

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Sales of Agricultural and Restricted Use Pesticides
DPR Regulation No. 16-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6302 and amend section 6414 of Title 3 California Code of Regulations (3 CCR). 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.

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 August 1, 2016. Comments regarding this proposed action may also be transmitted via e-mail to <dpr16002@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.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small businesses. This regulatory action is clarifying existing laws and regulations surrounding the sale of agricultural and restricted material pesticides.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

¹ 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.

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.

There are several FAC sections that govern the sales of pesticides in California. 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 section explicitly restricting to whom a registrant or licensed pesticide broker can sell an agricultural use pesticide.

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. All federal RUPs are by regulation state-restricted material pesticides. There are several FAC sections that deal with the sale of state-restricted material pesticides, but no single law or regulation section that explicitly outlines the restrictions on how they can be distributed from registrant to end user.

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 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. 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's 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.

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).

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 sections 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.

By clearly outlining the legal requirement surrounding the sale of agricultural use pesticides, DPR anticipates the benefit of the proposed regulation will increase compliance and assure successful enforcement.

During the process of developing these regulations, DPR conducted a search of any similar regulations on this topic and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations. DPR is the only agency that has the authority to regulate the sale and use of pesticides.

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. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code sec. 17500 et seq. There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulation action.

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.

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 clarifying existing laws and regulation already in effect.

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.

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, 12781, 12976, 14005, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11407, 11501, 12116, 12400, 14006, 14006.6, and 14015.

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:

Susan McCarthy, Environmental Program Manager II
Product Compliance Branch
916-445-6095

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

Director