

FINDING OF EMERGENCY
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6148(a), 6148.5(a), 6170, and 6216
Pesticide Product Registration Fees

The Department of Pesticide Regulation (DPR) finds that pursuant to section 12812(e) of the Food and Agriculture Code (FAC), an emergency exists and that the adoption of these regulations are necessary for the immediate preservation of the public peace, health, safety, and general welfare, and that these regulations shall remain in effect until amended by the Director.

INFORMATIVE DIGEST

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 applicators, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This regulatory scheme is set forth primarily in FAC Divisions 6 and 7.

All pesticide products must be registered with DPR before they can be sold for use in the State of California. Before a product is registered, DPR scientists conduct an evaluation of the product label and applicable scientific data. Each pesticide product's certificate of registration expires on December 31 of each year and must be renewed by January 31 to avoid a penalty. DPR also evaluates proposed label and formulation amendments to registered pesticide products. Currently, only applications for registration, renewal, and a portion of label amendments require a fee.

DPR is supported by various fund sources, including the DPR Fund, Environmental License Plate Fund, Federal Trust Fund, and reimbursements. The DPR Fund revenue consists of three primary revenue sources: annual certificates of product registration, pesticide-related business licenses, and mill assessments on the first sale of pesticide products into the State. Various FAC sections allow DPR to set the fees for pesticide registration and pesticide-related business licenses through regulation changes.

Legislation enacted in 1970 authorized DPR (which was, at that time, a division within the Department of Food and Agriculture) to charge a \$40 application fee for each pesticide product submitted to DPR for registration and/or renewal. In 1987, Chapter 503, Statutes of 1986 increased the registration and renewal application fee for each pesticide product to \$200. In 2003, DPR was given broad authority (Chapter 741, Statutes of 2003) to adjust fees through emergency regulations and set the fee schedule to ensure that total revenue collected each fiscal year is sufficient to support the expenditure levels for the registration program contained in the annual Budget Act. Subsequently, effective January 1, 2004, DPR set the application fee for each pesticide product submitted for registration and for annual renewal at \$750. DPR also set an application fee for amendments to the labeling of registered pesticide products at \$100 when the amendment must be supported by scientific data. DPR also established a 20 percent late-payment

penalty on the renewal fee if a registrant does not apply for renewal within one calendar month after the pesticide product's certificate expires.

Since fiscal year 2010-11, registration program revenue collected each fiscal year by DPR has not been sufficient to support the expenditure levels for the registration program contained in the annual Budget Act. Since this deficit is only expected to grow in the coming years, DPR is proposing to amend sections 6148, 6148.5, 6170, and 6216 to increase application fees for registration and renewal of each pesticide product from \$750 to \$1,150, and to change the application fee for label amendments from \$100 for amendments that require the support of data, to \$25 for any amendment to a registered pesticide product. The increases in application fees will ensure that the total collected revenue for the next three upcoming fiscal years is sufficient to support projected expenditure levels for DPR's pesticide registration program (PRP).

SPECIFIC FACTS SHOWING NEED FOR IMMEDIATE ACTION

FAC section 12812(c) requires the total registration fee revenue collected each fiscal year to support the expenditure levels for the registration program contained in the annual Budget Act. In other words, the PRP must be self-supporting and supported by the fee payers that receive the direct benefits from DPR's PRP. However, registration fee revenues have not supported DPR's PRP expenditures since 2010-11. As Table 1 illustrates, the deficit between registration fee revenue and registration expenditures started out minor, averaging only two percent of expenditures and small enough that action was not necessary because a minor uptick in revenue would have erased the deficit. In fiscal years 2013-14 and 2014-15, the deficit began to grow and will continue to grow in the coming years.

Table 1: Pesticide Registration Program Expenditures and Revenues

Fiscal Year	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15*	2015-16*	2016-17*	2017-18*
Revenue	\$10,379	10,210	10,207	10,460	10,617	10,617	10,617	10,617	10,617
Expenditure	\$9,936	10,446	10,533	10,674	11,220	13,106	15,297	15,651	14,367
Difference	\$443	-236	-326	-214	-603	-2,489	-4,680	-5,034	-3,750

(in thousands)

