCO filed comments, and DPR filed rebuttal comments. During the course of the review and comment period, Commission staff convened two pre-hearing conferences to assist staff and the parties in understanding each party's position, including staff's position reflected in the draft staff analysis. The draft staff analysis identified 10 proposed amendments to the parameters and guidelines. Comments on the draft staff analysis were filed by the DPR, DOF, and the County of San Bernardino.

There is only one issue that remains in dispute for the County of San Bernardino:

- Should the Offsetting Revenues and Reimbursements section be amended to add language requiring the deduction of unclaimed gas tax revenues as an offset?

Staff finds that unclaimed gas tax revenues received by claimant pursuant to Food and Agricultural Code section 224 are not required to be used toward paying the cost for reimbursable activities mandated by Food and Agricultural Code section 12979. However, to the extent that unclaimed gas tax revenues are used by a claimant toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset.

Therefore, staff recommends approval of the following language to replace DPR's proposal:

Specifically, the following revenues and reimbursements must be deducted from any cost claim costs claimed:

The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

### **Conclusion and Staff Recommendation**

Staff recommends that the Commission approve the proposed amendments to the parameters and guidelines, as modified by staff, beginning on page 25.

Staff further recommends that the Commission authorize staff to make technical non-substantive changes or corrections upon adoption.

## **Chronology**

01/21/1993	Commission adopts Statement of Decision
02/23/1995	Commission adopts parameters and guidelines
01/12/2007	Department of Pesticide Regulations (DPR) files proposed amendment to parameters and guidelines
02/20/2007	Department of Finance (DOF) files comments
03/22/2007	DPR modifies proposed amendment to parameters and guidelines
04/22/2008	Commission requests comments from the County of San Bernardino, original claimant
05/09/2008	DPR makes clarifications to proposed amendments to address audit issues
06/23/2008	DOF files comments on proposed amendments
06/23/2008	County of San Bernardino requests extension of time to submit response
06/25/2008	Commission staff approves request for extension of time
07/11/2008	County of San Bernardino files comments on proposed amendments
08/01/2008	DPR files rebuttal comments
09/18/2008	State Controller's Office (SCO) files comments
09/26/2008	Pre-hearing conference held and new schedule established
10/31/2008	DOF files comments
01/15/2009	DPR files rebuttal comments
02/24/2009	Commission staff issues draft staff analysis
03/26/2009	Pre-hearing conference held
04/09/2009	DOF files comments on draft staff analysis
04/15/2009	County of San Bernardino and DPR file comments on draft staff analysis
05/14/2009	Final staff analysis issued

## STAFF ANALYSIS

### **Background**

This is a request filed by the Department of Pesticide Regulation (DPR) to amend the original parameters and guidelines for the *Pesticide Use Reports Program* (CSM-4420).

If the Commission on State Mandates (Commission) approves DPR's request, the amendments would be effective for costs incurred beginning July 1, 2005.

### **Test Claim Decision**

Statutes 1989, chapter 1200 added Food and Agricultural Code section 12979, which states:

A pesticide use report shall be submitted to the commissioner or director on a form and in a manner prescribed by the director. The data from the pesticide use reports shall be considered in setting priorities for food monitoring, pesticide use enforcement, farm worker safety programs, environmental monitoring, pest control research, public health monitoring and research, and similar activities by the department, or by the department in cooperation with other state, regional, or local agencies with appropriate authority.

In 1991, the County of San Bernardino filed a test claim on this statute. In 1993, the Commission adopted a Statement of Decision on this test claim, finding that the provisions of Food and Agriculture Code section 12979, and its related regulations in Title 3 of the California Code of Regulations, increased the level of service to be provided by the county agricultural commissioners.<sup>1</sup>

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Food and Agriculture Fund in section 12846 of the Food and Agricultural Code which specified that it be used, upon appropriation, for the purposes of a number of sections, including 12979. Moreover, the Commission found that the Food Safety Account was created and an existing mill assessment that is imposed on counties was increased to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.

Former section 6393, subdivision (c) of Title 3, California Code of Regulations, which addressed the mill assessments, was amended to include new criteria for reimbursing counties for additional work related to the expansion of pesticide use reporting requirements for all agricultural uses. However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission found that to the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17556, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.

The Commission further found that any costs incurred as a result of the increased pesticide reporting requirements, that are not reimbursed by the Food Safety Account, and the increased mill assessment, are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provisions of Government Code section 17556, subdivision (e).

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<sup>1</sup> See Exhibit A, Statement of Decision.

## Parameters and Guidelines

The parameters and guidelines include the following limiting language under “Scope of Mandate:”

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979 of Chapter 1200 Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

And, specify the following reimbursable activities:

1. Issuing operator identification numbers pursuant to 3 CCR section 6622.
2. Issuing site identification numbers pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) pesticide use reports other than those specified in V.A. above.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Auditing the sales records specified in 3 CCR section 6562, which are prepared and maintained by pesticide dealers who are licensed by the state.

## **Department of Pesticide Regulation’s Request to Amend Parameters and Guidelines**

DPR requests that the parameters and guidelines be amended so mandate reimbursement guidelines will be conformed to current law and implementing regulations.<sup>2</sup> The Department of Finance (DOF), the County of San Bernardino, and the State Controller’s Office (SCO) filed comments on DPR’s original proposal and subsequent modifications.

In the original proposal, the Department of Pesticide Regulation proposed to update the existing parameters and guidelines with “current” Commission “boilerplate” language and to clarify that the mandate refers to use reports for pesticides that are not classified by the state as restricted materials. DPR also proposed to include mill disbursement, and unclaimed gas tax funds received by the claimant as offsetting revenues and other reimbursements, and to notify claimants that DPR developed an Offsetting Revenue Worksheet to help the counties identify the appropriate amounts to apply as an offset to a reimbursement claim. DPR also proposed adding a new Section VIII on Payment of Claims and later withdrew this request.

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<sup>2</sup> See Exhibit B, Department of Pesticide Regulation’s Original Request and Comments, dated January 12, 2007, March 22, 2007, May 9, 2009, August 1, 2008, and January 15, 2009.

On January 16, 2009, DPR filed rebuttal comments and modified its last proposed amendments by accepting many of the SCO recommendations.

On April 15, 2009, DPR commented on the draft staff analysis. DPR's suggested technical corrections are reflected in the final staff analysis. One substantive comment regarding Issue 8, Offsetting Revenue Worksheet, is addressed in the analysis below. With these changes, DPR accepts all other staff recommendations in the draft staff analysis.

