

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION  
Pertaining to the Herbicide Clopyralid  
DPR Regulation No. 04-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6576 and subchapter 4, article 1, section 6950 in chapter 4 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to lawn and turf uses of the herbicide clopyralid.

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 January 31, 2005. Comments regarding this proposed action may also be transmitted via e-mail <dpr04003@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing 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

In 1997, clopyralid, a low-toxicity herbicide that poses little hazard to people, animals, and most vegetation, was initially registered for use in California by the basic manufacturer to combat yellowstar thistle, a noxious weed that can kill livestock. It was subsequently registered by the basic manufacturer and other registrants for use on lawn and turf for control of broadleaf weeds.

In 2000, clopyralid was detected in compost in Washington State and determined to be the cause of injury to non-target plants. Grass clippings from residential lawns treated with clopyralid-containing products were considered to be one source of the residues in compost. Although some commercial compost facilities in California have detected clopyralid residues, no cases of non-target vegetative damage have been documented in the state.

Compost plays a critical role in implementing the California Integrated Waste Management Act of 1989. This law requires all cities and counties to develop source reduction, recycling, and composting programs

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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.

to achieve a 50 percent reduction in the amount of solid waste disposed of in California. The economic viability of the California composting industry will be threatened if residential, agricultural, commercial, and public users of compost lose confidence in the quality and safety of compost due to the presence of clopyralid residues. Local governments and waste haulers divert six million tons of yard waste annually from landfills to composting facilities, making composting a principal means by which local governments meet the state's landfill diversion requirements.

DPR and the California Integrated Waste Management Board (CIWMB), within the California Environmental Protection Agency (Cal/EPA), began investigating the possible presence of clopyralid residues in compost. DPR and CIWMB co-sponsored a workgroup that included compost industry representatives, the basic manufacturer, and other interested parties. This workgroup has sponsored a series of stakeholder meetings to determine how clopyralid is used in California and which uses can potentially contaminate compost feedstocks. The workgroup has coordinated stakeholder efforts to provide public information on the problem and to support a compost testing program to generate clopyralid residue data.

Assembly Bill 2356 (Chapter 591, Statutes of 2002) subsequently placed limitations on the sale and use of clopyralid lawn and turf products and required DPR to make a determination about continued use of clopyralid turf products to protect compost from becoming contaminated with persistent clopyralid residues. The Director was required to make a determination by April 1, 2003, on which lawn and turf uses are likely to result in persistent residues in compost and which uses will not. Persistent residues are defined by the bill as "residues of an herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants." For those uses that are likely to cause persistent residues in compost, the Director must either impose restrictions or cancel uses.

The restrictions that DPR plans to impose on the sale and use of clopyralid lawn and turf products are the subject of this proposed regulatory action.

DPR proposes to adopt section 6576 requiring licensed pest control dealers to obtain a signed statement from a licensed or certified qualified applicator certifying that he/she or their employees will not apply any product containing clopyralid to a residential lawn, and will only apply it to sites where the licensed or certified qualified applicator can assure the collected grass clippings will remain on the property.

In addition, DPR proposes to adopt subchapter 4, article 1, section 6950 of chapter 4 that prohibits applying clopyralid-containing products to lawn and turf unless the grass clippings from the treated area remain on the property, and prohibits applying clopyralid-containing products to residential lawns.

#### IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new

program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

#### COSTS OR SAVINGS TO STATE AGENCIES

DPR has 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 has determined that no costs or savings in federal funding to the State will result from the proposed action.

#### EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has 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 has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. Affected private persons and small businesses may include pesticide applicators, pest control businesses, and pesticide dealers. Any additional costs resulting from changes in application practices or pesticides selected should not have a significant adverse economic impact on pest control businesses. Pesticide dealers currently selling clocyralid pesticide products may experience some decreased sales that might be offset by increased sales from alternative substituted chemicals.

#### IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined that it is unlikely 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.

## 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 or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

## AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456, 12111, 12781, 12976, and 14102.

## REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 12824, 13190, 13191, and 13192.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has 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 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, the proposed text of the regulation, and a public hearing; inquiries regarding the rulemaking file; or questions on the substance of the proposed regulatory action may be directed to:

David Haskell, Associate Environmental Research Scientist  
Pesticide Registration Branch  
Department of Pesticide Regulation  
1001 I Street  
P.O. Box 4015  
Sacramento, California 95812-4015  
(916) 445-4207

**Note:** In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani, Regulations Coordinator  
Office of Legislation and Regulations  
(916) 445-3991

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 at <<http://www.cdpr.ca.gov>>.

## 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

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Director

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Date