

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3, California Code of Regulations  
Adopt section 6621  
Pertaining to Public Health Exemption

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 requirements of Title 14 CCR section 15252 and Public Resources Code section 21080.5 pertaining to certified state regulatory programs 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 6621. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide enforcement during a declared public health emergency. In summary, when a health emergency is declared by the Director of the Department of Public Health or a local health emergency is declared by a local health officer, the proposed action exempts a public agency, or its contractor, from the requirements of getting consent from and providing notice to a property owner (or operator) before directly discharging a pesticide on the owner's (or operator's) property.

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.

Current regulations require "Consent to Apply" and "Notice of Applications" prior to conducting a pesticide application (3 CCR sections 6616 and 6618). These regulations provide protections to pesticide workers and the public by requiring a pesticide applicator to provide notice and get consent from a property owner (or operator) before directly discharging a pesticide on the property owner's (or operator's) property. In a situation where immediate disinfection is necessary to prevent a disease outbreak and a property owner/operator is unavailable for consent and notice, or unwilling to address the situation, compliance with current regulations would delay the public health agency's disinfection activities. In other cases, the immediacy of the declared health emergency or local health emergency may make a public agency's, or its contractor's, outreach to a property owner/operator prior to applying a pesticide, and thus compliance with current regulations, infeasible. Delays in disinfecting contaminated sites pose a serious threat to human health and safety, and contamination requires urgent mitigation measures. The proposed regulation provides an exemption so a pesticide application can be made without delay by the

Department of Public Health, or its contractor, in the event of a declared health emergency or local health emergency, preventing negative impacts to public health and safety.

In 2017, California experienced a widespread outbreak of hepatitis A virus, resulting in 588 documented cases, 403 hospitalizations, and 20 deaths. Twenty-one counties were affected. As a result, Governor Brown declared a State of Emergency following declarations of local health emergencies in San Diego and Los Angeles counties. This outbreak largely affected persons experiencing homelessness and illicit drug users, many of whom had encampments on private properties as well as public lands. The encampments became contaminated and facilitated the spread of infection. In this type of situation, public officials can be faced with threat of delay to prevent further spread of a contagion.

If a property owner/operator is unavailable for consent and notice, or unwilling to provide consent and accept notice, the disinfection activities by the public health agency would be delayed. Delayed disinfection of contaminated sites by public health agencies poses a serious threat to human health and safety. The intent of this proposed regulatory exemption is to prevent further spread of contagions during outbreaks that have the potential to affect public health by expediting needed pesticide treatments.

Proposed section 6621 would exempt public agencies and their contractors, during a declared health emergency or local health emergency, from the requirements of sections 6616 and 6618. This proposed exemption is similar to the public health exemption for vector control activities in section 6620. To qualify for an exemption under section 6621, such an emergency must be declared by a local health officer or the Director of the Department of Public Health pursuant to Health and Safety Code section 101080.

#### CONSULTATION WITH OTHER AGENCIES

DPR consulted with the Department of Public Health's Vector Borne Disease section and the San Diego County Agricultural Commissioner's office.

#### ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(4)]

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

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

This proposed regulatory action will not have a significant adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. DPR is proposing to add an exemption from the consent and notification requirements of pesticide applications carried out to protect public health and safety in response to a local health emergency declared by the local health officer or a health emergency declared by the Director of the Department of Public Health.

This proposal will not significantly increase or decrease economic opportunities, or create any associated costs. Granting an exemption from the consent and notice requirements will allow public health agencies to more quickly address and mitigate emerging public health emergencies. Declared health emergencies and local health emergencies which would require use of this proposed exemption are likely to occur infrequently; California experienced only one health emergency that would have required the proposed exemption in the past five years. When a health emergency or local health emergency is declared, pursuant to 3 CCR sections 6616 and 6618, the applicator must obtain consent from and provide written or oral notification to the operator of the property. By exempting public health agencies from the consent and notice requirements, public health agencies may realize a nominal savings from time spent identifying whom to notify and executing such notifications. However, given that declared health emergencies and local health emergencies occur infrequently, and usually only a few notifications are required to be made during each emergency, any savings would be too insignificant to measure.

#### ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs, Creation of New Businesses or the Elimination of Existing Businesses, and the Expansion of Businesses Currently Doing Business within the State of California: DPR has determined that the proposed action would not create or eliminate jobs in California; create new businesses or eliminate existing businesses within California; or result in the expansion of businesses within California because this action merely allows existing businesses to respond to declared health emergencies and local health emergencies more quickly. The proposed action exempts public health agencies, or their contractors, from consent and notification requirements prior to pesticide applications during a declared health emergency or local health emergency. Declared health emergencies and local health emergencies which require use of this proposed exemption likely will occur unexpectedly and infrequently; California experienced only one health emergency that would have required the proposed exemption in the past five years. Therefore, this proposed exemption will not have any impact on businesses or jobs in California.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed exemptions will allow local public health agencies to respond rapidly to emerging biological threats to California residents by allowing pesticide applications to occur more quickly during a declared health emergency or local health emergency. A declared health emergency or local health emergency requiring use of this proposed exemption likely will occur unexpectedly and infrequently; California experienced only one health emergency that would have required the proposed exemption in the past five years. When a declared health emergency or local health emergency does occur, the response time to a public health outbreak is expected to be reduced, providing a benefit to the health and welfare of California residents.

#### IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

The proposed action exempts a public agency, or its contractor, when responding to a declared health emergency or local health emergency, from the requirements of getting consent from and

providing notice to a property owner (or operator) before directly discharging a pesticide on the property owner's (or operator's) property. DPR's review of the proposed action showed that no significant adverse environmental effect to California's air, soil, water, plants, fish, or wildlife can reasonably be expected to occur from implementing the proposal. This proposed action impacts only consent and notice requirements; all applicable environmental regulations, including pesticide laws, regulations and product label requirements, will still apply. Therefore, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

#### EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed action does not duplicate or conflict with federal regulations because there are no sections within the Code of Federal Regulations specific to pesticide application consent and notice requirements.

#### DOCUMENTS RELIED UPON

1. County of San Diego Declaration of Local Health Emergency, 9/1/2017