### **County of San Bernardino's Comments**

The County of San Bernardino, test claimant, concurred with all of DPR's proposed amendments except for the specific identification of offsetting revenues.<sup>3</sup> The County disagreed with the inclusion of unclaimed gas taxes that were established as a funding mechanism to reimburse counties for the costs of performing Food and Agricultural Code programs prior to the enactment of the mandated duties related to pesticide use reports. The County also argued that DPR should clarify that the offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the test claim statutes (Stats. 1989, ch. 1200). As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

The test claimant filed comments dated April 14, 2009, on the draft staff analysis which raised arguments similar to those raised in the test claimant's comments to DPR's proposed amendments. The substantive comments are discussed below.

### **State Agency Comments**

The DOF agreed with DPR's original proposed amendments to identify the specific revenues available to offset claims; concurred with the technical amendments clarifying the mandated activities and technical changes to the boilerplate to be consistent with current law; and found that the requested amendment to use current Commission boilerplate language is unnecessary as some of the provisions may not be applicable to the program.<sup>4</sup>

DOF also concurred with the SCO's comments and continued to recommend listing all state funds available to offset the cost of the mandate.

The SCO provided several comments to the proposed amendments and recommended making clarifying technical changes to conform to the boilerplate and format of current parameters and guidelines; making clarifying edits to one reimbursable activity; adding a new section for non-reimbursable activities; and deleting a new Section VIII, Payment of Claims.<sup>5</sup> The substantive comments are discussed below.

### **Discussion**

The proposed parameters and guidelines amendments and comments raise the following issues for determination by the Commission:

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<sup>3</sup> See Exhibit B, County of San Bernardino's Comments dated July 11, 2008.

<sup>4</sup> See Exhibit B, DOF Comments dated February 20, 2007, June 23, 2008, and October 31, 2008.

<sup>5</sup> See Exhibit B, State Controller's Office Comments dated September 18, 2008.

Should the parameters and guidelines be amended to:

1. Update the format and add the Commission's current "boilerplate" language?
2. Clarify that the mandate refers to *use reports for pesticides that are not classified by the state as restricted materials*?
3. Add a separate section identifying Non-Reimbursable Activities?
4. Update citation to OMB Circular A-87 for calculation of indirect costs?
5. Add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
6. Update the language regarding reimbursements that are based on the DPR contract for electronic submission of pesticide use reports?
7. Add *unclaimed gas tax funds* received by the claimant as offsetting revenues and other reimbursements and require them to be reported and deducted?
8. Add language informing claimants that the DPR has developed an Offsetting Revenue Worksheet to help counties identify appropriate amounts to apply as an offset to a county's reimbursement claim?
9. Add language to clarify documentation requirement to support pro-rata offsets?
10. Add new section on "Payment of Claims"?

**Issue 1      Should the parameters and guidelines be amended to update the format and add the Commission's current "boilerplate" language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI?**

The current parameters and guidelines for this program were adopted on February 23, 1995. Since that date, there have been many changes made to the format and the boilerplate language used in the parameters and guidelines. Except for one comment from the DOF, that the requested amendment to use current boilerplate is unnecessary as some provisions may not apply to the program, there is no disagreement among the other parties to update the format of, or the boilerplate language in the parameters and guidelines. Therefore, staff has modified the proposed amendments to the parameters and guidelines to conform with the format and current boilerplate language in Sections I, II, III, IV, VI, VII, VIII, IX, X, and XI.

**Issue 2      Should Section IV, Reimbursable Activities, Paragraphs 1, 2, 3, and 6 be amended to clarify that the reimbursable activities include pesticides that are not classified by the state as restricted materials"?**

The Commission's Statement of Decision denied reimbursement for "... pesticides that are classified by the state as restricted materials." Prior to the enactment of the test claim statute and adoption of the implementing regulations, reports on pesticides classified by the state as restricted materials were filed with counties. The current parameters and guidelines include limiting language in Section IV Reimbursable Activities that is being moved to Section I.

DPR proposes amendments to paragraphs 1, 2, and 6 to add language specifying that reimbursement is limited to activities related to the use of pesticides that are not classified by the state as restricted materials. Also, the SCO proposes an amendment to paragraph 3, to clarify the

reimbursable activity of reviewing and filing pesticide use reports with the DPR. There is no opposition to these proposed amendments.

Staff finds that the DPR's proposed language is consistent with the Statement of Decision and recommends approval of the following proposed language in Section IV, Reimbursable Activities, Paragraphs 1, 2, and 6:

1. Issuing operator identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6622.
2. Issuing site identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6623.
- ...
6. Audit the sales records of pesticide dealers as specified in 3 CCR section 6352, for the sale of pesticides that are not classified by the state as restricted materials which are prepared and maintained by pesticide dealers who are licensed by the state.

Staff also finds that the SCO's proposed language to modify Section IV Reimbursable Activities, Paragraph 3 is also consistent with the Statement of Decision. Therefore, staff recommends approval of the following proposed language with technical modifications proposed by staff:

3. Reviewing and filing with the Department of Pesticide Regulation (~~Department of Food and Agriculture until July 17, 1991) or the use of pesticides that are classified by the state as restricted materials~~) pesticide use reports other than those specified in V A above below. Note: Only costs incurred to review and file with the Department of Pesticide Regulation pesticide use reports other than those specified in V below may have components (e.g., data entry) which may be performed by unlicensed staff.

### **Issue 3            Should a new Section V. Non-Reimbursable Activities be added?**

The existing parameters and guidelines include a description of non-reimbursable activities in Section V Reimbursable Activities, A. Scope of the Mandate. However, this language is being moved to Section I. Summary of the Mandate to be consistent with the current format.

The State Controller's Office proposes that existing text description of non-reimbursable activities and language originally proposed by DPR regarding reimbursement of travel costs, be moved to a new Non-Reimbursable Activities section. Staff finds that this is a non-substantive, clarifying change. Therefore, staff recommends approval of the following proposed language:

#### **V.        Non-Reimbursable Activities**

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because the reports were required prior to the enactment of Food and Agricultural Code section 12979, of chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

If travel costs are incurred and the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion may be claimed.