*Projections

While the registration, renewal, and label amendment application fees have remained the same for the last 11 years at \$750, \$750, and \$100 for certain amendments, respectively, the cost of administering PRP has increased due to rising employee compensation and retirement costs (Table 2). For example, in 2014-15, employee compensation costs increased by \$482,000 per year and higher retirement contribution costs added \$172,000 to the PRP budget. Not only are these expenditures mandatory, but the majority of these expenditures are ongoing expenses that are added to PRP's baseline budget. Baseline budget increases are permanent increases that increase costs not just in the current fiscal year, but into the foreseeable future. In fact, employee compensation costs are expected to increase again in 2015-16, as every employee in PRP will be receiving scheduled salary increases on July 1, 2015. PRP employees in bargaining unit 10 (scientific staff) will be receiving a 3 percent raise and the remaining employees will be receiving a 2.5 percent salary increase. Approximately 75 percent of PRP employees are part of bargaining unit 10. Total salary increases in 2015-16 are projected to add \$216,000 to PRP's baseline budget.

In addition, the Legislature has approved funding for the Pesticide Registration Data Management System (PRDMS), a fully-integrated information management system for pesticide product and device registration. PRDMS will take the place of the current cumbersome paper-based registration process and allow for product registrations and renewals to be submitted and accepted electronically. Funding for PRDMS over the next three years equals \$4.319 million, with \$1,958,000 appropriated in 2015-16; \$1,961,000 in 2016-17; and \$400,000 in 2017-18.

Table 2: Factors Contributing to Pesticide Registration Program’s Rising Costs

Adjustment	2014-15	2015-16	2016-17	2017-18	Totals
2014-15 Budget Base	12,452,000	12,452,000	12,452,000	12,452,000	
2% Salary Increase (2014-15)	73,000	73,000	73,000	73,000	292,000
\$1,000 Bonus (2014-15) for bargaining unit 10 employees	52,000				52,000
Like Work-Like Pay salary increase for supervisory scientific classifications	357,000	357,000	357,000	357,000	1,428,000
2.5% Salary Increase (2015-16)		103,000	103,000	103,000	309,000
3% Salary Increase for bargaining unit 10 (2015-16)		113,000	113,000	113,000	339,000
Employee Compensation (2016-17)¹			206,000	206,000	412,000
Employee Compensation (2017-18)¹				206,000	206,000
2014-15 Retirement (3.1%)²	172,000	172,000	172,000	172,000	688,000
2015-16 Retirement (1%)²		69,000	69,000	69,000	207,000
2016-17 Retirement (2.4%)²			145,000	145,000	290,000
2017-18 Retirement (1.1%)²				71,000	71,000
PRDMS BCP		1,958,000	1,961,000	400,000	4,319,000
	13,106,000	15,297,000	15,651,000	14,367,000	

¹Estimate: Although it is difficult to project the costs of future employee compensation costs resulting from bargaining between the Governor and employee unions, DPR feels 5 percent is a good estimate based on the Governor’s desire to prefund retiree health care.

²Projected based on the California Public Employees’ Retirement System’s assumptions.

Based on registration and renewal data from the last three years, DPR receives an average of 13,500 applications to register or renew a pesticide product each year. At the current fee level, DPR collects \$10.4 million in registration fee revenue. With PRP Budget Act appropriations of \$13.1 million in 2014-15 and \$15.3 million in 2015-16, DPR is not currently collecting sufficient registration fee revenue to support PRP expenditures. The projected deficit in 2015-16 is \$4.7 million. Without immediate action, the PRP will not be the self-supported program required by FAC section 12812(c).

On January 14, 2015, DPR held a stakeholder workshop to discuss the deficit in the PRP and to obtain input from stakeholders on the best approach to close the widening deficit. DPR presented possible scenarios to close the deficit. After an informal comment and question and answer period, DPR decided on the proposed fees.

DPR proposes to amend section 6148 to increase the application fee, effective October 1, 2015, for each new pesticide product submitted for registration from \$750 to \$1,150 per product.

DPR proposes to amend section 6148.5 to reflect that application fees for amendments to currently registered pesticide products are changing from \$100 to \$25 per application, and to remove the limitation that the amendment fee is required only when the label amendment must be supported by scientific data. The fee exemption for special local needs labeling is not changed in section 6148.5. The \$25 amendment fee will apply to all types of pesticide product amendments, including substantive label amendments, nonsubstantive label amendments, label changes required by the U.S. Environmental Protection Agency or any other federal or state agency, amendments to the formulation of the pesticide product, and notifications. By implementing a standard amendment fee, DPR will continue to maintain the revenue currently generated to cover administrative costs, as well as providing predictability to registrants as to when a fee is required when applying for a pesticide product amendment. In addition, DPR is working towards a fully electronic submission process PRDMS. Having a standardized application fee requirement for all amendments will allow the computer system to determine if an appropriate fee has been submitted, without requiring human intervention and discernment.

