

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION  
Rebuttable Presumption Pertaining to California Pesticide Sales  
DPR Regulation No. 16-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6385 of Title 3, California Code of Regulations. The proposed action specifies the documentation that a person selling or distributing a pesticide into or within California must provide in order to rebut the presumption that the pesticide products were sold or distributed for use in the state, and therefore exempt from mill assessment.

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 15, 2016. Comments regarding this proposed action may also be transmitted via e-mail to <dpr16003@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 affect small businesses.

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 produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

A pesticide product must be registered (licensed for sale and use) in California before it can be used, possessed, or offered for sale in the state. Pursuant to FAC section 12841, the person who first sells a pesticide product registered by the Director for use in the state must pay mill assessment on the first sale of the pesticide in the state. FAC section 12843 requires mill assessment payments be made quarterly.

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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.

Not all pesticide products sold or distributed into California are intended for use in California. For example, a pesticide registrant may make a sale to another company, perhaps a nationwide hardware chain store, which maintains a central warehouse in California where all its pesticide product shipments are received. From that central warehouse, the company then reships the product to its retail stores both in California and other states. In this situation, the pesticide products reshipped out of California are exempt from the mill assessment.

FAC section 12841(b) states that there is a rebuttable presumption that pesticide products sold or distributed into or within California by any person are sold or distributed for use in the state. In other words, it is presumed that pesticide products sold or distributed into or within California are for use in the state and, unless the seller can provide documentation that this is incorrect, the seller must pay mill assessment each quarter for all sales. However, it is unclear what kinds of documentation must be made available to DPR in order to rebut the presumption that the pesticide sold or distributed into or within California was for use in the state.

DPR proposes adopting section 6385 identifying the documents that need to be provided to rebut the presumption of FAC section 12841. The adoption of section 6385 will clearly identify to persons selling or distributing pesticides into the state the information that the Department will use as evidence to determine the pesticide is not intended for use in the state, and therefore would not be subject to mill assessment. Proposed documentation includes accounting records of all sales transactions of pesticide products not intended for use in California; and a bill of lading or invoice showing that the pesticide product left the state and is in the seller's possession during the quarter for which mill assessment is due.

The proposed regulation clearly identifies the information that DPR will use as evidence to determine whether a pesticide is not intended for use in the state, and therefore would not be subject to mill assessment. DPR anticipates the benefit of the proposed regulation will provide clarity to sellers, increase compliance, and facilitate 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 section 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. The proposed regulation provides the option for registrants and brokers to rebut the presumption that the pesticide products sold or distributed were for use in the state in order to be exempt from paying mill assessment. Costs associated with providing documentation would occur only if the registrant or broker benefits from paying mill assessment.

### 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 intent of the proposed regulation is to clearly identify to persons selling or distributing pesticides into the state the information that the Department will use as evidence to determine whether a pesticide is not intended for use in the state, and therefore would not be subject to mill assessment.

The proposed regulation will benefit the seller by clearly identifying the information that DPR will require to prove the pesticide is not intended for use in the state, and therefore would not be subject to mill assessment.

## 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 and 12781.

## REFERENCE

This regulatory action is to implement, interpret, or make specific FAC section 12841.

## 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

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Director