**Issue 4            Should Section VII, Claim Preparation and Submission, B. Indirect Costs be amended to update a citation?**

The current boilerplate language allows claimants to utilize the procedure provided in “Office of Management and Budget (OMB) Circular A-87 Attachments A and B” for the calculation of indirect costs.

In comments filed by the County of San Bernardino,<sup>6</sup> we learned that this document is now cited as 2 CFR Part 225, Appendix A and B (OMB Circular A-87). The CFR citation has been verified and staff recommends updating this citation throughout Section VII, Claim Preparation and Submission, B. Indirect costs. The SCO’s agrees with DPR’s comments.

**Issues 5-8        Should Section VIII, Offsetting Revenues and Reimbursements be amended?**

The Commission recognized that the test claim statute also created the Food Safety Account in the Department of Agriculture Fund (Food & Agr. Code, § 12846) and changed the pesticide mill assessment from .008 mills per dollar to .009 mills per dollar (amendment to Food & Agr. Code, § 12841). However, the Commission noted that only a portion of the mill assessment increase is for the purposes of the increased pesticide use reporting requirements.

The Commission made the following findings in the Statement of Decision:

- The reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.<sup>7</sup>
- To the extent that costs incurred by the claimant are reimbursed by the Food Safety Account and the increased mill assessment, Government Code section 17557, subdivision (e), precludes such costs from being costs mandated by the state, as defined in Government Code section 17514.
- Any costs incurred as a result of the increased pesticide reporting requirements that are not reimbursed by the Food Safety Account and the increased mill assessment are costs mandated by the state, as defined in Government Code section 17514, and are not subject to the provisions of Government Code section 17556, subdivision (e).

The existing parameters and guidelines do not specifically identify the mill assessments in Section VIII, which was then named “Offsetting Savings and Other Reimbursements.”

This section of the parameters and guidelines currently includes the following language:

VIII. Offsetting Savings and Other Reimbursements

Any offsetting savings the claimant experiences as a direct result of this statute and its implementing regulations must be deducted from the costs claimed.

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<sup>6</sup> See Exhibit B, letter from County of San Bernardino, Department of Agriculture/Weights and Measures, dated July 9, 2008.

<sup>7</sup> See Exhibit A, Statement of Decision.

In addition, reimbursement for the costs of these mandated activities received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR and the DOF<sup>8</sup> propose updating this section to make substantive and technical amendments that specifically add language describing mill disbursements and gas taxes as offsets, and language to assist claimants in applying offsets.

The current proposal would replace Section VIII as follows:<sup>9</sup>

### VIII. Offsetting Revenues, Savings and Other Reimbursements

Any offsetting revenues or reimbursements the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim. [First Paragraph]

Specifically, the following reimbursements must be deducted from any cost claim:[Second Paragraph]

1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations;
2. funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines; and
3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines.

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/> htm. [Third Paragraph]

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata

<sup>8</sup> See Exhibit B, DOF letter dated February 20, 2007.

<sup>9</sup> See Exhibit B, DPR's Response to California State Controller Comments – proposed amendment to parameters and guidelines, dated January 9, 2009, pages 10-11.

portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval. [Fourth Paragraph]

The SCO proposes an alternative Fourth Paragraph, as follows:

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified in Section V.C.), etc. that show evidence of validity of claimed costs. If source documents do not specifically identify 100% use reporting, mandated records or activities vs. previously required records or activities, a default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years<sup>10</sup>based on actual data submitted or collected during that interval. [SCO proposed language on September 18, 2009.]

The proposed language is reviewed below under Issues 5-8.

**Issue 5      Should the Offsetting Revenues and Reimbursements Section be amended to add *mill disbursements* received by the claimant as offsetting revenues and other reimbursements and require claimants to report and deduct them?**

The Statement of Decision includes a Commission finding that “[t]he reason for creating the Food Safety Account and increasing the mill assessment was to provide funding for the new pesticide program contained in the test claim statute, part of which pertains to the pesticide use reports that are the subject of this claim.” Although the Commission made this finding, the parameters and guidelines do not include a specific reference to deduction of mill assessments as offsetting reimbursements.

DPR proposes an amendment to specifically identify “the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines, in accordance with current applicable regulations.”<sup>11</sup> The applicable regulations specify the criteria used by the Department of Pesticide Regulation in allocating pesticide mill assessment funds to counties based on each county’s costs, pesticide regulatory activities, workload, and performance, pursuant to section 12844 of the Food and Agriculture Code.

The Department of Pesticide Regulation/Mill Assessment Branch defines the pesticide “mill assessment” as a fee assessed on all pesticide sales, levied at the point of first sale into the state. A ”mill” is equal to one-tenth of a cent. In 2004, this “mill assessment” was 21 mills, or 2.1 cents per dollar of sales. The mill rate is set in regulation by DPR at a level adequate to support the Department’s annual expenditures authorized by the Legislature and to provide a prudent reserve.<sup>12</sup> “Mill assessment revenues are placed in a special fund used to pay for the State’s

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<sup>10</sup> SCO’s comment is based on and responds to an earlier DPR proposal.

<sup>11</sup> This refers to Title 3, Division 6, Chapter 2, Subchapter 3, Article 2, section 6390, et seq. of the Department of Pesticide Regulation’s regulations.

<sup>12</sup> In 1997, Statutes 1997, chapter 695 changed the amount of funds disbursed to the counties and required DPR and the county agricultural commissioners to jointly develop regulations specifying the criteria to be used in allocating the mill assessment funds to the counties based

pesticide regulatory program. DPR's programs are funded primarily from fees and from the mill assessment.<sup>13</sup>

According to DPR, California Code of Regulations, Title 3, section 6393, Criteria Items and Apportionments, was amended in 2004 to establish a more appropriate and equitable method for reimbursing the counties for all Pesticide Use Enforcement activities they perform.

Each month, counties report to the Department of Pesticide Regulation all their pesticide use enforcement activities on the Pesticide Regulatory Activities Monthly Report (PRMAR). The amount of apportionment of each criteria item is a percentage of the total mill assessment funds available for reimbursement to counties [less the amount specified in section 6395 (b) of the regulations].

DPR concludes that mill assessment funds received by the counties for six of nine apportionment activities need to be reported as reimbursement, thus offsetting the costs for these activities. (The six apportionment activities are in bold text below.) California Code of Regulations, title 3, section 6393, subdivision (b), Criteria Items and Apportionments follows with DPR's comments in italicized text<sup>14</sup> and staff's findings:

- (1) **Apportionment, 3 percent:** The total number of Pesticide Use Enforcement Program inspections completed in accordance with the prioritization plan agreed upon by the Director and the commissioners and the commissioner's negotiated work plans.<sup>15</sup>  
(Emphasis added by DPR.)

