

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Statewide Notification of Agricultural Use of Restricted Materials
DPR Regulation No. 23-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6000, 6424, 6428, 6432, and 6434 of title 3, California Code of Regulations (3 CCR). This proposal will affect pesticide regulatory program activities pertaining to the submission of notices of intent (NOIs) for the agricultural use of restricted materials. In summary, this proposed action will require all agricultural use NOIs to be electronically submitted to the County Agricultural Commissioner (CAC) via www.CalAgPermits.org, unless the CAC grants an exemption from the electronic submission requirement upon a finding of undue hardship. Additionally, it will require all NOIs for soil fumigations to be electronically submitted to the local CAC via www.CalAgPermits.org a minimum of 48 hours before the intended start of the application. It will also require specific information from NOIs for the use of restricted materials requiring a permit for the production of an agricultural commodity to be electronically submitted to DPR via www.CalAgPermits.org at least 24 hours in advance of the intended start of a non-soil fumigant application and at least 48 hours in advance of the intended start of a soil fumigation. The proposed action additionally requires DPR to make the specific NOI information it receives publicly available upon receipt or as soon as practicable. Finally, it will require DPR to evaluate its system and process for making this information publicly available and issue a report three years after the system's implementation.

WRITTEN COMMENT PERIOD

Any interested person may submit comments in writing about the proposed action to the agency contact person named below. DPR will accept written comments that are submitted via U.S. mail and postmarked no later than January 12, 2024. Comments regarding this proposed action that are transmitted via e-mail to dpr23003@cdpr.ca.gov or by facsimile at 916-324-1491 must be received no later than January 12, 2024.

PUBLIC HEARINGS

Two in-person public hearings and one virtual public hearing have been scheduled for the times and places stated below to receive oral or written comments regarding the proposed changes.¹

DATE: Wednesday, December 13, 2023
TIME: 4:30 p.m.
PLACE: Clovis Veterans Memorial District
Memorial Auditorium
808 4th Street
Clovis, California 93612

¹ If you have special accommodation or language needs, please provide notice at least 10 business days before the public meeting by contacting the person named below. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

DATE: Thursday, December 14, 2023
TIME: 4:30 p.m.
PLACE: Ventura County Fairgrounds
Santa Rosa Hall
10 West Harbor Boulevard
Ventura, California 93001

A DPR representative will preside at the in-person hearings. Persons who wish to speak will be asked to register before the hearing. The registration of speakers will be conducted at the location of the hearing from 3:30 p.m. to 4:30 p.m. Generally, registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded the opportunity to do so after registered persons have been heard. If the number of registered persons in attendance warrants, the hearing officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

DATE: Tuesday, December 19, 2023
TIME: 4:30 p.m.
PLACE: Zoom (Virtual)
Webinar ID: 873 2837 5612
Passcode: 221172
Direct link to join the meeting from a web browser or Zoom client:
<<https://us02web.zoom.us/j/87328375612?pwd=Tko3TGJaa0ZWQWxiOWdteThneFcyUT09>>
One tap to join from a mobile phone: +16699009128,,87328375612#,,,*221172#
Or call from a landline: +1 669 900 9128 – and enter the Webinar ID and Passcode (above) when prompted

A DPR representative will preside at the virtual hearing. Persons who wish to make comments orally during the hearing may raise their hand using the Zoom functions and make oral comments when called upon. Persons calling into the Zoom meeting who wish to make a comment orally during the hearing may raise their hand by dialing *9 on their phone's dial pad. This will indicate to DPR representatives that the person on the phone has raised their hand. Generally, persons will be heard in the order in which they raised their hand. Participants will also be given instructions on how to provide oral comment once they have accessed the hearing. If persons experience technical difficulties during the hearing, persons may e-mail written comments to <dpr23003@cdpr.ca.gov>. DPR will also accept written comments that are submitted via U.S. mail and postmarked on the day of the hearing. If the number of persons in attendance warrants, the hearing officer may limit the time for each oral comment in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

There is increasing public interest in obtaining equitable and routine access to information about agricultural pesticide applications prior to the applications occurring. DPR is the lead state agency responsible for administering California's pesticide regulatory program. DPR's mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. DPR encourages the use of environmentally sound pest management, including integrated pest management (IPM). DPR's IPM Program promotes risk reduction through information, encouragement, incentives, and community-based problem solving. DPR's statewide regulation of pesticides includes: evaluating pesticide products for human health and environmental risks and registering products prior to sale or use within the State; protecting worker health and safety; regulating and mitigating adverse human health and environmental effects of pesticide use; licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; overseeing local enforcement of pesticide laws and regulations; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

Pesticides must be registered with DPR prior to sale and use in California. (FAC sections 12803; 12993; 12995.) Under FAC section 14004.5, registered pesticides that pose a higher degree of potential to cause harm to public health, farmworkers, domestic animals, honeybees, the environment, wildlife, or crops other than those being treated are designated as restricted materials in 3 CCR section 6400. Under the existing restricted material permitting process, a grower must obtain a restricted material permit from the CAC prior to possessing or using a restricted material. (3 CCR section 6412.) Prior to making an agricultural restricted material application, a property operator, authorized representative, or pest control business must submit an oral or written NOI, which provides site- and time-specific information, to the CAC a minimum of 24 hours prior to the start of the application. (3 CCR section 6434.) The CAC is then required to evaluate whether the proposed application may cause a substantial adverse environmental impact. (3 CCR section 6432.) While this information is submitted to the CAC, CACs are specifically exempt from the requirements to prepare written documentation and to provide public notice of a final decision. The proposed regulations will allow DPR to develop and implement a statewide system to provide information to the public in advance of intended restricted material agricultural commodity applications.

