

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Adopt Section 6302 and Amend Section 6414  
Sales of Agricultural and Restricted Use Pesticides

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 requirement of Title 14, CCR section 15252 and Public Resources Code section 21080.5 pertaining to state regulatory programs certified under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM  
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to adopt 3 CCR section 6302 and amend section 6414. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to enforcement. In summary, the proposed regulation is intended to set forth in one section within 3 CCR the prohibitions on the sale of agricultural and restricted material pesticides that require these pesticides be distributed only through licensed entities and be sold only to end users by licensed pest control dealers. The proposed action clarifies that it is illegal and a violation for registrants and licensed pest control brokers to sell pesticides labeled for agricultural use or designated as a restricted material pesticide, to anyone other than a registrant, licensed pest control dealer, or licensed pesticide broker; and clarifies that it is illegal and a violation for a licensed pest control dealer to sell pesticides designated as a restricted material that requires a restricted materials permit to anyone who does not have a permit or, if exempt from the permit requirement, to anyone who is not a certified commercial or certified private applicator.

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.

Pesticides must be registered (licensed for sale and use) with the U.S. Environmental Protection Agency (U.S. EPA) before they can be registered in California. DPR's preregistration evaluation is in addition to, and complements, U.S. EPA's evaluation. Before a pesticide can be sold or used in California, both agencies require data on a product's toxicology and chemistry--how it behaves in the environment; its effectiveness against targeted pests and the hazards it poses to nontarget organisms; its effect on fish and wildlife; and its degree of worker/bystander exposure.

Certain pesticides can be especially dangerous to human health or the environment if not used correctly, and therefore, pesticides can be designated as restricted-use pesticides (RUPs) by U.S. EPA or as restricted material pesticides by DPR. Federal RUPs must be used by or under the supervision of certified private or certified commercial applicators, and restrictions are carried out through instruction on pesticide product labels. Controls on state-listed restricted materials are carried out through permits issued by the local county agricultural commissioner and are in addition to any controls on the product labels. All federal RUPs are by regulation state-restricted material pesticides, but do not require a permit for use unless they are separately listed in regulation as a state-restricted material. (FAC section 14006.5 and 3 CCR section 6414).

There are several FAC sections that govern the sales of pesticides in California. FAC section 12400 states that it is unlawful for any person other than a registrant, a licensed pest control dealer, or a licensed pesticide broker to sell pesticides into California. FAC section 12116 states it is unlawful for a licensed pest control dealer to purchase agricultural use pesticides from any person other than a registrant, licensed pesticide broker, or another licensed pesticide dealer. FAC section 11407(a) defines a pest control dealer as any person, including a manufacturer, distributor, or retailer who sells pesticides to users for an agricultural use and therefore, only a licensed pest control dealer can sell agricultural pesticides to end-users. FAC section 11408 defines "agricultural use."

DPR interprets these FAC sections as making it unlawful for registrants to sell agricultural use pesticides to anyone other than a licensed pesticide broker or a licensed pest control dealer and for licensed pesticide brokers to sell agricultural use pesticides to anyone other than a registrant, a licensed pest control dealer, or another licensed pesticide broker. However there is no single law or regulation explicitly restricting to whom a registrant or licensed pesticide broker can sell an agricultural use pesticide.

Similarly, there are several FAC sections that deal with the sale of state-restricted material pesticides, but no single law or regulation that explicitly outlines the restrictions on how they can be distributed from registrant to end user. FAC section 11407(d) defines a pest control dealer as any person, including a manufacturer, distributor, or retailer who sells a pesticide to an end user that is designated a restricted material as provided in 14004.5 that requires a permit or must be used only by or under the supervision of a certified applicator; therefore, the indirect conclusion is that only a licensed pest control dealer can sell directly to an end user a restricted material that requires a permit or that must be used by or under the supervision of a certified applicator (federal RUPs). By extension, unless a registrant or licensed broker is also a licensed as a pest control dealer, neither can sell a restricted material requiring a permit or that must be used by or under the supervision of a certified applicator to an end user.

