

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION  
Worker Protection Standard  
DPR Regulation No. 16-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6722; and to amend sections 6000, 6618, 6619, 6720, 6723, 6723.1, 6724, 6726, 6732, 6734, 6738.3, 6738.4, 6744, 6761, 6761.1, 6762, 6764, 6766, 6768, 6769, 6770, 6771, 6776, and 6782 of Title 3, California Code of Regulations (3 CCR). This proposed action would amend existing worker safety regulations to align them with the newly revised federal Worker Protection Standard (WPS) regulations [Title 40 Code of Federal Regulations, Part 170 (40 CFR)] that become effective January 2, 2017. The proposed action revises requirements for training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and emergency decontamination when using a pesticide for the commercial or research production of an agricultural commodity.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on June 6, 2016. Comments regarding this proposed action may also be transmitted via e-mail to <dpr16001@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small businesses. The regulatory action is amending California worker safety regulation in order to maintain at least the same level of protection as the newly revised federal rules, and is not proposing any additional requirements beyond what will be required by U.S. EPA when the federal WPS becomes effective nationwide on January 2017.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's mission is to protect public health and the environment from adverse effects of pesticide use. DPR regulates: pesticide product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and pesticide residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

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<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

The FAC also specifically requires that DPR adopt regulations to ensure safe working conditions for persons handling pesticides and working in and about pesticide-treated areas. DPR's current regulatory requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment, restricted-entry intervals after pesticide application, decontamination supplies, and emergency medical aid are designed to reduce the risk of pesticide exposure and injuries among pesticide handlers and workers exposed to pesticides.

In 1992, the U.S. Environmental Protection Agency (U.S. EPA) issued the federal Worker Protection Standard (WPS), which became final in 1995. U.S. EPA acts under the authority and mandate of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The federal WPS regulations are found at 40 CFR, part 170, Agricultural WPS. The purpose of the federal WPS is to provide protection to pesticide agricultural workers and handlers through training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and emergency decontamination requirements.

U.S. EPA granted DPR primacy for pesticide enforcement in California and, in 1997 after DPR made changes to its regulations to conform to the federal WPS, U.S. EPA determined California's worker safety program to be equivalent to the federal WPS. In addition to the requirements that were equivalent to the federal WPS, over the years DPR has put into place several regulatory requirements that are stricter than those in the federal WPS through rulemaking.

On November 2, 2015, U.S. EPA revised portions of its federal WPS to enhance protections in its existing WPS. The purpose of its revisions is to further reduce occupational pesticide exposure and incidents or related illness among agricultural workers and pesticide handlers when using pesticides for the production of an agricultural commodity.

In general, California's regulatory requirements are more stringent and U.S. EPA based many of their new requirements on those in California. While DPR's worker protection regulations are already consistent or more restrictive than most of the regulatory changes mandated by the newly revised federal WPS rules, DPR needs to revise some of its existing California worker safety regulations in 3 CCR to ensure they are consistent with the newly revised federal WPS.

DPR proposes to revise requirements for training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and emergency decontamination when using a pesticide for the commercial or research production of an agricultural commodity, in order to maintain at least the same level of protection as the revised federal WPS. DPR is not proposing any additional requirements beyond what will become effective nationwide by U.S. EPA in January 2017.

Adoption of these regulations will provide a benefit to worker safety by further strengthening current regulations that are already designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California

Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

CAC offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR establishes an annual work plan with the CACs, which already requires the CACs to conduct pesticide use inspections and investigations and to enforce compliance with California worker protection laws and regulations.

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

#### EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

#### EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR 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. DPR is proposing amendments to California worker safety regulation in order to maintain at least the same level of protection as the newly revised federal rules, and is not proposing any additional requirements beyond what will be required by U.S. EPA when the federal WPS becomes effective nationwide on January 2017.

## COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Job/Businesses: DPR determined it is not likely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California because the proposed regulation is designed to align with the new federal WPS rules.

The proposed regulations will benefit worker safety by further strengthening current regulations that are already designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Ensuring that pesticide users comply with the newly adopted regulations will benefit worker safety. Implementation of the proposed regulations will not adversely affect the health and welfare of California residents or the environment.

## CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

## AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 12976, 12981.

## REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 12973, 12980, and 12981.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

## AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
916-445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Kevin Solari, Environmental Program Manager  
Worker Health and Safety Branch  
916-323-7614

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

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Director