

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Enforcement Response
DPR Regulation No. 06-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6128 and amend section 6130 of Title 3, California Code of Regulations. The proposed regulatory action would specify appropriate enforcement responses to be taken by the county agricultural commissioner (CAC) each time a violation(s) occurs.

SUBMITTAL OF COMMENTS

Any interested party may present comments in writing about the proposed action to the agency contact person named in this notice. Written comments must be received no later than 5:00 p.m. on March 17, 2006. Comments regarding this proposed action may also be transmitted via e-mail <dpr06001@cdpr.ca.gov> or by facsimile (FAX) transmission at (916) 324-1452.

A public hearing has been scheduled for the time and place stated below to receive oral comments regarding the proposed regulatory changes.¹

DATE: March 16, 2006
TIME: 1:00 p.m.
PLACE: California Environmental Protection Agency Headquarters Building
Sierra Hearing Room
1001 I Street,
Sacramento, California 95812

A DPR representative will preside at the hearing. 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 12:30 to 1:00 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 the 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.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action has no impact on small businesses that operate lawfully. There will be some impact to those businesses that are found in violation of certain California pesticide laws and regulations.

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service. If you are a person who needs assistance in Spanish, please contact the agency person listed in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR is mandated by state and federal law to protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes extensive scientific product evaluation and registration; and statewide licensing and certification of commercial applicators, dealers, and advisers. CACs have joint authority with DPR in enforcing pesticide laws and regulations. Field enforcement on a local level is carried out by the CACs, under the supervision of DPR. The goal of the enforcement programs is to protect public health, property, pesticide handlers and fieldworkers, and environment of the State of California.

Consistent statewide enforcement of California's environmental laws is paramount for the protection of California's people, property, and the environment. However, local program administration naturally can result in variable enforcement decisions and responses. After finding inconsistent enforcement of environmental protection laws and regulations by CACs, DPR and the California Agricultural Commissioners and Sealers Association worked together to develop and adopt as guidelines a 2005 Enforcement Response Policy (ERP). ERP is intended to strengthen environmental enforcement and improve statewide consistency of enforcement responses used by CACs when acting upon pesticide violations. By creating a violation classification system and enforcement response procedure, CACs throughout California are able to follow the same guidelines.

During the 2005 legislative session, Senator Martha Escutia recognized the need for a consistent and timely strategy for enforcement of pesticide laws and amended Senate Bill (SB) 455 that, in part, required DPR to adopt the ERP into regulations. On October 7, 2005, Governor Schwarzenegger vetoed SB 455. However, in the Governor's veto message, DPR was directed to initiate the process of putting the 2005 ERP into regulation in an expedited manner. Therefore, DPR is proposing to adopt specific provisions for CACs to comply with when determining the appropriate enforcement response when a violation occurs.

Proposed section 6128 would specify the appropriate enforcement responses that CACs shall take for specific classes of violations in specific situations. The proposed enforcement responses are consistent with the guidelines established in the 2005 ERP. Specifically, this proposal would:

- Require CACs to comply with this section.
- Define "compliance action," "decision report," and "enforcement action."
- Set up an enforcement response structure designed to be used based on the three types of class violations specified in section 6130--A, B, and C. Section 6130 identifies these three classes based upon the seriousness and potential harm to public health, worker safety, and the environment. CACs would respond to each violation with an enforcement response appropriate to that violation class.
- Requires CACs to provide the opportunity to the District Attorney, City Attorney, or Circuit Prosecutor to participate in a priority investigation, as defined in Food and Agricultural Code (FAC) section 12999.5, and/or pursue a civil or criminal action if other than a compliance action is being contemplated.

Additionally, DPR proposes to amend section 6130 to clarify what determines a "repeat" violation.

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 agency will result from the proposed regulatory actions.

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 regulatory actions.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed actions 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. 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. The proposed regulatory action will have no impact on lawful operations of pesticide users, advisers, or dealers. Fines are incurred only for violations of the FAC and Title 3, California Code of Regulations.

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 alternatives considered by the agency, or that have 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 regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 12781, 12976, 12981, and 15203.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11892, 12973, 12996, 12997, 12999.5, and 15202.

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; and inquiries regarding the rulemaking file may be directed to:

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

Questions on the substance of the proposed regulatory action, particularly technical or historical questions concerning DPR's enforcement response regulations, may be directed to:

Scott Paulsen, Chief
Pesticide Enforcement Branch
Department of Pesticide Regulation
(916) 445-4036

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

Director

Date