

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Section 6860  
Pertaining to Toxic Air Contaminants

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR). Section 6110 meets the requirements of Title 14 CCR section 15252 and Public Resources Code section 21080.5 pertaining to certified state regulatory programs under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION / PESTICIDE REGULATORY PROGRAM  
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR section 6860. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to air monitoring and evaluation under its general reevaluation mandate and under the mandates of Assembly Bill 1807 (Chapter 1047, Statutes of 1983, and amended by Chapter 1380, Statutes of 1984, AB 3219), the Toxic Air Contaminant Act. In summary, this action would designate the pesticide chemical chloropicrin as toxic air contaminant (TAC) pursuant to Food and Agricultural Code (FAC) section 14023.

SPECIFIC PURPOSE AND FACTUAL BASIS

With the enactment of California's Toxic Air Contaminant Act, the Legislature created the statutory framework for the evaluation and control of chemicals as TACs. The statutes are contained in FAC sections 14021-14027. FAC section 14021 defines a TAC as "an air pollutant that 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."

DPR evaluates pesticides as TACs pursuant to FAC section 14022. FAC section 14022 requires the evaluations to be conducted in consultation with the Office of Environmental Health Hazard Assessment (OEHHA) and the Air Resources Board. Upon completion of a pesticide evaluation, FAC section 14023(a) requires DPR, in consultation and with the participation of OEHHA, to prepare a report on the health effects of the pesticide due to airborne emissions resulting from its use. The report assesses the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report must include OEHHA's written findings. FAC section 14023(b) requires a review of the report by a panel of independent scientists known as the Scientific Review Panel (SRP). The SRP reviews the scientific data upon which the report is based, the supporting scientific procedures and methods used, and the conclusions and assessments on which the report is based. The SRP then submits its written findings to DPR. Based on the results of this comprehensive evaluation and review, the law requires the DPR Director to determine whether the candidate pesticide is a TAC.

Title 3 CCR section 6890 provides the criteria the Director must use. If the candidate pesticide is determined to be a TAC, FAC section 14023(d) requires the Director to list that pesticide as a TAC in regulation.

Chloropicrin is a fumigant pesticide. Fumigants are gases that during use fill an area, such as a building or soil in a field, and poison targeted pests. Chloropicrin has a low odor threshold and causes sensory irritation at very low concentrations. In addition to its use as a pesticidal active ingredient it also is added as a warning agent to the odorless fumigant methyl bromide. Small amounts are also co-applied in structural fumigations with sulfuryl fluoride, as a warning agent.

The primary source of chloropicrin in the environment is pesticide applications in which chloropicrin is either a fumigant active ingredient or a warning agent. Additionally, chloropicrin occurs in small amounts as a minor, transient byproduct of reactions between organic matter and certain water treatment chemicals used in chlorination and other oxidative water disinfection treatments.

Following application to soil, chloropicrin rapidly diffuses through the soil in all directions, then dissipates quickly, with half-lives ranging from approximately an hour to several days. Its physical and chemical properties are such that its environmental fate includes release into the airborne environment.

DPR has conducted an evaluation and risk assessment of chloropicrin. It is contained in the report, "*Evaluation of Chloropicrin as a Toxic Air Contaminant*, February 2010." This report is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

The SRP has reviewed the chloropicrin reports (draft *Evaluation of Chloropicrin as a Toxic Air Contaminant*, November 2009, and the final report *Evaluation of Chloropicrin as a Toxic Air Contaminant*, February 2010) and submitted its written findings to DPR on April 1, 2010. In its findings, the SRP concluded that the Panel has reviewed the report prepared by DPR and reviewed by OEHHA, as well as the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based, as required by state law. The Panel finds that chloropicrin should be classified as a TAC.

Based on the results of the evaluation of chloropicrin and the criteria listed in section 6890 for identifying pesticides as TACs, the Director has declared chloropicrin to be a TAC (DPR, 2010).

The proposed regulatory action adds chloropicrin to section 6860(a).

#### CONSULTATION WITH OTHER AGENCIES

As described above, DPR has consulted with OEHHA and the Air Resources Board. In addition, DPR has consulted with the California Department of Food and Agriculture during the development of the text of proposed regulations as specified in FAC section 11454.2, and the

February 6, 1992, Memorandum of Agreement, which was developed as provided in section 11454.2.

Copies of correspondence with these agencies are contained in the rulemaking file.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION (GOVERNMENT CODE SECTION 11346.2(b))

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

ECONOMIC IMPACT ON BUSINESSES

The proposed regulations will not have a significant adverse economic impact upon business. The document relied upon to make this determination is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

The proposal in effect pertains to designating the pesticide chemical chloropicrin as a TAC in section 6860(a). DPR's review of the proposed action showed that no significant adverse environmental effect to California's air, soil, water, plants, fish, or wildlife can reasonably be expected to occur from implementing the proposal. Therefore, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with the Code of Federal Regulations.

DOCUMENTS RELIED UPON

1. DPR. 2009. *Draft Evaluation of Chloropicrin as a Toxic Air Contaminant*. Department of Pesticide Regulation, Sacramento, California.
2. DPR. 2010. *Evaluation of Chloropicrin as a Toxic Air Contaminant*. Department of Pesticide Regulation, Sacramento, California.
3. Scientific Review Panel Public Meeting Transcript. February 24, 2010.
4. Froines, J.R. 2010. *Findings of the Scientific Review Panel on Toxic Air Contaminants on the*

*Proposed Identification of Chloropicrin as a Toxic Air Contaminant.* April 1, 2010.

5. DPR. 2010. *Notice of Proposed Decision Concerning the Director's Declaration of Chloropicrin as Toxic Air Contaminants.* Mary-Ann Warmerdam, Director, Department of Pesticide Regulation. April 15, 2010.
6. OEHHA. 2009. Revised Findings on the Health Effects of the Active Ingredient Chloropicrin. Anna M. Fan, Office of Environmental Health Hazard Assessment. November 24, 2009.
7. Storelli, Stephen, California Environmental Protection Agency, Agencywide Economic Analysis Unit, Air Resources Board. Economic Assessment for DPR's Proposed Regulation to Designate the Pesticide as a Toxic Air Contaminant. Memorandum to Linda Irokawa-Otani, Regulations Coordinator, DPR. April 21, 2010.