

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Sulfuryl Fluoride
DPR Regulation No. 05-005

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6400 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action designates sulfuryl fluoride as a state restricted material. The proposed regulatory action would make permanent the emergency regulation that is now in effect.

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 5, 2005. Comments regarding this proposed action may also be transmitted via e-mail to <dpr05005@cdpr.ca.gov>, or by facsimile 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.¹

EFFECT ON SMALL BUSINESS

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Sulfuryl fluoride is a gaseous fumigant currently used for termite eradication in homes and other structures, and to control insects in construction materials, mills, ships, railroad cars, and other transportation vehicles. These sites are normally fumigated by tarping or sealing the entire structure and injecting sulfuryl fluoride into the enclosed air space. Fumigation takes approximately 24 hours to complete. After these structures are fumigated, they are aerated using natural ventilation or exhaust fans until the ambient air levels of sulfuryl fluoride reach five parts per million (ppm) or less.

Sulfuryl fluoride is a Category I pesticide due to its acute inhalation toxicity. DPR scientists have reviewed toxicity data and identified possible acute, subchronic, and chronic adverse effects. Due to its high vapor pressure, the expected primary route of sulfuryl fluoride exposure is through inhalation. Exposure to high levels of sulfuryl fluoride may produce harmful effects on people, such as toxicity to the brain and respiratory system. Based on its acute inhalation toxicity, the U.S. Environmental Protection Agency (U.S. EPA) designated sulfuryl fluoride as a

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.

federally restricted-use pesticide pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Sales and use of this pesticide are limited to certified applicators and those under their direct supervision, thus controlling the number of persons with direct access to the fumigant.

3CCR section 6400(a) states that any pesticide labeled as a "restricted use pesticide" pursuant to section 3 of FIFRA is also designated as a restricted material in California. Generally, possession and use of a restricted pesticide are allowed only under a permit from the local county agricultural commissioner (CAC). However, 3CCR section 6414(b) exempts pesticides listed under section 6400(a) from a restricted-materials permit provided the pesticide is used by or under the supervision of a certified applicator, unless otherwise required by the commissioner. Additionally, pursuant to FAC 14006.6(d) permits are not required of persons performing structural pest control and operating pursuant to a license issued under Chapter 14 of Division 3 of the Business and Professions Code.

In January 2004, U.S. EPA registered sulfuryl fluoride for use on a wide range of food commodities, such as dried fruits; almonds, walnuts, and other tree nuts; cereals and small grains; and cereal and small grain processed products. Also, it was federally registered for commodity use in fumigation chambers, indoor or outdoor areas where commodities would be sealed with a tarpaulin, structures that would be sealed with a tarpaulin or tape, surface ships and barges, and stationary vehicles (trailers, trucks, and containers).

In February 2004, DPR received an application requesting registration of sulfuryl fluoride for similar uses in California. The Director found that the above uses of sulfuryl fluoride is not expected to cause any significant adverse effect on human health and the environment, provided additional mitigation measures are taken when fumigating large grain-processing and commodity-treatment facilities, and that there is a clear need for the product in California. Sulfuryl fluoride is proposed as a methyl bromide alternative for post-harvest fumigation of a variety of food commodities. Under the Federal Clean Air Act, 70 percent of methyl bromide production has been phased out. Therefore, DPR filed an emergency regulation (OAL File No. 05-0325-01E) with the Office of Administrative Law to designate sulfuryl fluoride as a California restricted pesticide in section 6400(e), in order to allow CACs to immediately implement feasible mitigation measures through permit conditions, thus preventing the potential health risks associated with the off-site movement of sulfuryl fluoride to persons living near commodity-treated fumigation facilities. The emergency regulation became effective April 4, 2005. Subsequently, DPR registered sulfuryl fluoride on May 18, 2005.

DPR is proposing to amend section 6400(e), permanently designating sulfuryl fluoride as a state restricted material. Current California law and regulations provide for a list of pesticides for which special considerations are indicated. Food and Agricultural Code (FAC) section 14004.5 authorizes the Director, by regulation, to designate and establish a list of restricted materials based upon a criteria which includes danger of impairment of public health. Designating this chemical as a restricted material will continue to provide an effective mechanism that allows CACs to implement feasible mitigation measures through permit conditions, thus preventing the risk of acute and seasonal exposures from the off-site movement of sulfuryl fluoride to persons living near fumigation facilities. This process would allow the commissioner to place additional

conditions on the permit, where necessary, that are precisely crafted on a site-specific basis to protect nearby residents. The permit process has the advantage of allowing flexibility in requirements. The problems unique to that use site can be specifically addressed without placing unnecessary burdens on other applications.

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 B 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.

The proposed action requires users of sulfuryl fluoride to obtain a permit before they use sulfuryl fluoride for commodity fumigation. CACs are currently required to issue permits for restricted materials and also issue applicator identification numbers to agricultural establishments for pesticide use reporting requirements. In most cases, permit applicants will simply be substituting sulfuryl fluoride for methyl bromide on their permit.

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 determined 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. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined 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 it, or that has otherwise been identified and brought to its attention, 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.

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

AUTHORITY

This regulatory action is being taken pursuant to authority vested by FAC sections 14004.5 and 14005.

REFERENCE

This regulatory action implements, interprets, or makes specific FAC sections 14004.5 and 14005.

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 and/or the proposed text of the regulation, and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Department of Pesticide Regulation
Office of Legislation and Regulations
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable or questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

Randy Segawa, Supervising Environmental Research Scientist
Environmental Monitoring Branch
(916) 324-4137

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>>.

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

Director

Date