

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Carbon Monoxide Pest Control Devices
DPR Regulation No. 21-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt Title 3, California Code of Regulations (3 CCR) section 6695. The pesticide regulatory program activities affected by the proposal are those pertaining to enforcement of pest control general standards of care. In summary, the proposed action will ensure that each person using a carbon monoxide pest control device to perform pest control uses a device bearing the U.S. Environmental Protection Agency (U.S. EPA) establishment number; does not use the device inside any structure; uses the device at specified distances away from structures; does not use the device on a burrow known or believed to contain non-target vertebrate animals; and does not use the device for purposes other than to control for burrowing rodent pests. It will also require employers of employees performing pest control for hire or for a local government to ensure protective eyewear is worn by employees, keep records of use, and report any adverse effect that occurs from use of the devices.

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 September 8, 2021. Comments regarding this proposed action may also be transmitted via e-mail to <dpr21002@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 affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment through the regulation of pesticide sales and use, and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration; and continues through statewide licensing of commercial and private applicators and pest control businesses; 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.

In 2011, Assembly Bill 634 (Huber, Chapter 407, Statutes of 2011) legalized the use of carbon monoxide pest control devices (CO pest control devices) to control burrowing rodents in California. (FAC section 6025.4) This legislation requires CO pest control devices to be labeled with a warning about the toxicity of carbon monoxide; a statement prohibiting the use of a CO pest control device in inhabited structures; and a statement that the devices must be used in accordance with certain provisions of the California Fish and Game Code. Three years later, Senate Bill (SB) 1332 (Wolk, Chapter 257, Statutes of 2014) directed DPR to regulate the proper, safe, and efficient use of CO pest control devices to control burrowing rodent pests.

Under FAC section 14160, CO pest control devices are defined as any method or instrument using carbon monoxide to prevent, eliminate, destroy, or mitigate burrowing rodents. These CO pest control devices are regulated as “pest control” in California. According to FAC section 11403, “pest control” includes the use of any device to control pests, or to prevent, destroy, repel, mitigate, or correct any pest infestation or disorder of plants. As a result, individuals using these devices must follow all laws and regulations specific to pest control. Even without specific regulations for the safe and effective use of CO pest control devices, there are existing laws and regulations that pertain to the use of these devices. Anyone performing pest control for hire, including individuals using CO pest control devices to control burrowing rodents, must be licensed by DPR and registered with the county agricultural commissioner (CAC) in any county where they perform pest control. Additionally, this use of carbon monoxide is subject to the requirements of Division 6 (commencing with FAC section 11401) and Division 7 (commencing with FAC section 12500). Other applicable laws and regulations include: FAC sections 11701 through 11701.5 and 11732; and 3 CCR section 6600.

DPR proposes to adopt section 6695, as directed by FAC section 14161, to ensure that the devices will be used safely and efficiently, in an enforceable manner that is more protective than existing laws and practice. Sections 6695(a)(1-5) applies to each person using a CO pest control device to perform pest control. Section 6695(a)(1) establishes that CO pest control devices used to control burrowing rodent pests must be federally registered and bear a U.S. EPA Establishment Number of the establishment in which it was manufactured. Sections 6695(a)(2-3) prohibits the use of carbon monoxide pest control devices inside any structure inhabited by people or livestock, whether occupied or not. It will also prohibit use on burrow openings within 50 feet of a structure inhabited by people or livestock, whether occupied or not, when used for control of ground squirrels and field mice, within 100 feet of a structure inhabited by people or livestock, whether occupied or not, when used for control of gophers, or within 65 feet of a structure inhabited by people or livestock, whether occupied or not, when controlling all other burrowing rodent pests. Additionally, section 6695(a)(4) will prohibit use of a CO pest control device on a burrow opening known or believed to contain non-target vertebrate animals, and subsection (a)(5) will prohibit use of a CO pest control device for purposes other than to control for burrowing rodent pests. Sections 6695(b)(1-3) outlines the responsibilities of the employer of an employee operating a carbon monoxide pest control device to perform pest control for hire or for a local government, including a city, county, city and county, school district, park district, authority, or any other political subdivision of the state. Section 6695(b)(1) requires the employer to ensure that the employee operating a carbon monoxide pest control device to perform pest control wears protective eyewear that complies with the American National Standards Institute’s (ANSI) Standard for Occupational and Educational Personal Eye and Face

Protection Devices ANSI Z87.1-2020 while the device is in use. Section 6695(b)(2) requires the employer of the employee using a carbon monoxide pest control device to retain records of use of the carbon monoxide pest control device and requires the records to include the date the device was used, name of the operator of the property treated, address of where the device was used, site at which the device was used, and length of time the device was operated for every treatment. Lastly, section 6695(b)(3) requires the employer to immediately submit to the Director any adverse effect to human health or safety, property, or the environment, from the use of the carbon monoxide pest control device.

Carbon monoxide (CO) is a poisonous, colorless, odorless, and tasteless gas that can be deadly, especially when confined in enclosed spaces. CO pest control devices use gasoline-powered engines to generate CO, which is compressed and stored until released into the rodent burrow under pressure. The pressurized system allows the CO to move farther through the burrow system than it would with a more passive application such as using a cartridge. By establishing additional requirements that will minimize the risks associated with exposure to CO, DPR can ensure that employees operating the devices and the public are protected from the risks of CO. Additionally, aside from the laws and regulations referenced in this section, there are currently no enforceable requirements pertaining to the use of CO pest control devices. The intent of these proposed regulations is to ensure that the devices will be used safely and efficiently, in an enforceable manner that is more protective than existing laws and practice.

Additionally, adoption of these regulations will benefit the health and welfare of California residents, worker safety, and the State's environment by creating enforceable requirements that are protective of human health, such as prohibiting use near inhabited structures, thus reducing the potential for accidental human carbon monoxide exposure, and benefit worker safety by requiring protective eyewear for users, reducing the risk of pesticide poisonings and injuries among device users.

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. California law directs DPR to develop regulations for the proper, safe, and efficient use of carbon monoxide pest control devices, and is the only agency with the authority to do so.

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 BUSINESS

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 significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Pest control businesses and local governments who operate carbon monoxide pest control devices will be required to comply with the proposed regulations. Protective eyewear, recordkeeping and reporting of adverse effects will be new requirements that may incur additional costs. DPR estimates that these requirements will result in an initial cost of \$100 per business, with annual costs of \$100 per business.

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 within the State of California because carbon monoxide pest control devices are currently being used to control burrowing rodent pests. This action is consistent with current law and will not significantly restrict or increase the use of carbon monoxide pest control devices. It will clarify and add limits for how CO pest control devices must be used. The proposed regulations do not prohibit the use.

The proposed regulations will benefit the health and welfare of California residents, worker safety, and the State's environment by creating enforceable requirements that are protective of human health, such as prohibiting use near inhabited structures, thus reducing the potential for accidental human carbon monoxide exposure, and benefit worker safety by requiring protective eyewear for users, reducing the risk of pesticide poisonings and injuries among device users.

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, 11502, and 14161.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11708, 11733, 12757, 14160, 14161, and 15316.

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, Senior Environmental Scientist (Specialist)
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:

Eryn Shimizu, Senior Environmental Scientist (Specialist)
Office of Laws and Regulations
916-445-7230

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>>.