

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6000, 6424, 6428, 6432, and 6434
Pertaining to Statewide Notification of Agricultural Use of Restricted Materials

UPDATE OF THE INITIAL STATEMENT OF REASONS

This regulatory action amends sections 6000, 6424, 6428, 6432, and 6434 of title 3 of the California Code of Regulations (3 CCR). In summary, this action requires all agricultural use notices of intent (NOIs) to be electronically submitted to the County Agricultural Commissioner (CAC) via www.CalAgPermits.org, unless the CAC grants an exemption from the electronic submission requirement upon a finding of undue hardship. Additionally, it requires all NOIs for soil fumigations to be electronically submitted to the local CAC via www.CalAgPermits.org a minimum of 48 hours before the intended start of the application. It also requires specific information from NOIs for the use of restricted materials requiring a permit for the production of an agricultural commodity to be electronically submitted to the Department of Pesticide Regulation (DPR) via www.CalAgPermits.org at least 48 hours in advance of the intended start of a soil fumigation and at least 24 hours in advance of the intended start of an application of all other pesticides. This action requires DPR to make the specific NOI information it receives publicly available upon receipt or as soon as practicable. Finally, it requires DPR to issue annual updates on its system and process for making the specific NOI information publicly available until DPR issues a comprehensive report on the system three years after this regulatory action goes into effect. DPR must accept public comments on its annual status updates and on its comprehensive three-year report and receive feedback from and present on its annual status update and comprehensive three-year report to the Department of Pesticide Regulation Environmental Justice Advisory Committee and the State Board of Food and Agriculture.

This regulatory action was noticed in the *California Regulatory Notice Register* on November 3, 2023.

During the 70-day public comment period, DPR held three public regulatory hearings to receive oral and written comments on the proposed action in addition to receiving written comments by e-mail, U.S. mail, or facsimile (FAX). The comments timely received are discussed under the subheading “Summary and Response to Comments Received During the 70-Day Comment Period” of this Final Statement of Reasons. For the reasons stated below, DPR modified sections of the originally proposed text, which are summarized under the subheading “Changes to the Text of Proposed Regulations Following the 70-Day Comment Period.”

DPR issued a Notice of Modifications to Text of Proposed Changes in the Regulations pertaining to Statewide Notification of Agricultural Use of Restricted Materials on July 2, 2024. During the 30-day public comment period, DPR held three public regulatory hearings to receive oral and written comments on the modified text in addition to receiving written comments on the modified text by e-mail, U.S. Mail, SmartComment online public comment portal, or FAX. The timely received comments are discussed under the subheading “Comments Received During the 30-Day Comment Period.” Following the 30-day comment period, DPR made one nonsubstantive change without regulatory effect to the regulation text, which is described below under the subheading

“Nonsubstantive Change to the Text of Proposed Regulations Following the 30-Day Comment Period.”

Changes to the Text of Proposed Regulations Following the 70-Day Comment Period

DPR proposed the following changes to the originally proposed text of 3 CCR section 6434:

- Amended originally proposed subsection (c)(2). The originally proposed subsection (c)(2) required that an NOI for “all non-soil fumigant pesticides requiring a permit” be submitted to the local CAC at least 24 hours prior to the date and time the application is intended to commence. DPR received inquiries as to whether the 24-hour time submission requirement applies to all pesticides requiring a permit that are not soil fumigants or to a subset of fumigant pesticides that are not applied to soil. DPR intended this requirement to apply to the former to be consistent with the intent of the regulation – to provide information to the public in advance of intended restricted material agricultural commodity applications requiring a permit. Additionally, requiring an NOI for all pesticides requiring a permit that are not soil fumigants to be submitted to the CAC 24 hours prior to the intended start of the application is consistent with current requirements. Therefore, DPR amended subsection (c)(2) to clarify that an NOI is required to be submitted to the local CAC at least 24 hours prior to the date and time the application is intended to commence for all other pesticides that require a permit – pesticides that are not soil-fumigants that require a permit.
- Amended, restructured and reworded originally proposed subsection (d).
 - The originally proposed subsection (d) required that select information from an NOI be submitted to DPR at least 24 hours prior to the date and time the application is intended to commence for all non-soil fumigant pesticides that require a permit. DPR amended subsection (d) to clarify that this requirement applies to all pesticides requiring a permit that are not soil fumigants, as opposed to a subset of fumigant pesticides that are not applied to soil. This amendment is consistent with the amendments to subsection (c)(2).
 - DPR amended subsection (d) to clarify that the select NOI information must be submitted to DPR “either” 48 hours or 24 hours prior to the intended time and date of the application. This amendment clarified the two distinct time requirements for when select NOI information must be submitted to DPR – 48 hours for intended soil fumigant applications that require a permit and 24 hours for all other intended applications that require a permit.
 - DPR restructured and reworded subsection (d) for clarity.
- Amended originally proposed subsection (e)(1).
 - DPR amended originally proposed subsection (e)(1) to clarify that select NOI information must be submitted to DPR for an intended application of a restricted material requiring a permit “either” 24 hours or 48 hours prior to the date and time the application is intended to commence depending on the type of pesticide being applied. Additionally, DPR amended subsection (e)(1) to clarify that the 24-hour time submission requirement applies to all other pesticides requiring a permit – pesticides that are not soil fumigants, as opposed to a subset of fumigant pesticides that are not applied to soil. Both of these amendments are consistent with the amendments to subsections (c)(2) and (d) discussed above.

