

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION  
Pesticide Handlers, Cotton Harvest Aids, Personal Protective  
Equipment Exemptions and Field Fumigation Posting  
DPR Regulation No. 19-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6000, 6470, 6738.4, 6776, and 6784. The pesticide regulatory program activities affected by the proposal are those pertaining to pesticide worker safety and pesticide enforcement. In summary, the proposed action will amend DPR's existing regulations to increase clarity, enforceability and consistency with federal standards, and align field soil fumigation posting requirements with pesticide product labeling. Field soil fumigation posting requirements include posting responsibility, sign content, and posting duration.

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 21, 2019. Comments regarding this proposed action may also be transmitted via e-mail to <dpr19002@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.

FAC section 12980 requires that DPR work jointly with the Office of Environmental Health Hazard Assessment (OEHHA) to develop regulations to ensure safe working conditions for persons handling pesticides and working in and around pesticide-treated areas. FAC section 12981 requires DPR to adopt regulations to accomplish the Legislature's intent relative to ensuring safety in the pesticide workplace. DPR's current regulatory requirements for pesticide safety training, personal protective equipment (PPE), field posting, and notice of completed

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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.

applications are designed to reduce the risk of pesticide exposure and injuries among pesticide handlers and workers exposed to pesticides.

“Handle” is currently defined in 3 CCR section 6000 and the definition includes the term “greenhouse.” In 2017 and 2018, DPR amended California’s pesticide worker safety regulations to be consistent with the revised federal Worker Protection Standard (WPS). During the 2017 regulatory action, the definition of “greenhouse” was deleted from section 6000 and the definition of “enclosed space,” which includes greenhouses, was added to section 6000 to align with the federal WPS usage of the term “enclosed space production.” Since the definition of “greenhouse” was deleted, DPR changed “greenhouse” to “enclosed space” throughout 3 CCR Division 6 where its use is consistent with the federal WPS. The section 6000 definition of “Handle” was inadvertently overlooked when the earlier changes were made. This proposed action amends the definition of “Handle” by changing the term “greenhouse” to the new term “enclosed space.” Additionally, the definition is proposed to be split into subsections to aid in clarity and readability.

Subsection 6470(a) describes requirements for employers using the listed pesticides as cotton harvest aids. This subsection also refers to a definition of “closed system” in section 6000 that no longer exists. Effective January 1, 2016, the definition of “closed system” was removed from section 6000 as DPR adopted a performance-based standard for this equipment during a regulatory action. For clarity, this proposed action removes the reference to section 6000 from subsection 6470(a) and makes minor grammatical edits.

Section 6738.4 currently allows PPE to be modified in certain situations and states that exempted PPE must be “available” for use at the worksite. The federal WPS requires exempted labeling PPE to be “immediately available” to the handler when the handler is using a closed system or enclosed cab. DPR proposes to amend section 6738.4 by establishing that labeling-required PPE must be within immediate reach when using a closed system or enclosed cab. Minor edits are also being made for readability.

Currently, subsection 6776(f) requires that when a fumigant is applied to a field, the field must be posted with a sign containing specific information, such as the date and time of fumigation. Subsection 6784(a) currently requires that this sign remain posted until aeration is complete. The proposed amendments to these sections address: posting responsibility, sign content, and posting duration. DPR’s proposed amendments to these subsections establish the operator of the property as the party responsible for posting a warning sign when a soil fumigant is applied to a field, and require the field fumigation warning sign to include information specified by product labeling, such as the date and time the Entry Restricted Period ends. The proposed regulations also amend the sign posting duration requirements, specifying when the sign is to be posted, how long the sign shall remain posted, and when the sign shall be removed. It also clarifies that the posted signs are to remain legible for the duration of the posting. The amendments also include a proposed restructure of both subsections for clarity and readability.

Adoption of these regulations will provide a benefit to worker safety. The FAC requires that DPR adopt regulations that provide for safe working conditions for persons handling pesticides and working in pesticide-treated areas, including regulations on the subject of PPE and other protective devices. The regulations clarify and reduce ambiguity of current requirements, more closely align California's requirements with the federal WPS and pesticide labeling, and help ensure that pesticide users correctly comply with requirements that benefit worker safety.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California Department of Industrial Relations, Division of Occupational Safety and Health, have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used.

#### 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 the proposed regulations are intended to align with federal standards.

The proposed regulations will benefit worker safety by further strengthening current regulations that are already designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Ensuring that pesticide users comply with the newly adopted regulations will benefit worker safety. Implementation of the proposed regulations will not adversely affect the health and welfare of California residents or the environment.

## 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, 12976, 12981, 14005, and 14102.

## REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 12980, 12981, 14006, and 14102.

## 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 below:

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



Acting Director