*DPR: This apportionment addresses reimbursable component number 3 from the SCO's claim form (PUR-1) allowing reimbursement for inspecting pesticide use records of growers, auditing pest use records of growers, and auditing pesticide dealer sales records.*

Based on the Commission's Statement of Decision, staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activities 4, 5, and 6. Therefore, staff finds that the apportionment must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(1).)

- (2) **Apportionment, 3 percent:** The total number of: licensed pest control dealers located in each county; licensed pest control advisers, pest control businesses, pest control aircraft pilots, and farm labor contractors registered in each county; structural pest control

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upon each county's pest control activities, cost, workload, and performance. In 2001, California Code of Regulations sections 6391 and 6393 were amended and section 6397 was adopted establishing the disbursement criteria to be used to allocate mill assessment funds to the counties. The revised CCR 6393 criteria ultimately established specific apportionments to address the increased cost associated with full pesticide use report activities. Again in 2004, section 6393 was again amended.

<sup>13</sup> See Exhibit E, Department of Pesticide Regulation/Mill Assessment Branch, "Information for Retailers About Selling Pesticides and Paying Mill Assessment."

<sup>14</sup> See Exhibit B, Department of Pesticide Regulation Request to Amend Parameters and Guidelines, "Historical Background," dated January 12, 2007.

<sup>15</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(1).

operators providing notice of work in each county; active operator identification numbers in each county; and additional similar workload activities approved jointly by the Director and the commissioners.<sup>16</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 1 from the SCO's claim form PUR-1 allowing reimbursement for issuing operator IDs.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 1. Therefore, it must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(2).)

(3) **Apportionment, 3 percent:** The total number of private applicator certificate holders certified in each county.<sup>17</sup>

*DPR: This apportionment does not pertain to pesticide use report activities.*

Based on the Commission's Statement of Decision, staff agrees with DPR that this apportionment does not pertain to pesticide use report activities and is not an offset.

(4) **Apportionment, 3 percent:** Work hours expended on pesticide related activities that are agreed upon by the Director and the commissioners, provided the work hours are expended by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license or by unlicensed persons qualified to apply for a Pesticide Regulation and/or Investigation and Environmental Monitoring license who are closely supervised by persons holding a Pesticide Regulation and/or Investigation and Environmental Monitoring license.<sup>18</sup> (Emphasis added by DPR.)

*DPR: The apportionment directly pertains to pesticide use reports activities.*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(4).)

(5) **Apportionment, 3 percent:** Expenditures reported by each county for pesticide-related activities that are agreed upon by the Director and the commissioners.<sup>19</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to pesticide use report activities, but does have some indirect linkages (e.g. increased expenditures reported results in an increased share of the mill assessment revenues).*

Since the agreement between the DPR Director and each agricultural commission is unique, staff finds that the apportionment may be used for pesticide-related activities that are not state-

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<sup>16</sup> California Code of Regulations, title 3, section 6393, subdivision (c)(2).

<sup>17</sup> California Code of Regulations, title 3, section 6383, subdivision (c)(3).

<sup>18</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(4).

<sup>19</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(5).

mandated. Therefore, based on the Commission's Statement of Decision, staff finds that to the extent that this apportionment is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset. (Cal.Code Regs., tit. 3, § 6393, subd. (b)(5).)

- (6) **Apportionment, 3 percent:** The total pounds of pesticides used in the county that have been reported pursuant to Food and Agricultural Code section 12979. (Cal.Code Regs., tit. 3, § 6394, subd. (b)(6).)<sup>20</sup> (Emphasis added by DPR.)

*DPR: This apportionment does not directly pertain to PUR [pesticide use report] activities but does have some indirect linkages (e.g. an increase in total pounds of pesticides reported results in an increased share of the mill assessment revenues).*

Staff finds that to the extent that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(6) is used toward reimbursable activities mandated by Food and Agricultural Code section 12979, then that amount must be deducted from any cost claimed for reimbursement as an offset.

- (7) Apportionment 21 percent: The total number of restricted materials permits and permit amendments issued by each county; sites identified on all restricted materials permits and permit amendments issued by each county; and notices of intent reviewed by each county.<sup>21</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision which denied reimbursement for activities related to restricted materials, staff finds that the apportionment in California Code of Regulations, title 3, section 6393, subdivision (b)(7) is not an offset.

- (8) Apportionment, 21 percent: Based on the total pounds of nonagricultural-labeled pesticides sold in this state in relation to each county's population. Pounds of pesticide sold data shall be derived from mill assessment collection information provided to the department. Population data shall be based on the most recent U.S. census information. Counties receiving funding under the provisions of section 8698.5 of the Business and Professions Code for structural fumigation enforcement shall only receive funds from this apportionment after deducting the amount of funds received pursuant to section 8698.5 of the Business and Professions Code.<sup>22</sup>

*DPR: This apportionment does not pertain to the subject PUR activities.*

Based on the Commission's Statement of Decision, staff finds that the requirements related to non-agricultural labeled pesticides and structural fumigation enforcement are not reimbursable, so the apportionment established by California Code of Regulations, title 3, subdivision (b) (8) is not an offset.

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<sup>20</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(6).

<sup>21</sup> California Code of Regulations, title 3, section 6393, subdivision (b)(7).

<sup>22</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (8).

(9) **Apportionment, 40 percent:** Based on each county's pesticide use report data records in relation to the total number of pesticide use report data records submitted to the department by all counties.<sup>23</sup> (Emphasis added by DPR.)

*DPR: This apportionment directly addresses reimbursable component number 2 from the SCO's claim form PUR-1, allowing reimbursement for reviewing and filing with the DPR pesticide use reports.*

Staff finds that this apportionment was specifically intended to cover the costs of Reimbursable Activity 3 and must be deducted as an offset. However, since the calculation of this apportionment includes non-reimbursable pesticide use report data records, staff concludes that only the portion of this apportionment that is based on Reimbursable Activity 3 must be deducted as an offset. (Cal. Code Regs., tit. 3, § 6393, subd. (b)(9).)