The amendments proposed in this regulatory action will require all agricultural use NOIs to be electronically submitted to the CAC via www.CalAgPermits.org unless the CAC grants an exemption from the electronic submission requirement upon a finding of undue hardship. Additionally, the proposed action will require all NOIs for soil fumigations to be electronically submitted to the local CAC a minimum of 48 hours before the intended start of the application. The amendments will also add specificity to the information required for an NOI and will require specific information from an NOI required for the use of a restricted material requiring a permit for the production of an agricultural commodity to be electronically submitted to DPR via www.CalAgPermits.org, at least 48 hours in advance of the intended start of a soil fumigation and at least 24 hours in advance of the intended start of a non-soil fumigant application. The proposed action will also add a procedure for an NOI that is exempt from the electronic submission requirement upon a finding of undue hardship. The proposed action will also amend an existing exemption to the time requirements for the submission of an NOI to clarify that an exemption may

be granted by the CAC when the CAC has determined that safe and effective pest control cannot be attained because of the nature of the commodity or pest problem. The CAC will also be required to electronically note that an exemption was granted via www.CalAgPermits.org. The proposed action will additionally require DPR to provide specific NOI information to the public upon receipt or as soon as practicable. Finally, the proposed action will require DPR to evaluate its system and process for providing this information and issue a report three years after the system's implementation.

Adoption of these proposed regulations will benefit the public, including California residents, by providing equitable and routine access to information about intended agricultural commodity restricted material applications around homes, places of work, schools, and other areas of interest. Certain stakeholder groups and members of the public have stated that advance information about intended agricultural commodity restricted material applications will afford them an opportunity to voluntarily take additional precautions to avoid potential exposure, such as closing windows and bringing in or cleaning children's outdoor toys, if they desire, which could indirectly lead to human health benefits. Additionally, requiring all agricultural use NOIs to be submitted electronically may have a net positive impact on the environment as it could increase CAC staff efficiency by allowing them to accept and process NOIs on CalAgPermits. Furthermore, CAC staff will only need to search CalAgPermits instead of both CalAgPermits and paper files. NOIs submitted electronically through CalAgPermits are available using CalPEATS, the electronic system CAC staff use to conduct inspections and investigations. This may allow more time for CAC staff to conduct investigations and inspections of pesticide applications, which could have an indirect positive impact on the environment. Additionally, the electronic submission requirement may reduce the use of paper. Approximately 89 percent of the 86,567 agricultural use NOIs received by CACs in fiscal year 2020-2021 were submitted electronically. This means over 9,500 NOIs were submitted to CACs via other means (e.g., DPR-provided paper forms, faxes, phone calls).

During the process of developing these regulations, DPR conducted a search of any similar regulations on this topic and concluded that these proposed regulations are not inconsistent or incompatible with existing state regulations. DPR is the only state agency that has the authority to regulate the use of pesticides.

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.

OTHER NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES

DPR determined that the proposed regulations may result in nondiscretionary costs to local agencies, such as local water districts, city landscaping, or public works and road maintenance departments. Local agencies may need to spend time learning the electronic submission system. This is estimated to cost \$12.85 per local agency, and a total of \$719.60 for all local agencies.

CAC offices are local government agencies responsible for enforcing pesticide regulations in California, including any changes to pesticide regulations such as the proposed regulations. CACs may need to respond to community questions related to the statewide notification system. Initial funding for the CACs will be supported from the \$10 million allocation DPR received in the Budget Act of 2021 (Assembly Bill 128) to support initial development of the proposed statewide notification system through June 30, 2026. After FY 26/27, any future costs to CACs would be supported through the mill assessment. CACs may also have to process NOIs that they determine are exempt from electronic submission after making a finding of an undue hardship and document when an exemption to the NOI time requirement was granted. However, these determinations and any costs associated with these determinations are discretionary.

COSTS OR SAVINGS TO STATE AGENCIES

DPR determined that the proposed regulations may result in costs to other state agencies. State agencies may need to spend time learning the electronic submission system. This is estimated to cost \$12.85 per state agency, and a total of \$89.95 for all state agencies impacted by the proposed regulations.

Additionally, the proposed regulations are anticipated to have a fiscal impact on DPR. Costs include, but are not limited to, redirection of existing staff; operating expenses and new equipment; interdepartmental and external consultation; data centers; software licenses; ongoing legal support of the system; DPR outreach and response to the public, industry, and Commissioners; and other potential DPR activities related to the administration and implementation of the statewide notification system. The expected cost to DPR is estimated at \$3,259,682 for FY 2024/25, \$4,127,225 for FY 2025/26, and \$4,166,208 for FY 2026/27.

