

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6000
Pertaining to Ground Water Protection Areas

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 6000. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to ground water protection. In summary, the proposed action amends the document, "EH03-05 (Est. 08/03) Ground Water Protection Areas" that identifies ground water protection areas (GWPA) in California. DPR proposes to add new GWPA that have been identified based on pesticide detections. This document is incorporated by reference in the definitions "ground water protection area," "leaching ground water protection areas," and "runoff ground water protection areas."

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

The Pesticide Contamination Prevention Act (Act) (Statutes of 1985, Chapter 1298) added Article 15 (sections 13141-13152) to Chapter 2 of Division 7 of the FAC. The purpose of the Act is to prevent pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

The Act requires DPR to conduct soil and ground water monitoring for those listed pesticides in 3 CCR section 6800(b), maintain a database of wells sampled for pesticide residues, and formally review the continued use of pesticides found in ground water as the result of legal agricultural use. 3 CCR section 6800(a) currently consists of a list of seven chemicals--atrazine, simazine, bromacil, diuron, prometon, bentazon, and norflurazon--that have been detected in ground water or soil pursuant to FAC section 13149. FAC section 13150 allows the continued sale and use of these chemicals provided that certain conditions have been met.

Current section 6000 includes definitions for: GWPA, an area of land that has been determined by the Director to be sensitive to the movement of pesticides to ground water; leaching GWPAs, areas of land where pesticide residues move from the soil surface downward through the soil matrix with percolating water to ground water; and runoff GWPAs, areas of land where pesticide residues are carried in runoff water to more direct routes to ground water such as dry or drainage wells, poorly sealed production wells, soil cracks, or to areas where leaching can occur. DPR has identified these areas of land where ground water contaminations have been detected and are currently identified in the DPR document EH03-05 (Est. 08/03) entitled "Ground Water Protection Areas" that is incorporated by reference within these definitions.

Since 2004, GWPAs are established by DPR based on the following criteria (Ross et al. 2011):

- (1) Identification of vulnerable areas based on a predictive approach that associates detections with certain soil types (using CALVUL model) and depth to ground water; or
- (2) Detections of active ingredients listed in the 3 CCR section 6800(a) or their degradation products due to legal agricultural use in:
 - (a) One well in a section that is adjacent to an existing GWPA; or
 - (b) Two or more wells within a four section area that is not adjacent to an existing GWPA.

Based on pesticide detections, DPR has identified 121 additional GWPAs.

DPR proposes to amend the document EH03-05 (Est. 08/03) entitled "Ground Water Protection Areas" as follows:

- Rename the document to "Ground Water Protection Areas 2017 (Rev. 8/17) – This title gives a better idea of when the document was last updated. Also, EH03-05 indicates that this document was published in 2003. New name is consistent with the current naming practices being followed by the DPR's Environmental Monitoring Branch.
- Modify the "Update" section with the reasoning behind new proposed GWPAs being added, and delete the logic behind previous update as it does not pertain to this revised document anymore.
- Add 121 GWPAs, and identify the area as either a leaching GWPA or runoff GWPA as defined by section 6000.
- Delete the appendix "Recommendation for Exclusion of Counties with Sparse and Non-Contiguous Ground Water Protection Areas from the Proposed Ground Water Regulations Memo dated August 18, 2003" because it does not pertain to the new proposed GWPAs being added.

CONSULTATION WITH OTHER AGENCIES

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, and the

August 20, 2013, Memorandum of Understanding which was developed as provided in section 11454.2.

Copies of correspondence with the California Department of Food and Agriculture are contained in the rulemaking file.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(4)]

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

ECONOMIC IMPACT ON BUSINESS [GOVERNMENT CODE SECTION 11346.2(b)(5)(A)]

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. However, the GWPAs, located in 15 counties, will require growers to use an alternative pesticide or follow one of the management practices. The impact of these changes is discussed in the economic impact assessment that is listed in the "Documents Relied Upon" section of the Initial Statement of Reasons for this proposed regulatory action and is available from DPR.

Businesses may be impacted if they conduct vegetation management programs using section 6800(a)-listed chemicals in areas that are designated as GWPAs. Applications of section 6800(a)-listed chemicals will be prohibited in GWPAs if certain criteria designed to prevent runoff and leaching cannot be met. Some businesses are already meeting those criteria with current practices while others will need to revise weed management practices and/or use alternative pesticides in some situations.

The impacts will affect growers who use section 6800(a)-listed chemicals primarily on six crops within the proposed GWPAs. These crops are alfalfa, almonds, grapes, oranges, peas, and walnuts. The peak annual cost, estimated to be \$11,281, is expected to occur in the first year of the regulations, with recurrent annual cost impacts of \$11,043 in subsequent years. Impacts on affected grape (except wine) and walnut growers, which account for 86 percent of the total cost impacts, are estimated to be \$2 per acre.

Growers who farm crops treated with section 6800(a)-listed chemicals within the designated areas can expect to see minor increases in operating costs that will result in reductions of gross revenues. The level of reductions in gross revenue is not expected to result in noticeable shifts in crop selection because the reduction is expected to be minor and most of the crops affected are permanent crops.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs within the State of California: The proposed action will not likely create or eliminate jobs within California. If the selected mitigation practices result in a net increase of additional chemical treatments, there could be some increase in demand for labor. However, this should not be sufficient to lead to a permanent increase in the number of jobs within California. Alternative practices that involve substituting one chemical for another or adopting new application practices are not expected to require additional employees.

Creation of New Business or the Elimination of Existing Businesses within the State of California: The proposed action would unlikely create or eliminate existing businesses within the State of California. Any additional costs resulting from changes in application practices or pesticides selected should not have a significant adverse economic impact on farmers. Pesticide dealers currently selling listed chemicals may experience some decreased sales that might be offset by increased sales from alternative substituted chemicals.

The Expansion of Businesses Currently Doing Business within the State of California: DPR has determined that this proposal is unlikely to result in an expansion of businesses because impacted growers are not expected to contract with other businesses to comply with the regulation and current pesticide dealers will simply sell the alternative chemical(s) instead of the regulated chemical.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulations will protect ground water from contamination resulting from the agricultural use of pesticides thus preventing pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

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

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 CONFLICT OR DUPLICATION OF FEDERAL REGULATIONS

The proposed action does not duplicate or conflict with federal regulations because there are no federal regulations contained within the Code of Federal Regulations that address this issue.

DOCUMENTS RELIED UPON

1. Ross, L., L. Quagliaroli, M. Pepple, and J. Troiano. 2011. Criteria for Establishing Ground Water Protection Areas. Environmental Monitoring Branch, Department of Pesticide Regulation, California Environmental Protection Agency, Sacramento, California.
(http://www.cdpr.ca.gov/docs/emon/pubs/ehapreps/analysis_memos/2337_sanders.pdf, verified July 06, 2017).
2. Aggarwal, V. 2017. Memorandum to Pam Wofford. Proposal to Create Additional Ground Water Protection Areas Based on Pesticide Detections. California Department of Pesticide Regulation. Sacramento, California.
3. Pepple, Mark. March 19, 2018. Assessment of Economic Impacts of Proposed DPR Regulation Creating Additional Ground Water Protection Areas. Executive Office. Memorandum.