There is no opposition to the proposed amendment to specify the offset of "the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations." The County of San Bernardino finds that mill assessments qualify for the offset of local agencies' mandated costs.<sup>24</sup>

Staff finds that the mill disbursements received by claimants that are based on the reimbursable activities identified in Section IV of the parameters and guidelines in accordance with current applicable regulations (Cal. Code of Regs., tit. 3, § 6393, subdivision (b), (1), (2), and (9)) must be identified and deducted from any costs claimed.

Staff further finds that the mill disbursements received by claimants in accordance with California Code of Regulations, title 3, section 6393, subdivisions (b) (4), (5) and (6) that are used to offset the reimbursable activities identified in Section IV of the parameters and guidelines must be identified and deducted from any costs claimed.

Therefore, staff recommends the Commission approve the following language:

Specifically, the following revenues and reimbursements must be deducted from any costs claimed:

1. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (1), (2), and (9) that are based on the reimbursable activities in Section IV of the parameters and guidelines.
2. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (4), (5) and (6) that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

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<sup>23</sup> California Code of Regulations, title 3, section 6393, subdivision (b) (9).

<sup>24</sup> See Exhibit B, County of San Bernardino's letter dated July 9, 2008.

**Issue 6      Should the Offsetting Revenue and Reimbursements Section be amended to update the language regarding reimbursements that are based on the DPR contract for electronic submission of pesticide use reports?**

Section VIII of the Parameters and Guidelines currently addresses offsetting revenue from the contract for electronic submission of *Pesticide Use Reports*:

Specifically, reimbursements received from the memorandum of understanding for pesticide use reporting between the county agricultural commissioner and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) and the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation (Department of Food and Agriculture until July 17, 1991) must be deducted from any costs claimed.

DPR's proposed amendment would update and replace the original paragraph with the following language:<sup>25</sup>

Specifically, the following reimbursements must be deducted from any cost claim:

...

funding received by the claimant under the contract for the electronic submittal of pesticide use reports between the county and the Department of Pesticide Regulation for those activities identified as reimbursable in Section IV of the parameters and guidelines, and ....

The County of San Bernardino finds that contract revenue funds qualify for the offset of local agencies' mandated costs.<sup>26</sup> However, the County argues that DPR should clarify that offsetting revenue from electronic submission of use reports is limited to the revenue generated from inputting use reports resulting from the mandates of Chapter 1200, Statutes of 1989. As currently worded, revenue from inputting use reports excluded from this mandate would offset the costs.

DPR's proposed amendment is limited to revenue received for "activities identified as reimbursable in Section IV of the parameters and guidelines." Section IV of the parameters and guidelines sets forth the reimbursable activities resulting from the test claim statute. Thus, the scope of the increased costs for reimbursable activities and any offsetting revenues resulting from the contract for the electronic submittal of pesticide use reports between the county and DPR are already limited by the identified reimbursable activities imposed by Statutes 1989, chapter 1200.

However, staff finds that clarifying language is necessary. DPR's proposed amendment does not track the language of the reimbursable activity – "reviewing and filing with the Department of Pesticide Regulation pesticide use reports." Therefore, staff recommends modifying DPR's proposed amendment to clarify this description of the reimbursable activity by inserting the words "reviewing and filing" and making other clarifying edits, as follows:

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<sup>25</sup> See Exhibit B, Department of Pesticide Regulation Memoranda, dated January 9, 2009.

<sup>26</sup> See Exhibit B, County of San Bernardino's letter dated July 9, 2008.

Specifically, the following revenues and reimbursements must be deducted from any cost claim costs claimed:

...

The payments received under each county's contract with DPR for the review and filing of pesticide use reports (electronic submittal to DPR) that are identified as reimbursable in Section IV of the parameters and guidelines.

**Issue 7      Should the Offsetting Revenues and Reimbursements section be amended to add language requiring the deduction of unclaimed gas tax revenues as an offset?**

The Commission's Statement of Decision and parameters and guidelines do not mention the application of unclaimed gas tax revenues received by counties as an offset.

However, DPR has proposed to include unclaimed gas tax revenues received by counties, pursuant to Food and Agricultural Code section 224, as offsetting revenues and other reimbursements, stating:

[S]ince unclaimed gas tax allotment revenues are allocated by the California Department of Food and Agriculture based on total agricultural program costs reported by counties statewide, the [State Controller's Office] has determined that when a county reports its mandated costs within total agricultural program costs, it increases its share of statewide revenue allocations.<sup>27</sup>

DPR asserts that the inclusion of unclaimed gas tax revenues as offsetting revenues ensures that counties account for the receipt of all offsetting funds. According to DPR, between 1989-90 and 1993-94, the gas tax refund rate doubled (from 9 cents to 18 cents), and the amount of unclaimed gas tax distributed to fund Food and Agricultural Code (FAC) section 224, subdivision (c) programs (which included all pesticide use report activities, including those under the state mandate) nearly tripled. In October 1996, the California Department of Food and Agriculture (CDFA) updated its County Agricultural Commissioners Annual Financial Statement Procedures Manual to specifically include review of pesticide use reports (PUR) and issuance of operator identification numbers as reportable Pesticide Use Enforcement Program activities. Because unclaimed gas tax funds are distributed based on these financial statements, a portion of these funds are for the mandated activities. DPR explains:<sup>28</sup>

Several times since 1989-90, CDFA has also successfully negotiated with the Department of Transportation to increase the formula to determine the amount transferred to CDFA and available for all FAC section 224(c) programs. For example, in 2003-04, the unclaimed gas tax distributed to the counties reflected an increase of about 38 percent over the previous year. CDFA's March 30, 2004 letters to the counties that accompanied the disbursement stated that "the additional unrefunded gas tax your county receives is intended to augment your existing agriculture programs." Those existing agriculture programs include all PUR activities.

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<sup>27</sup> See Exhibit B, Department of Pesticide Regulation proposed amendment to Parameters and Guidelines, dated January 12, 2007, p. 2.

<sup>28</sup> See Exhibit B, Department of Pesticide Regulation Memorandum, dated August 1, 2008.

DPR fully supports the idea that only a small portion of the unclaimed gas tax relates to the mandated PUR activities. DPR further suggests that “when submitting a claim, a county should document the ratio of mandated PUR activities to total pesticide use enforcement activities and apply this ratio to the total unclaimed gas tax they receive for pesticide use enforcement to determine the amount to include as offsetting reimbursement on the claim.”<sup>29</sup>

The SCO and DOF agree with DPR’s proposed amendment.

