

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Sections 6170(a) and (b), 6172(a), and 6200(c)  
Pertaining to Pesticide Product Registration

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR). Section 6110 meets the requirements of Title 14, CCR section 15252, and Public Resources Code section 21080.5 pertaining to certified state regulatory programs under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM  
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend sections 6170(a) and (b), 6172(a), and 6200(c) in 3 CCR. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide product registration. In summary, the proposed action would clarify regulations related to data requirements for pesticide product registration consistent with past and current practices of the Department.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR is proposing amendments to sections 6170(a) and (b), 6172(a), and 6200(c). The Office of Administrative Law (OAL) initially approved these proposed changes on June 5, 2002 (OAL File No. 02-0423-03N) and August 14, 2002 (OAL File No. 02-0729-01N), respectively, as changes without regulatory effect. However, a recent Appellate Court (*Syngenta Crop Protection, Inc. v. Helliker* [2006] 136 Cal.App.4th 1464), found the changes to be substantive and subject to the rulemaking procedures of Chapter 3.5, Article 5 of the Administrative Procedures Act (APA). The Court ruled that even though these amendments were consistent with DPR's practice under the former regulations, DPR was required to inform the public of the proposed amendments.

Title 1 CCR section 100(a)(3) states that an agency may revise text published in CCR without complying with the rulemaking procedure specified in article 5 of the APA to delete a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a U.S. District Court located in California, the U.S. Court of Appeals for the Ninth Circuit, or U.S. Supreme Court. Therefore, even though the Court ruled that the amendments were adopted in violation of the APA and are invalid, the text in the existing 3 CCR reflects the language that was approved on June 5 and August 14, 2002, and will not be revised until judgment becomes final. However, DPR is proceeding to adopt these proposed amendments under the rulemaking procedures of Chapter 3.5, Article 5 of the APA. Therefore, the text of the proposed regulations does not reflect what is currently published in 3 CC. The proposed regulations are presented as if the additions and deletions are being made to the text that existed prior to the changes made in 2002.

DPR proposes to amend the following sections:

- DPR proposes to add the phrase "by the applicant" to subsections 6170(a) and (b). The proposed change will further clarify that the data that must be submitted to DPR with each application for product registration or label amendment are the data that the applicant submitted to the U.S. Environmental Protection Agency (U.S. EPA) to support federal registration or amendment of the product that the applicant is requesting to register or amend in California. Additionally, to correct an unintentional omission that occurred in 1990 when section 6170 was amended (OAL File No. 90-0621-02) DPR is restoring the reference to sections 6181-6192 in the second sentence of 6170(a) to correspond to their reference in subsection (b). The word or term "product" and "of the product" has been added to subsections (a) and (b) to be consistent with the use of the terms elsewhere in section 6170.
- DPR proposes to delete the phrase "and active ingredients" in sections 6172(a)(1) and (3) and 6200(c)(1) and (3) because the phrase is redundant and potentially confusing to the regulated public. DPR requires applicants for registration of a pesticide product to submit acute toxicity studies conducted on the formulation of the product that is intended to be sold for use in California. If the product is a manufacturing use product containing only the technical grade chemical active ingredient, then the acute toxicity studies must be conducted using the technical grade chemical active ingredient. If the product contains other ingredients, in addition to the chemical active ingredient, (i.e., the product has been formulated), then the acute toxicity studies must be conducted using the product as formulated. Because the term "product" is applicable to both formulated products and products containing only active ingredients, the additional reference to "active ingredient" is redundant and potentially confusing to the regulated public.
- Also, since the creation of the California Environmental Protection Agency, there has at times been confusion in the regulated community over whether the reference to "EPA" in DPR's regulations refers to the U.S. Environmental Protection Agency or the California Environmental Protection Agency. In order to clarify the agency being referenced, we propose to replace all references to the previous acronym for U.S. Environmental Protection Agency "EPA" with the acronym "U.S. EPA" in sections 6170 and 6172.

#### ALTERNATIVES TO 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.

#### EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with any regulations contained within the Code of Federal Regulations.

DOCUMENTS RELIED UPON

There are no documents upon which DPR is relying in proposing this regulation other than the provisions of California law.