- Amended originally proposed subsection (g).
 - DPR amended subsection (g) to specify that the requirement in this subsection, which requires DPR to provide specified information about intended restricted material applications that require a permit to the public, will become effective 30 days after the effective date of this action. Postponing the effective date of this subsection by 30 days is necessary so that DPR has sufficient time to address any unanticipated technological issues with its electronic system for making NOI information publicly available.
 - Additionally, DPR amended the cross-reference to subsection (d) to specifically reference the information listed in subsections (d)(1)-(d)(6) to clarify the information that DPR is required to make publicly available.
 - DPR amended subsection (g) to require DPR to make the pesticide product name(s) and active ingredient(s) publicly available, in addition to the information listed in subsections (d)(1)-(d)(6). This information is currently submitted on NOIs. This amendment is in response to public comments requesting to receive the pesticide product name(s) and active ingredient(s) for intended applications. DPR intended, prior to receiving the public comments and proposing this amendment, to make this information publicly available for intended applications. DPR can determine this information from the pesticide product registration number(s) (subsection (d)(4)). This amendment clarifies DPR's intent that it will provide the public with the pesticide product name(s) and active ingredient(s) to be applied. Providing this additional information will inform the public about what pesticides will be applied near areas of interest, using the pesticide's label and chemical names, and allow the public to obtain additional information about the pesticide or chemical.
 - DPR amended the second cross-reference to subsection (d) to subsections (d) and (e)(1) to clarify the requirement that DPR make publicly available information about intended restricted material applications requiring a permit that are reported to DPR by both (1) property operators, property operator representatives, or the pest control business under subsection (d) and, (2) CACs under subsection (e)(1). This clarifies DPR's intent that it will also provide information reported under subsection (e)(1).
 - Lastly, DPR amended, reworded, and restructured subsection (g) to clarify that the requirement that DPR make information about intended applications that require a permit publicly available at least 24 hours prior to the intended date and time of the application is to commence, or as soon as practicable, applies to all applications of pesticides that require a permit that are not a soil fumigant, as opposed to a subset of fumigants that are not applied to soil. This amendment is consistent with amendments to subsections (c)(2), (d), and (e)(1) discussed above.
- Amended and restructured originally proposed subsection (h). The originally proposed subsection (h) required DPR to evaluate its system and process for making information about intended restricted material applications that require a permit publicly available after three years.
 - DPR amended subsection (h) to create subsection (h)(1). Subsection (h)(1) will require DPR to annually publicly issue a status update on its system and process for making information about intended applications requiring a permit publicly available, feedback

