

FOOD AND AGRICULTURAL CODE
DIVISION 7. AGRICULTURAL CHEMICALS, LIVESTOCK REMEDIES, AND
COMMERCIAL FEEDS
Chapter 3. Restricted Materials
Article 1.5. Pesticides

14021. (a) As used in this article, "pesticide" means any economic poison as defined in Section 12753.

(b) For purposes of this article, "toxic air contaminant" means an air pollutant which may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health. Pesticides which have been identified as hazardous air pollutants pursuant to Section 7412 of Title 42 of the United States Code shall be identified by the director as toxic air contaminants.

(Added by Stats. 1983, Ch. 1047, Sec. 2.)

14022.(a) In consultation with the Office of Environmental Health Hazard Assessment and the Air Resources Board, the director shall evaluate the health effects of pesticides which may be or are emitted into the ambient air of California and which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health. Upon request of the State Air Resources Board, the director shall include a pesticide for evaluation.

(b) The director shall complete the evaluation of a pesticide within 90 days after receiving the scientific data specified in subdivision (c) from the office and the State Air Resources Board. The director may extend the 90-day deadline for a period not to exceed 30 days if the director transmits to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline.

(c) In conducting this evaluation, the director shall consider all available scientific data, including, but not limited to, relevant data provided by the office, the Occupational Safety and Health Division of the Department of Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. At the request of the director, the State Air Resources Board shall document the level of airborne emissions and the office shall provide an assessment of related health effects of pesticides which may be determined to pose a present or potential hazard and each agency shall provide technical assistance to the department as it conducts its evaluation.

(d) The director may request, and any person shall provide, information on any substance which is or may be under evaluation and which is manufactured, distributed, or used by the person to whom the request is made, in order to carry out his or her responsibilities pursuant to this chapter. Any person providing information pursuant to this subdivision shall, at the request of the director, identify that portion of the information submitted to the department which is a trade secret and, upon the request of the director, shall provide documentation to support the claim of the trade secret. Information supplied which is a trade secret, as specified in Section 6254.7 of the Government Code, and which is so marked at the time of submission shall not be released to the public by the director, except in accordance with Section 1060 of the Evidence Code and Section 21160 of the Public Resources Code.

FOOD AND AGRICULTURAL CODE

(e) The director shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the pesticide in California, persistence in the atmosphere, and ambient concentrations in the community.

(Amended by Stats. 1984, Ch. 1380, Sec. 1. Affected by Governor's Reorganization Plan No. 1 of 1991, Sec. 57, Effective July 17, 1991.)

14023.(a) Upon completion of the evaluation conducted pursuant to Section 14022, the director shall, in consultation and with the participation of the Office of Environmental Health Hazard Assessment, prepare a report on the health effects of the pesticide which may be determined to be a toxic air contaminant which poses a present or potential hazard to human health due to airborne emission from its use. The report shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report shall also contain an estimate of the levels of exposure which may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans, resulting from current or anticipated exposure. The report shall include the findings of the office. The report shall be made available to the public, subject to subdivision (d) of Section 14022.

(b) The report prepared pursuant to subdivision (a) shall be formally reviewed by the scientific review panel established according to Section 39670 of the Health and Safety Code. The director shall also make available the data deemed necessary to the scientific review panel, according to departmental procedures established to ensure confidentiality of proprietary information. The panel shall review, as appropriate, the scientific data on which the report is based, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based. The panel shall submit its written findings to the director within 45 days after receiving the report, but it may petition the director for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is seriously deficient, the report shall be returned to the director who shall revise and resubmit the report, within 30 days following receipt of the panel's determination, to the panel prior to development of emission control measures.

(d) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (b), the director shall prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a pesticide is a toxic air contaminant. After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall list, by regulation, pesticides determined to be toxic air contaminants.

(e) The director shall determine, in consultation with the office, the State Air Resources Board, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant pursuant to subdivision (d). Any person may submit written information for consideration by the director in making determinations on control measures.

(Amended by Stats. 1984, Ch. 1380, Sec. 2. Affected by the governor's Reorganization Plan No. 1 of 1991, Sec. 58, Effective July 17, 1991.)

14024. (a) For those pesticides for which a need for control measures has been determined pursuant to subdivision (e) of Section 14023 and pursuant to provisions of this code, the director, in consultation with the agricultural commissioners and air pollution control districts and air quality management districts in the affected counties, shall develop control measures designed to reduce emissions sufficiently so that the source will not expose the public to the levels of exposure which may cause or contribute to significant adverse health effects. Where no demonstrable safe level or threshold of significant adverse health effects has been established by the director, the control measures shall be designed to adequately prevent an endangerment of public health through the application of best practicable control techniques.

(b) Best practicable control techniques may include, but are not limited to, the following:

- (1) Label amendments.
- (2) Applicator training.
- (3) Restrictions on use patterns or locations.
- (4) Changes in application procedures.
- (5) Reclassification as a restricted material.
- (6) Cancellation.

(c) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall adopt, by regulation, control measures, including application of the best practicable control techniques enumerated in subdivision (b) or any other best applicable control technique, for those pesticides for which a need has been determined.

(Amended by Stats. 1984, Ch. 1380, Sec. 3.)

14025. Any person may petition the department to review a determination made pursuant to this article. The petition shall specify the additional scientific evidence regarding the health effects of a pesticide which was not available at the time the original determination was made and any other evidence which would justify a revised determination.

(Added by Stats. 1983, Ch. 1047, Sec. 2.)

14026. Nothing in this article shall be construed to limit or expand the department's authority regarding pesticides which are not determined to be toxic air contaminants.

(Added by Stats. 1983, Ch. 1047, Sec. 2.)

14027.(a) Notwithstanding Section 12998, any person who violates any rule or regulation, emission limitation, or permit condition adopted pursuant to this article is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. In assessing a civil penalty under this article, the court shall consider the appropriateness of the penalty with respect to the following factors:

- (1) The size of the business of the person being charged.
- (2) The gravity of the violation.
- (3) The good faith of the person being charged.

FOOD AND AGRICULTURAL CODE

(4) The history of previous violations. Any money recovered under this section shall be paid into the Department of Pesticide Regulation Fund for use by the department in administering this division and Division 6 (commencing with Section 11401).

(b) Liability may be imposed under subdivision (a) only if the department establishes that the violation was caused by an act which was the result of intentional or negligent conduct by the person accused of the violation.

(Added by Stats. 1984, Ch. 1380, Sec. 4. Affected by the Governor's Reorganization Plan No.1 of 1991, Sec. 59, Effective July 17, 1991.)