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 has made an initial determination that adoption of these proposed regulations 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. The proposed regulations will allow DPR to develop and implement a statewide system to provide information to the public in advance of intended restricted material agricultural commodity applications. The estimated cost of the proposed regulations over a lifetime of five years is \$7,290,487. DPR made this determination based on the memorandum titled, "Economic & Fiscal Analysis of Amending 3 CCR Sections 6000 (Definitions), 6424 (Forms), 6428 (Agricultural Permit Applications), 6432 (Permit Evaluation), and 6434 (Notice of Intent)," listed in the "Documents Relied Upon" section of the

Initial Statement of Reasons for this proposed regulatory action, which is available from DPR.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

California's current system of requiring an operator of the property to obtain an agricultural use restricted material permit and submit an NOI prior to applying a restricted material requiring a permit has been established for over 45 years. To meet the current needs of the proposed statewide notification system, DPR is proposing limited changes that build upon the established practices and requirements of the restricted material permitting program; most of which are consistent with current industry practices.

In consultation with the California Department of Food and Agriculture's (CDFA's) Office of Pesticide Consultation and Analysis, DPR has determined that the proposed regulations will impact farms and other operations submitting agricultural use NOIs. In reasonable compliance with the proposed regulations, businesses may need to learn how to submit an NOI electronically and may need to purchase a laptop or computer as well as internet service. DPR estimates the initial cost for a small business to be \$1,052.85 and the initial cost for a typical business to be \$642.50. Additionally, the annual cost for a small business is estimated to be \$840 and the annual cost for a typical business is estimated to be \$0. Over the 5-year lifetime of these regulations, the total impact is estimated to be \$7,290,487. These are conservative estimates, the actual economic cost impact of the proposed regulations will likely be lower.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs within the State of California: DPR determined that the proposed action would not create or eliminate jobs in California because NOIs are already currently required to be submitted prior to applying a restricted material.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California: DPR determined the proposed action is unlikely to create new businesses or eliminate existing businesses within the State of California because NOIs are already currently required to be submitted prior to applying a restricted material. Pest management will be necessary regardless of any decline in sales and use of pesticides subject to the proposed regulation, and thus businesses are not expected to be impacted.

The Expansion of Businesses Currently Doing Business within the State of California: DPR has determined that this proposal is unlikely to result in an expansion of businesses currently doing business within California. Impacted property operators may purchase laptops or computers and may also purchase a subscription to the internet through a service provider. These purchases and subscriptions would be spread out among existing providers and are unlikely to cause an expansion of businesses currently doing business within California. If property operators choose to use another pest control option instead of using a restricted material, any new demand for pest control services would be spread out among the existing pest control advisors, pest control businesses, and pest control dealers in the state and would likely be handled with existing staff.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulations will benefit the public, including California

residents, by providing equitable and routine access to information about intended agricultural commodity restricted material applications around homes, places of work, schools, and other areas of interest. Certain stakeholder groups and the public have stated that advance information about intended agricultural commodity restricted material applications will afford them an opportunity to voluntarily take additional precautions to avoid potential exposure, such as closing windows and bringing in or cleaning children's outdoor toys, if they desire, which could indirectly lead to human health benefits. Additionally, requiring all agricultural use NOIs to be submitted electronically may have a net positive impact on the environment as it could increase CAC staff efficiency by allowing them to accept and process NOIs on CalAgPermits. Furthermore, CAC staff will only need to search CalAgPermits instead of both CalAgPermits and paper files. NOIs submitted electronically through CalAgPermits are available using CalPEATS, the electronic system CAC staff use to conduct inspections and investigations. This may allow more time for CAC staff to conduct investigations and inspections of pesticide applications, which could have an indirect positive impact on the environment. Additionally, the electronic submission requirement may reduce the use of paper. Approximately 89 percent of the 86,567 agricultural use NOIs received by CACs in fiscal year 2020-2021 were submitted electronically. This means over 9,500 NOIs were submitted to CACs via other means (e.g., DPR-provided paper forms, faxes, phone calls).

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. DPR considered the following three alternatives to the proposed regulation:

1. No requirement to electronically submit written notices of intent.
2. Providing NOIs and public notice more than 24 hours before application of a non-soil fumigant and more than 48 hours before application of a soil fumigant.
3. Providing public notice about intended soil fumigations only.

The Department deemed the alternatives to be infeasible, to be more economically burdensome, or to not achieve the proposed regulation's intended purpose. Interested members of the public are invited to submit written comments regarding alternatives during the written comment period.

AUTHORITY

This proposed regulatory action is taken pursuant to the authority vested by FAC sections 11456, 14005, and 14102.

REFERENCE

This proposed regulatory action is to implement, interpret, or make specific FAC sections 11501, 14001, and 14006.

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 regulations 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:

Jeannie Alloway
Department of Pesticide Regulation
Office of Legal Affairs
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-324-2666

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations 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>>.