FAC section 14015 states that, except as provided in regulation by the Director, restricted material pesticides can only be possessed and used by or under the supervision a certified applicator (private applicator or certified commercial applicator). FAC section 14006.6(c) states that a permit for possession of a restricted material is not required by a registrant or a licensed pest control dealer. This allows pest control dealers and registrants to possess and sell restricted materials, but not licensed pest control brokers.

The Director has determined possession of restricted materials by a licensed pesticide broker would not be injurious to the environment or to any person, animal, crop, or other property pursuant to FAC section 14005. Therefore, DPR proposes amending section 6414 by adding subsection (f) to exempt licensed pesticide brokers from requiring a permit for possession of restricted materials for sales to a registrant, licensed pest control dealer, or another licensed pesticide broker in California.

DPR proposes adopting section 6302(a) to clarify that it is illegal for a registrant or licensed pesticide broker to sell in California an agricultural use pesticide to any person other than a registrant, licensed pest control broker or licensed pesticide dealer. This proposal is consistent with FAC sections 11407(a), 12116, and 12400.

DPR proposes adopting section 6302(b) to clarify that it is illegal for a registrant or licensed pesticide broker to sell any pesticide designated as a state-restricted material to any person in California other than a registrant, licensed pesticide broker, or licensed pest control dealer. This proposal is consistent with FAC sections 11407(d), 14006.6, and proposed section 6414(f).

Finally, DPR proposes adopting section 6302(c) to clarify that it is illegal for any licensed pest control dealer to sell a restricted material to an end user who does not have a permit, or if exempt from the permit requirement, to anyone who is not a certified commercial or certified private applicator. This is consistent with FAC 14007(d), 14006.6(d), and 3 CCR sections 6412 and 6568.

Without clear laws or regulations stating who may and may not sell pesticides labeled for agricultural use and pesticides designated as restricted materials, registrants and licensed pesticide brokers may not know that they are prohibited from selling agricultural-use pesticides or restricted materials to end users. Only licensed pest control dealers are authorized to sell agricultural use and restricted material pesticides to end users. This assures that key provisions of DPR's regulatory control over these pesticides are implemented; licensed pest control dealers are required to ensure the purchaser of these pesticides has an operator identification number that allows DPR to track pesticide use, and, if purchasing a restricted material, is a certified applicator and has the necessary restricted material permit. Registrants and licensed pesticide brokers do not have comparable requirements to ensure tracking of pesticide use or that the person purchasing a restricted material pesticide can use the pesticide safely, effectively, and lawfully. This proposed regulation explicitly and clearly outlines the legal requirement surrounding the sale of agricultural use and restricted material pesticide necessary to increase compliance and assure successful enforcement.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(5)]

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

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

The proposed 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. The proposed regulation clarifies existing laws and regulation.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs with the State of California: The proposed regulation is intended to set forth in one section within 3 CCR the prohibitions on the sale of agricultural and restricted material pesticides that require these pesticides be distributed only through licensed entities and be sold only to end users by licensed pest control dealers. These prohibitions are currently in various sections of the FAC and 3 CCR. Therefore, DPR has determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs within the State of California.

Creation of New Business or the Elimination of Existing Businesses with the State of California: The proposed regulation is intended to set forth in one section within 3 CCR the prohibitions on the sale of agricultural and restricted material pesticides that require these pesticides be distributed only through licensed entities and be sold only to end users by licensed pest control dealers. These prohibitions are currently in various sections of the FAC and 3 CCR. DPR is not imposing any new requirements on businesses. Therefore, DPR has determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of existing businesses with the State of California.

The Expansion of Businesses Currently Doing Business within the State of California: The proposed regulation is intended to set forth in one section within 3 CCR the prohibitions on the sale of agricultural and restricted material pesticides that require these pesticides be distributed only through licensed entities and be sold only to end users by licensed pest control dealers. These prohibitions are currently in various sections of the FAC and 3 CCR. Therefore, DPR has determined that it is unlikely that the proposed regulatory action will impact the expansion of businesses currently doing business within the State of California.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: DPR does not anticipate any benefits to the health and welfare of California residents, worker safety, or the environment. As mentioned above, the proposed regulation clearly outlines the legal requirement surrounding the sale of agricultural use pesticides necessary to increase compliance and assure successful enforcement.

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 effect to California's environment 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

None.