

FINAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Section 6860  
Pertaining to Toxic Air Contaminants

UPDATE OF THE INITIAL STATEMENT OF REASONS

The originally proposed regulatory action was noticed in the *California Regulatory Notice Register* on December 15, 2006.

During the 45-day public comment period, the Department of Pesticide Regulation (DPR) received one letter of comment on the originally proposed text. The comments are discussed under the heading "Summary And Response To Comments Received" of this Final Statement of Reasons.

DPR has amended 3 CCR section 6860. The pesticide regulatory program activities that will be affected by this action are those pertaining to air monitoring and evaluation under its general reevaluation mandate and under the mandates of Assembly Bill 1807 (Chapter 1047, Statutes of 1983, and amended by Chapter 1380, Statutes of 1984, AB 3219), the Toxic Air Contaminant Act. In summary, this action designates the pesticide chemical sulfuryl fluoride as toxic air contaminant (TAC) pursuant to Food and Agricultural Code (FAC) section 14023.

With the enactment of California's Toxic Air Contaminant Act, the Legislature created the statutory framework for the evaluation and control of chemicals as TACs. The statutes are contained in FAC sections 14021-14027. FAC section 14021 defines a TAC as "an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health."

DPR evaluates pesticides as TACs pursuant to FAC section 14022. FAC section 14022 requires the evaluations to be conducted in consultation with the Office of Environmental Health Hazard Assessment (OEHHA) and the Air Resources Board. Upon completion of a pesticide evaluation, FAC section 14023(a) requires DPR, in consultation and with the participation of OEHHA, to prepare a report on the health effects of the pesticide due to airborne emissions resulting from its use. The report assesses the availability and quality of data on health effects--including potency, mode of action, and other relevant biological factors--of the substance. The report must include OEHHA's written findings. FAC section 14023(b) requires a review of the report by a panel of independent scientists known as the Scientific Review Panel (SRP). The SRP reviews the scientific data upon which the report is based, the supporting scientific procedures and methods used, and the conclusions and assessments on which the report is based. The SRP then submits its written findings to DPR. Based on the results of this comprehensive evaluation and review, the law requires the DPR Director to determine whether the candidate pesticide is a TAC. Title 3 CCR section 6890 provides the criteria the Director must use. If the candidate pesticide is determined to be a TAC, FAC section 14023(d) requires the Director to list that pesticide as a TAC in regulation.

Sulfuryl fluoride is a colorless, odorless gas. The primary source of sulfuryl fluoride in the environment is from its use as a fumigant. Sulfuryl fluoride is used to fumigate sealed structures and their contents (construction materials, furnishings, and household effects), such as dwellings (including mobile homes), buildings, barns, vehicles, fumigation chambers, rail cars, and surface ships in port. It controls existing infestations of insects and related pests, such as drywood termites, powder post beetles, old house borers, death-watch beetles, bedbugs, cockroaches, clothes moths, rats, and mice.

After fumigation, sulfuryl fluoride in the air of a treated structure is immediately released into the atmosphere in the gaseous state. Once in the atmosphere, the fate of sulfuryl fluoride is unclear, since there are no available studies specifically on this subject. Based on limited relevant data, sulfuryl fluoride appears to have a long atmospheric lifetime, and, therefore, should be considered a greenhouse gas.

DPR has conducted an evaluation and risk assessment of sulfuryl fluoride. It is contained in the draft report, "*Sulfuryl Fluoride (Vikane®) Risk Characterization Document*, June 2005." This report is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

The SRP has reviewed the sulfuryl fluoride report and submitted its written findings to DPR September 8, 2006. In its findings, the SRP concluded:

The Panel has reviewed the draft version of report "*Sulfuryl Fluoride (Vikane®) Risk Characterization Document*," prepared by DPR and reviewed by the Office of Environmental Health Hazard Assessment, as well as the scientific procedures and methods used to support the data, the data itself and the conclusions and assessments on which the report is based. The Panel has also reviewed and considered public comments, and agency responses to comments. The Panel concludes that the report, with the revisions specified by the SRP, is based upon sound scientific knowledge and represents a balanced assessment of our current scientific understanding.

The Panel recommends that the Director of DPR initiate regulatory steps to list sulfuryl fluoride as a Toxic Air Contaminant pursuant to FAC section 14023(d).

Based on the results of the evaluation of sulfuryl fluoride, the findings of the SRP, and the criteria listed in section 6890 for identifying pesticides as TACs, the Director declared sulfuryl fluoride to be a TAC (DPR, 2006).

### SUMMARY AND RESPONSE TO COMMENTS RECEIVED

DPR received comments during the 45-day public comment period from Fluoride Action Network and Beyond Pesticides.

*Comment:*

- Sulfuryl fluoride is acutely toxic.
  
- *Response:* DPR agrees with this comment.
  
- *Comment:*
- Recommend that the state ban the use of the highly toxic sulfuryl fluoride because it is inevitable that many "incidents" and more deaths will occur.
- In its health risk assessment, performed for the TAC process, risks were only assessed for exposure to Vikane® (non-food fumigant), and no assessment was performed for ProFume®, the sulfuryl fluoride fumigant used on food.
- Use of sulfuryl fluoride is unnecessary, as less toxic alternatives exist and are effective.
- Fumigation workers need better protection in using Vikane® and ProFume®.

*Response:* Comments are not relevant to this proposed action. No response necessary.

### PUBLIC HEARING

DPR scheduled and held a public hearing on January 31, 2007. No one testified. A transcript of the hearing is contained in the rulemaking file.

### CONSULTATION WITH OTHER AGENCIES

As described above, DPR has consulted with OEHHA and the Air Resources Board. In addition, DPR has consulted with the California Department of Food and Agriculture during the development of the text of proposed regulations as specified in FAC section 11454.2, and the February 6, 1992, Memorandum of Agreement which was developed as provided in FAC section 11454.2.

### MANDATE 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 requiring 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 this regulatory action.

### ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory change.

### POSTING REQUIREMENT

Title 3 CCR, section 6110, states in part that, "The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days." DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <http://www.cdpr.ca.gov>. In addition, copies were provided to the offices listed above for posting.