DPR proposes to revise section 6216 to reflect the change in the renewal application fee from \$750 to \$1,150. Proposed section 6216 also notes that the increased fee applies to all certificates of registration (licenses) expiring on December 31, 2015, or after.

Table 3: Pesticide Registration Program Revenue Sources

	Current Fee Structure	Proposed Fee Structure	Increase over Current Fee Structure
Revenue Source	FY 2014-15*	FY 2015-16*	
Label Amendments	\$78,000	\$80,000	\$2,000
Applications	1,027,000	1,630,000	603,000
Renewals	9,485,000	14,112,000	4,627,000
Other/Misc. Revenue (late payment penalty, public records requests, returned checks, etc.)	27,000	27,000	0
Totals	\$10,617,000	\$15,849,000	\$5,232,000

*Projections

The proposed increase in application fees, as shown in Table 3, are projected to generate \$5.2 million more per year in revenue than the current fee structure. The proposed increase will cover the projected increase in PRP costs for 2015-16 and 2016-17, when the deficit is projected to be at its largest before falling slightly in 2017-18. DPR also notes that the current PRP expenditure

projections focus only on the three largest drivers--employee compensation, retirement contributions, and PRDMS--and did not include other baseline expenditures that are typically added to PRP's budget. Other baseline expenditures were not added because they are minor compared to the three that were included and also because the other baseline expenditures are difficult to project and estimate.

Additionally, DPR proposes to amend section 6170 to incorporate by reference and amend the Application for Pesticide Registration Form 39-030 (Rev. 9/03). The title of the proposed application form will be revised to "Application for Pesticide Registration DPR-REG-030 (Rev.10/15)," and the form will be amended to reflect the new application fee, as well as several other nonsubstantive changes. The nonsubstantive changes include:

Pages 1-5:

- Delete logo and change form identification information in accordance with DPR form guidelines.

Page 1:

- Add header entitled "Applicant Information."
- Add statement to read all instructions on page 3 before completing the form.
- Add term "agent" wherever "authorized representative" appears on the form, including option to add agent address under applicant information.
- Delete area code parentheticals when phone numbers are requested.
- Switch order of boxes 10 and 11.
- Within new box 10:
 - Delete "Alternate Formula " and "Revised Formula " under "Type of California registration action requested " because these actions are types of amendments (not new product registrations) and replace with two additional types of new product registrations, "Master Label" and "Product Transfer. " Both types of requests require submission of a new pesticide product application form and fee. A "master label" is a type of new pesticide product registration, the difference being that a product bearing a "master label" cannot be offered for sale or distribution in California. A product transfer (ownership of an individual pesticide product is transferred from one company to another) is also a type of new product registration requiring submission of a new application form and fee under 3CCR section 6153.
 - Replace acronym "FAC" with "Food and Agricultural Code."
 - Replace for clarity the term "Stand Alone" with "Full Product." "Full Product" is the more appropriate terminology for a Section 24c registration action that is not associated with a product already registered for sale and use in California.
- In new box 11, change the page number for Product Formulation Information form and other minor typographical edits.
- In box 14, revise "Density Liquid Product or Solid Product" to "Liquid Products Only," and allow applicants to provide either product density or specific gravity consistent with 3 CCR section 6170.5(1).
- Revise certification to include full regulatory citation.

Page 2:

- Add "Product " before "Brand Name " for clarity.
- Box 1: Reword and reorder checkbox heading, spell out "including," and delete extra spaces.
- Box 2: Add additional information regarding method of application consistent with 3 CCR section 6170.5(r) and other minor typographical edits.
- Box 3: Add more formulation types, consistent with 3 CCR section 6170.5(s), and other minor typographical edits.
- Boxes 4 and 5: Minor typographical edits involving space deletions and addition of parentheticals.

