

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Medical Supervision Program
DPR Regulation No. 22-002

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) section 6728. The pesticide regulatory program activities affected by the proposal are those pertaining to pesticide worker safety. In summary, the proposed action will clarify that the physician contracted with an employer to act as a medical supervisor must be registered with the Office of Environmental Health Hazard Assessment (OEHHA). Additionally, the proposed action will require that baseline red cell and plasma cholinesterase determinations, which are verified every two years, be established after a period of at least 30 days during which the employee has had no exposure to an organophosphate or carbamate (OP/CB) pesticide.

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 May 3, 2022. Comments regarding this proposed action may also be transmitted via e-mail to <dpr22002@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 proposed action will clarify that physicians who contract with an employer to act as a medical supervisor must be registered with OEHHA, which is consistent with Health and Safety Code (HSC) section 105206. It will also specify when employers must send their employees for baseline red cell and plasma cholinesterase testing. The proposed action should not impact employers or pesticide applications as employers should be able to send their employees for baseline red cell and plasma cholinesterase testing during low-spraying seasons.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Medical Supervision Program (“Program”) is designed to protect employees who regularly mix, load, or apply OP/CB pesticides with the signal word “DANGER” or “WARNING” for the commercial or research production of an agricultural plant commodity by monitoring their cholinesterase activity levels. Under DPR’s existing regulations in 3 CCR section 6728, the Program requires employers of these employees to contract with a physician to act as a medical supervisor. HSC section 105206 requires these employers to contract with a physician registered as a medical supervisor with OEHHA. Under 3 CCR section 6728(b), physicians who are contracted as medical supervisors must possess OEHHA’s *Medical Supervision of Pesticide*

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.

Workers—Guidelines for Physicians (GFP), which recommends a 30-day exposure-free period from OP/CB pesticides before establishing a baseline red cell and plasma cholinesterase determination. Additionally, 3 CCR section 6728(c)(1) requires employers to send their employees to the medical supervisor for baseline red cell and plasma cholinesterase determinations. The medical supervisor orders a cholinesterase test to establish baseline red cell and plasma cholinesterase determinations. If an employee handles OP/CB pesticides with the signal word “DANGER” or “WARNING” for more than six days in a 30-day period, then follow-up cholinesterase tests are ordered for monitoring at intervals specified by the medical supervisor. The medical supervisor will compare the follow-up tests to the baseline test to determine if an employee has depressed cholinesterase levels. If a depression does occur, then the medical supervisor will recommend additional protective measures to the employer.

The proposed regulations would amend 3 CCR section 6728(b) to clarify that the physician contracted as a medical supervisor must be registered with OEHHA, as required by HSC section 105206. It would also amend 3 CCR section 6728(c)(1) to specify that baseline values verified every two years shall be established after a period of at least 30 days during which the employee has had no exposure to OP/CB pesticides.

The broad objective of the regulations is to protect employees who regularly mix, load, or apply OP/CB pesticides with the signal word “DANGER” or “WARNING” for the commercial or research production of an agricultural plant commodity from overexposure. These proposed regulations will provide a benefit to and enhance worker safety by ensuring accurate determinations of an employee’s baseline red cell and plasma cholinesterase levels. Accurate baselines will enable registered medical supervisors to accurately determine if employees have depressed cholinesterase levels and provide the appropriate recommendations to employers to protect their employees from overexposure (i.e., removal of the employee from further exposure or workplace evaluation.)

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. This proposed action will only amend an existing program to require medical supervisors to be registered with OEHHA, consistent with HSC section 105206, and to specify the required timing for employers to send their employees for baseline red cell and plasma cholinesterase testing.

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 regulatory 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. These amendments will not have an economic impact on established businesses and medical practices, as there is no cost for physicians to register as medical supervisors with OEHHA. In addition, the proposed action should not impact employer costs or pesticide applications, as employers can send their employees for baseline red cell and plasma cholinesterase testing during low-spraying seasons.

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. Employers covered by the Program are already required to send their employees who regularly handle OP/CB pesticides for baseline red cell and plasma cholinesterase testing. This proposed action will simply add language to an existing program specifying the period when the baseline red cell and plasma cholinesterase testing must be performed. The proposed action should not impact employer costs or pesticide applications, as employers can send their employees for baseline testing during low-spraying seasons. Moreover, employers are already required to contract with a medical supervisor under HSC section 105206. This amendment adds language clarifying that physicians contracted as medical supervisors must be registered with OEHHA. This amendment will not have an economic impact on established businesses and medical practices, as there is no cost for physicians to register as medical supervisors with OEHHA.

The proposed regulations will benefit and enhance worker safety by ensuring accurate determinations of an employee's baseline red cell and plasma cholinesterase levels in an exposure-free period. Accurate baselines will enable registered medical supervisors to continuously monitor cholinesterase levels of an employee and recommend additional protective measures if cholinesterase depression occurs. This will further protect employees by ensuring the most accurate baseline and subsequent testing, helping determine if additional protective

measures are needed to protect employees from overexposure (i.e., removal of the employee from further exposure or workplace evaluation.).

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 section 12981.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 12980 and 12981, and Health and Safety Code section 105206.

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:

Shafeesha Ali, Research Scientist II (Epidemiology/Biostatistics)
Worker Health and Safety Branch
916-445-4278

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>>.