The County of San Bernardino disagrees with the inclusion of unclaimed gas tax revenues as offsetting revenues. The County argues: (1) a pre-existing revenue stream is inappropriate to use as a funding mechanism unless there was some specific increase to the revenue source to fund the mandate and that there has been no specific increase in unclaimed gas tax to fund this mandate; (2) if the state fully funds the costs incurred for the mandates of Statutes 1989, chapter 1200, there is no local cost and therefore no unclaimed gas tax revenue associated with the performance of these mandated activities; and (3) use of unclaimed gas tax revenue as a funding source for this mandate decreases the available funding for all other pre-existing Food and Agricultural Code programs resulting in additional local costs to the counties related to these programs, effectively shifting the costs of a new mandate to pre-existing programs.<sup>30</sup>

Revenue and Tax Code section 8101, allows individuals who have paid a tax for motor vehicle fuel and have used that fuel for particular purposes to be reimbursed and repaid the amount of the tax. The remaining money from the vehicle fuel tax, including unclaimed amounts available for reimbursement, are deposited into the Motor Vehicle Fuel Account. Revenue and Tax Code section 8352.5 provides that the Director of Transportation and the Director of Food and Agriculture shall jointly prepare a report setting forth the current estimate of the amount of money in the Motor Vehicle Fuel Account attributable to agricultural off-highway use of motor vehicle fuel subject to refund pursuant to section 8101 less the gross refunds paid by the Controller. An amount equal to this estimate shall be transferred from the Motor Vehicle Fuel Account to the Department of Food and Agriculture Fund.

Food and Agricultural Code section 224 (as added by Stats.2001, ch. 145) provided that money transferred to the Food and Agriculture Fund from the Motor Vehicle Fuel Account pursuant to Revenue and Tax Code section 8352.5, less specified amounts for state use (Food & Agr. Code § 224 subds. (a) and(b)), is appropriated to be paid to counties as partial reimbursement for county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code that are supervised by the Department of Food and Agriculture. Payments to counties are apportioned to counties in relation to each county’s expenditure to the total amount expended by all counties for the preceding fiscal year for agricultural programs authorized by the Food and Agricultural Code.<sup>31</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> See Exhibit B, Claimant response to Department of Pesticide Regulation proposed amendment to parameters and guidelines, dated July 9, 2008.

<sup>31</sup> Food and Agricultural Code section 224 was amended by Statutes 2007, chapter 421, operative July 1, 2008, to reflect changes that occurred in 1991 when then-Governor Wilson created the California Environmental Protection Agency and moved DPR into it from the Department of Food and Agriculture. Since the relocation of CDR, the Department of Food and Agriculture has

When analyzing statutory language, the rules of statutory construction provide:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. ... If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs.<sup>32</sup>

Also, in *People v. Knowles* the California Supreme Court held:

If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.<sup>33</sup>

Here, the statute in question is Food and Agricultural Code section 224, which apportions unclaimed gas tax funds to county agricultural commissioners. The plain language of section 224 does not require county agricultural commissioners to use any apportionments received pursuant to section 224 for the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). Rather, the stated purpose of apportionments received by county agricultural commissioners pursuant to section 224 is to reimburse county expenses for carrying out agricultural programs authorized by the Food and Agricultural Code, including the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200).<sup>34</sup> As a result, although a county may have reported mandated costs within total agricultural program costs resulting in an increase of a county's share of statewide revenues allocated pursuant to section 224, the increased revenue attributable to the mandated activities is not required to be spent on the mandated activities. Therefore, if the claimant does not spend any of the revenue allocated pursuant to section 224 on the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the revenue cannot be counted as offsetting revenue. If, however, claimant uses unclaimed gas tax revenue to cover the costs of the reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), the amount used must be counted as offsetting revenues.

Staff finds that unclaimed gas tax revenues received by claimant pursuant to Food and Agricultural Code section 224 do not constitute state-mandated offsetting revenues that must be deducted from any cost claimed for reimbursement if the revenue is not used toward paying the

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continued to reimburse county agricultural commissioners for activities that are under DPR. The amendment authorized \$ 9 million in funding of DPR for the purpose of reimbursing county agricultural commissioners activities that are under the purview of DPR. Reimbursement is apportioned to counties in relation to each county's expenditures to the total amount expended by all counties for the preceding fiscal year for pesticide use enforcement programs "or with the collective agreement of the agricultural commissioners, disbursement to counties for a current fiscal year according to criteria developed in work plans, or any combination of reimbursement and disbursement as agreed upon by the director and the commissioners."

<sup>32</sup> *Estate of Griswold*, (2001) 25 Cal.4th 904, 910-911.

<sup>33</sup> *People v. Knowles* (1950) 35 Cal.2d 175, 183.

<sup>34</sup> Food and Agricultural Code section 224, subdivision (c) (Stats. 2001, ch. 145). See footnote 1 regarding amendment by Statutes 2007, chapter 421.

cost for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200). However, to the extent that unclaimed gas tax revenues are used toward reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200), then that amount must be deducted from any cost claimed for reimbursement as an offset.

Therefore, staff recommends approval of the following language to replace DPR's proposal:

Specifically, the following revenues and reimbursements must be deducted from any cost claim costs claimed:

The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

**Issue 8      Should the Offsetting Revenues and Reimbursements Section be amended to add language informing claimants that the DPR has developed an Offsetting Revenue Worksheet that may be used to calculate offsetting revenues and reimbursements?**

The existing parameters and guidelines do not identify any worksheets or forms that may be used to calculate offsetting savings [revenues] and other reimbursements.

DPR proposed that the following language be added to Section V, Offsetting Revenues and Reimbursements":

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at [http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/\\_\\_\\_\\_.htm](http://www.cdpr.ca.gov/docs/enfcompli/prenffrm/____.htm).

DPR developed the Offsetting Revenue Worksheet to "assist" counties in identifying all reimbursement for the costs of the mandated activities.<sup>35</sup> However, the plain language of the parameters and guidelines does not require the use of the Offsetting Revenue Worksheet to make a claim for reimbursement for reimbursable activities mandated by Food and Agricultural Code section 12979 (Stats. 1989, ch. 1200).

Claimant has not commented on the inclusion of the above language or the use of the Offsetting Revenue Worksheet.