Page 3:

- Renumber page.
- Revise incomplete form statement to delete separate application for each alternate formula and each revised formula. It is no longer necessary to complete a separate application form.
- Delete "PRODUCT INFORMATION" heading.
- Instruction 1: Clarify firm name must be the same as on file with U.S. EPA if product federally registered.
- Instruction 4: Reword information pertaining to authorized representative.
- Instruction 7: Describe that e-mail address will enroll applicant into automatic notification program.
- Instruction 8: Clarify that the product's brand name must be the same as what appears on product labeling.
- Instruction 9: Clarify Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) citation and change "Department " to "DPR."
- Instruction 10: Revise instructions to be consistent with changes made to box 10. Reiterate for applicants that a master label cannot be sold or distributed for use in California.
- Instruction 13: Minor spacing and punctuation edits.
- Instruction 14: Revise instructions to be consistent with changes made to box 14.
- In the application package checklist:
 - Correct minor typographical edits throughout the checklist.
 - Update page numbers for completed application form.
 - Delete reference to ensuring application form is complete and signed and to keep a photocopy, add statement that electronic signatures are not accepted, and repeat language from page 5 regarding applicants may submit a copy of the U.S. EPA Confidential Statement of Formula in lieu of the product formulation information.
 - Revise amount of application fee from \$750.00 to \$1,150 and describe all types of new pesticide product actions considered under section 6148(a)(1).
 - Add checkbox for copy of the U.S. EPA correspondence accepting product transfer, company ownership, and/or name change.
 - Add request for copy of U.S. EPA acceptance letter with stamped accepted label.
 - Spell out acronym "CCR" and add reference to California Notice on data formatting.
 - Delete checkbox and clarify how to reference data on file with DPR pursuant to FAC section 12811.5. Until January 1, 2006, FAC section 12811.5 provided that if an applicant did not submit its own data to fulfill DPR's data requirements for a new pesticide product or an amendment to a currently registered pesticide product, and the

applicant wished to rely upon data owned by another company, DPR needed written authorization (letter of authorization) from the appropriate data owner. If an applicant did not wish to, or could not, obtain a letter of authorization from a current data owner, then the applicant had to submit its own duplicate data to DPR. Chapter 612, Statutes of 2005 changed state law regarding how DPR treats data submitted in support of product registration. FAC section 12811.5 now allows DPR to consider evaluations of all data it has on file, regardless of the source of the data.

- Delete duplicate mailing information.
- Delete notice regarding permit processing since Permit Reform Act was repealed in 2004.

Page 4:

- Renumber page.
- Reword sentence stating that all labeling must be accepted prior to sale or use.
- Revise amount of renewal application fee from \$750 to \$1,150 and correct legal date when penalty commences from "after February 1" to "after January 31" pursuant to 3 CCR section 6217.
- Delete delivery address since it is not relevant to a copy request.
- Add that e-mail addresses of staff are available on internet and other minor typographical edits.
- Add informational statement about how to receive A Guide to Pesticide Registrants and public notices regarding pesticide registration issues.

Page 5:

- Renumber page.
- Reference page 6 for instructions.
- Reiterate on top of page that U.S. EPA Confidential Statement of Formula may be submitted in lieu of this page.

Page 6:

- Change title of page to "Instructions for Product Formulation Information."
- Update page number reference from page three to page five.

If regulations to increase registration fees are not adopted, DPR will not be able to realize approximately \$5.2 million in revenue to support the PRP appropriation contained in the 2015-16 Budget Act. Regulations must be adopted to comply with FAC section 12812(e). Therefore, an increase in registration and renewal application fees and an application fee for all amendments to currently registered pesticides are necessary to keep pace with rising PRP expenditures.

Benefit to the environment, worker safety and the health of California residents:

The proposed amendments would allow DPR to continue to effectively evaluate, as required by FAC section 12824, applications for registration of new pesticide products and amendments to currently registered products and to continuously evaluate registered pesticides to ensure that use of the products will not result in significant adverse impacts on human health or the environment.

During the process of developing these emergency regulations, DPR conducted a search of any similar regulations and concluded that these proposed regulations are neither inconsistent nor

incompatible with existing state regulations. DPR is the only state agency that has the authority to regulate pesticides. No other state agency has the authority to establish pesticide product registration fees.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 12781 and 12812.

REFERENCE

This regulatory action implements, interprets, or makes specific FAC sections 12811, 12812, and 12815.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 175000) of Division 4 of the Government Code because the regulatory action does not constitute a new program of higher level of service of an existing program within the meaning of section 6 of Article XIIB of the California Constitution.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from this regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no effect on federal funding to the State will result from this regulatory action.