received, and changes to its system and process. Subsection (h)(1)(A) requires DPR to receive feedback from and present the annual status updates to the Department of Pesticide Regulation Environmental Justice Advisory Committee (EJAC) and the State Board of Food and Agriculture (Board). Subsection (h)(1)(B) requires DPR to accept public comments on its annual status update for a minimum of 30 days. DPR will be required to issue an annual status update and receive feedback from the EJAC, the Board and the public via a public comment period until DPR issues a draft report on its system three years after the regulation goes into effect or as soon thereafter as reasonably practicable. The requirement to annually receive feedback from the EJAC, the Board and the public addresses public comments requesting that the community members from the communities most affected by pesticide use, agriculture interests, public health and medical interests, beekeepers, environmental interests, and other stakeholders have an opportunity to provide feedback on the system and participate in the system review. DPR is required to specifically receive feedback from and present the status update to the EJAC and the Board to provide different public forums for multiple stakeholder groups to provide feedback and participate in the system review. The 30-day public comment period in subsection (h)(1)(B) will provide the public sufficient time to review the annual status update and provide suggestions and feedback to DPR for DPR's consideration during the remaining part of the year. This amendment also addresses public comments DPR received requesting DPR review its system and process for making information publicly available earlier than DPR's originally proposed three years. The annual status update ensures DPR will annually (1) report out on feedback received and/or changes made and (2) keep the public informed about the operation of the system over the past year until DPR issues a comprehensive draft report under subsection (h)(2).

- DPR also moved the requirement that DPR issue a final report to new subsection (h)(2) and amended it to require that DPR issue a draft report, followed by a final report, on its system and process of providing information to the public pursuant to subsection (g) and any changes made three years after the effective date of the regulation or as soon thereafter as reasonably practicable. The report will serve as a comprehensive review of the whole system and process, including improvements made to the system, over time. Subsection (h)(2)(A) requires DPR to receive feedback on its draft report from, and present its draft report to, the EJAC and the Board. This is to be consistent with subsection (h)(1)(A) and to provide different public forums for multiple stakeholder groups to provide feedback and participate in the system review. Subsection (h)(2)(B) will require DPR to make the draft report available for public comment for a minimum of 45 days. By requiring DPR's draft report to be available for public comment, this amendment addressed public comments that the community members from the communities most affected by pesticide use, public health and medical interests, beekeepers, agriculture interests, environmental interests, and other stakeholders all be included in the review of the system. DPR will make the draft report available for a minimum 45-day comment period. This time period is consistent with the regular rulemaking process, specifically Government Code section 11346.4(a). It will provide the public a meaningful amount of time to review the draft report, which will

comprehensively cover the past three years of the system, and provide public comment to DPR.

- DPR added Food and Agricultural Code (FAC) sections 901 and 11519 to the references for section 6434. These references are added as FAC section 901 establishes the State Board of Food and Agriculture and FAC section 11519 establishes the Department of Pesticide Regulation Environmental Justice Advisory Committee, which are both listed in proposed subsection (h). This is a non-substantive amendment.

Nonsubstantive Change to the Text of Proposed Regulations Following the 30-Day Comment Period

Following the 30-day comment period and prior to submitting this regulatory action to the Office of Administrative Law for review, DPR made a nonsubstantive change to the text to change “base” to “base line” in 3 CCR sections 6428(b) and 6434(b)(12) and (d)(3). This is a nonsubstantive change without regulatory effect to align with the Public Land Survey System nomenclature and use the complete name “base line” instead of the shortened “base.” This change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision and therefore, no further notice is required.

DPR added a specific reference to the pesticide notification system in subsection 6434(g) to align with the existing language in subsection 6434(h) and the language of the Budget Act. Additionally, DPR added the specific dates in subsections 6434(g) and 6434(h)(2), and made minor punctuation and grammatical fixes.

PUBLIC HEARINGS

DPR scheduled and held three public regulatory hearings during the 70-day comment period. Two in-person public hearings were scheduled and held on December 13, 2023 and December 14, 2023. A virtual hearing was scheduled and held on December 19, 2023. Transcripts for each of these hearings are contained in the rulemaking file.

DPR also scheduled and held three public regulatory hearings during the 30-day comment period to receive comments on the proposed modifications described in the Notice of Modifications to Text of Proposed Changes in the Regulations Pertaining to Statewide Notification of Agricultural Use of Restricted Materials. Two in-person public hearings were scheduled and held on July 12, 2024 and July 23, 2024. A virtual hearing was scheduled and held on July 15, 2024. Transcripts for each of these hearings are contained in the rulemaking file.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 70-DAY COMMENT PERIOD

See Attachment A.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 30-DAY COMMENT PERIOD

See Attachment B.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the regulatory action does not impose a mandate upon local agencies or school districts.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the adopted regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

POSTING REQUIREMENT

3 CCR section 6110, states in part that, “The public report shall be posted on the official bulletin board of the Department for 45 days.” DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>. The documents incorporated by reference in this rulemaking were available upon request directly from the Department.