DOF believes that this worksheet will assist claimants in preparing accurate claims for reimbursement. The SCO does not object to the inclusion of the proposed language.

Staff notes that the use of Offsetting Revenue Worksheet is one approach to calculating offsetting revenues and reimbursements to deduct from claimed costs.

There is no requirement for claimants to use this worksheet. However, as originally proposed, this worksheet was inconsistent with the draft staff analysis. DPR has revised this worksheet to be consistent with Section VIII of the parameters and guidelines as reflected in the draft staff analysis. In addition DPR met with SCO staff to discuss this issue. According to DPR, SCO has indicated that Claiming Instructions can be revised to advise counties that they may contact DPR (via website) if they want assistance in calculating offsetting revenues and reimbursements.

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<sup>35</sup> See Exhibit B, DPR's proposed amendment to parameters and guidelines, dated March 22, 2007.

Based on this information, DPR is now willing to remove the reference to the Offsetting Revenue Worksheet from the parameters and guidelines, as originally proposed.<sup>36</sup>

Therefore, staff recommends denial of the proposed language described above.

**Issue 9      Should the Offsetting Revenues and Reimbursements Section be amended to add language to clarify documentation requirement to support pro-rata offsets?**

The existing parameters and guidelines do not provide any guidance as to how pro-rata portions of offsetting revenues and other reimbursements can be supported by source documents.

DPR proposes the addition of the following language in Section VIII:

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied, provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted.<sup>37</sup>

SCO proposes the inclusion of the following language in Section VIII:

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified above in Section V.C.), etc. that show evidence of validity of claimed costs.

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro-rata portion or default ratio may be applied provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every five years based on actual data submitted or collected during that interval.

It appears that the purpose of both proposals is to assist claimants in applying a pro-rata portion or default ratio to the calculation of offsets and to describe acceptable documentation. However, staff finds both proposals difficult to understand. Although there is no opposition from the County of San Bernardino, staff recommends denial of both the DPR proposal and the SCO proposal until either version is clarified and proposed. Otherwise, inclusion of either proposal will not help claimants in calculating pro-rata offsets for deduction based on inadequate source documents; nor will staff understand how to apply this provision in reviewing incorrect reduction claims that may be filed on this program.

Therefore, staff recommends denial of the proposed language described above.

**Issue 10:      Should a new Section VIII – Payment of Claims be added to the parameters and guidelines?**

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<sup>36</sup> See Exhibit B, DPR's memorandum, "Comments on Draft Staff Analysis," dated April 13, 2009.

<sup>37</sup> See Exhibit B, DPR's Response to SCO Comments – proposed amendment to parameters and guidelines, dated January 9, 2009. In this letter, DPR changed the last phrase in the original proposed language from "is updated at least every five years" to "... three years."

The Department of Pesticide Regulation proposed adding new Section VIII. Payment of Claims to the Parameters and Guidelines. This section, as proposed, would state:

All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.

After this proposed amendment was opposed by the SCO and DOF, DPR deleted the proposed language in its January 2009 comments.

Staff agrees with the SCO and DPR for the following reasons:

The Legislature adopted the 2005-2006 Budget Act<sup>38</sup> and appropriated funds from the Department of Pesticide Regulation Fund for payment of the *Pesticide Use Reports* program. The decision to pay mandate reimbursement claims from this special fund was made by the Legislature and enacted into law through this and subsequent budget acts. In future years, the Legislature could appropriate funds for this program from the General Fund or another special fund. The power to make appropriations is reserved for the Legislature. Executive power over appropriations is limited and is set out in the state Constitution which provides that each year the Governor shall submit a proposed budget to the Legislature (Cal. Const. art. IV, 12) and that each bill, including the budget bill shall be presented to the Governor for his or her signature or veto (Cal. Const., art. IV, 10). Legislative determinations relating to expenditures in other respects are binding upon the executive who, in expending public funds may not disregard legislatively prescribed directives and limits pertaining to the use of such funds.

The budget language (Provision 1) adopted by the Legislature recognized the authority and constitutional duty of the State Controller to audit, verify, and pay mandate reimbursement claims and exercised the power to appropriate funds.

Schedule 1 identifies the program, *Pesticide Use Reports* (Ch. 1200, Stats. 1989) (CSM-4420). Provision 1 states:

Allocations of funds provided in this item to the appropriate local entities shall be made by the State Controller in accordance with the provisions of each statute or executive order that mandates the reimbursement of the costs, and shall be audited to verify the actual amount of the mandated costs in accordance with subdivision (d) of Section 17561 of the Government Code. Audit adjustments to prior year claims may be paid from this item. Funds appropriated in this item may be used to provide reimbursement pursuant to Article 5 (commencing with Section 17615) of Chapter 4 of Part 7 of Division 4 of Title 2 of the Government Code.

The 2006 Budget Act, Item 8885-295-0106, adopted the same language as 2005 and appropriated \$162,000; likewise, the 2007 Budget Act in Item 8885-295-0106 appropriated \$666,000 for costs incurred in fiscal years 2001-2002 through 2004-2005, inclusive, and the 2008 Budget Act in Item 8885-295-0106, appropriated \$160,000 for costs incurred in fiscal years 2005-2006 and 2006-2007.

Staff finds that adoption of the proposed amendment is inconsistent with existing law, including prior state budgets and laws governing mandate reimbursement. Therefore, staff recommends denial of this proposed amendment.

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<sup>38</sup> See Statutes 2005, chapter 38; Statutes 2006, chapter 47; Statutes 2007, chapter 171.

## **Conclusion and Recommendation**

Staff recommends that the Commission approve the proposed amendments to the parameters and guidelines, as modified by staff, beginning on page 25.

Staff further recommends that the Commission authorize staff to make technical non-substantive changes or corrections upon adoption.



## **PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF**

Food and Agricultural Code Section 12979  
Statutes 1989, Chapter 1200

California Code of Regulations, Title 3, Sections 6000, 6393 (c),  
6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628  
(Register 90, No. 1)

*Pesticide Use Reports*  
06-PGA-02 (CSM-4420)

### **I. SUMMARY OF THE MANDATE**

On January 21, 1993 the Commission on State Mandates (Commission) adopted a Statement of Decision finding that Food and Agricultural Code section 12979, as added by Statutes 1989, Chapter 1200, and its implementing regulations in Title 3 of the California Code of Regulations, required county agricultural commissioners to implement a new program or higher level of service in an existing program within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution.

