

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Public Health Exemption
DPR Regulation No. 19-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt Title 3, California Code of Regulations (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 property owner's (or operator's) property.

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 July 23, 2019. Comments regarding this proposed action may also be transmitted via e-mail to <dpr19001@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. The regulatory action will only exempt public agencies, or their contractors, from consent and notification requirements prior to pesticide applications during a declared health emergency or local health emergency.

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.

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.

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 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 provide consent and accept notice, 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. Therefore, DPR is proposing to adopt section 6621, which would exempt public agencies and their contractors, during a declared health emergency or local health emergency, from the requirements of sections 6616 and 6618. 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. This proposed regulation will provide an exemption so a pesticide application can be made without delay by the Department of Public Health, or its contractor, preventing negative impacts to public health and safety. The intent of this regulation is to prevent further spread of contagions during outbreaks that have the potential to affect public health by expediting needed pesticide treatments.

Adoption of this regulation will be a benefit to the health and welfare of California residents. 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 is likely to occur unexpectedly and infrequently; California experienced only one health emergency that would have required the proposed exemption in the past five years. When such an emergency does occur, application of the exemption provided by the proposed regulation is expected to reduce the response time to a public health outbreak, providing a benefit to the health and welfare of California residents.

During the process of developing this proposed regulation, 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 in California.

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.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/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 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 are likely to 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 proposed regulations 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 is likely to occur unexpectedly and infrequently, perhaps once in five years. When such an emergency does occur, application of the exemption provided by the proposed regulation is expected to reduce the response time to a public health outbreak, providing a benefit to the health and welfare of California residents.

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 12976.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC section 11501.

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:

Lauren Otani, Environmental Scientist
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-5781

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 above:

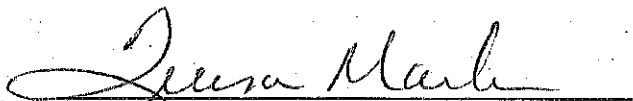
Nathan Desjarlais, Senior Environmental Scientist (Specialist)
Enforcement Branch
916-445-5779

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