The enactment of the test claim statute and adoption of implementing regulations resulted in county agricultural commissioners receiving a greatly expanded number of pesticide use reports. While the chapter contained a funding mechanism, the Commission found that the funding was not sufficient to cover all of the increase in costs experienced by counties. Costs related to activities required by Food and Agricultural Code section 12979, and its implementing regulations in Title 3 of the California Code of Regulations that are not otherwise reimbursed by the Food Safety Account and increased mill assessment, were therefore found to be reimbursable costs mandated by the state.

Counties shall be reimbursed for the costs of increased pesticide use reporting requirements resulting from the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989 and its implementing regulations in Title 3 of the California Code of Regulations (Title 3, California Code of Regulations, sections 6000, 6393(c), 6562, 6568, 6619, 6622, 6623, 6624, 6626, 6627, 6627.1, 6628), which increased pesticide use reporting requirements on pesticide users to include all agricultural users; increased record keeping requirements on pesticide dealers that are licensed by the state; and required county agricultural commissioners to issue operator and site identification numbers to specified persons, inspect and audit certain records, and file the newly-required pesticide use reports with the state.

Activities related to reports from the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

## **II. ELIGIBLE CLAIMANTS**

Any city, county, and city and county that incurs increased costs as a result of this reimbursable state-mandated program is eligible to file a reimbursement claim for those costs.

## **III. PERIOD OF REIMBURSEMENT**

This parameters and guidelines amendment is effective for the period of reimbursement beginning on July 1, 2005.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A county or city and county may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
2. In the event that revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise provided by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

## **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts. and Pesticide Regulatory Activity Monthly Reports (PRAMR).

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, costs of performing the following activities are reimbursable:

1. Issuing operator identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6622.
2. Issuing site identification numbers for the use of pesticides that are not classified by the state as restricted materials pursuant to 3 CCR section 6623.
3. Reviewing and filing with the Department of Pesticide Regulation ~~Department of Food and Agriculture until July 17, 1991~~ pesticide use reports other than those specified in IV A above below. This activity may be performed by unlicensed persons.
4. Inspecting pesticide use records of growers and other property operators who the county agricultural commissioner had ~~and~~ reason to believe failed to report to the commissioner the use of pesticides that are not classified by the state as restricted materials.
5. Auditing the pesticide use records of growers who submitted pesticide use reports to the county agricultural commissioner for the use of pesticides that are not classified by the state as restricted materials.
6. Audit the sales records of pesticide dealers as specified in 3 CCR section 6352, for the sale of pesticides that are not classified by the state as restricted materials which are prepared and maintained by pesticide dealers who are licensed by the state.

## **V. Non-Reimbursable Activities**

Activities related to reports for the use of pesticides that are classified by the state as restricted materials or for the use of pesticides that are applied by commercial pest control applicators and businesses are not reimbursable because those reports were required prior to the enactment of Food and Agricultural Code section 12979, of Chapter 1200, Statutes of 1989, and its implementing regulations in Title 3 of the California Code of Regulations (3 CCR).

If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.

## **VI. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

## 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

Claimants may use time studies to support salary and benefit costs when an activity is task repetitive in nature. Time study usage is subject to the time study guidelines included in the State Controller's annual claiming instructions.

## 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

## 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

## 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

## 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

If the purpose of the travel includes activities broader than the reimbursable activities, only the pro-rata portion can be claimed.

## 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the

reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1. Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (the Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should

be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

## **VIII. PAYMENT OF CLAIMS**

~~All claims are paid from the Department of Pesticide Regulation Fund. Therefore, all claims are required to be authorized for payment by the Department of Pesticide Regulation.~~

## **VII. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a county or city and county pursuant to this chapter<sup>1</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, and offsetting revenues and reimbursements, as described in Section VIII, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VIII. OFFSETTING REVENUES SAVINGS AND OTHER REIMBURSEMENTS**

Any offsetting revenues or reimbursements offsets the claimant experiences in the same program as a direct result of the same statute or executive orders found to contain the mandate from any source, including and not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from the costs claimed cost of this claim. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from the costs claimed.

Specifically, the following revenues and reimbursements must be deducted from any costs claimed cost claim:

1. the mill disbursement received by the claimant for those activities identified as reimbursable in Section IV of the parameters and guidelines, in accordance with current applicable regulations.
1. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (1), (2), and (9) that are based on the reimbursable activities in Section IV of the parameters and guidelines.
2. The mill disbursement funds allocated to each county pursuant to California Code of Regulations, title 3, section 6393, subdivision (b) (4), (5) and (6) that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

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<sup>1</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

3. The payments received under each county's contract with DPR for the review and filing of pesticide use reports (electronic submittal to DPR) that are identified as reimbursable in Section IV of the parameters and guidelines.
  3. unclaimed gas tax funds received by the claimant for those activities identified as reimbursable in Section IV (B) of the parameters and guidelines.
4. The amount of unclaimed gas tax funds received by the claimant that are used to offset the reimbursable activities in Section IV of the parameters and guidelines.

Option A

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.edpr.ca.gov/does/enfcompli/prenffrm.htm>.

Option B

An Offsetting Revenue Worksheet has been developed to assist counties in identifying all reimbursement for the costs of the mandated activities. This worksheet will be updated for each fiscal year and can be accessed at <http://www.edpr.ca.gov/does/enfcompli/prenffrm.htm>.

Pesticide Regulatory Activity Monthly Reports (PRAMR), offsetting revenue worksheet (as identified above in Section V.C.), etc. that show evidence of validity of claimed costs.

If source documents do not specifically identify 100% use reporting mandated records or activities versus previously required records or activities, a pro rata portion or default ratio may be applied provided that it is based on appropriate data (e.g., pesticide use reports submitted) and is updated at least every three years based on actual data submitted or collected during that interval.

## **IX. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon revised parameters and guidelines adopted by the Commission.

The Controller shall, within 60 days after receiving amended parameters and guidelines prepare and issue revised claiming instructions for mandates that require state reimbursement established by Commission action pursuant to Government Code section 17557, section 17557.2, or any decision or order of the Commission pursuant to section 17559. The claiming instructions shall

be derived from the test claim decision and the parameters and guidelines adopted by the Commission. Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies. (Gov. Code, § 17558, subdivision (c).)

If revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

## **X. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

## **XI. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision (CSM-4220) is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

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