

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Toxic Air Contaminants
DPR Regulation No. 08-004

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6860 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action designates the pesticide chemical endosulfan as a toxic air contaminant (TAC) in subsection (a) pursuant to Food and Agricultural Code (FAC) section 14023.

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 6, 2009. Comments regarding this proposed action may also be transmitted via e-mail <dpr08004@cdpr.ca.gov> or by facsimile 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: January 5, 2009
TIME: 9:30 a.m.
PLACE: California Environmental Protection Agency Headquarters Building
Sierra Hearing Room
1001 I Street
Sacramento, California 95814

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 9:00 a.m. to 9:30 a.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 does not affect small businesses. The regulatory action merely adds endosulfan to the TAC List in section 6860(a) and does not restrict or further regulate use of the chemical by businesses. Pursuant to FAC section 14023(e), the need for, and appropriate degree of, control measures for a pesticide listed as a TAC pursuant to FAC

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.

section 14023(d) shall be determined by DPR in consultation with the Office of Environmental Health Hazard Assessment (OEHHA), the Air Resources Board (ARB), and the air pollution control districts or air quality management districts in the affected counties. If a need for control measures is determined for endosulfan, the proposed control measures will be promulgated in a separate regulatory action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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." As mandated by FAC section 14022, DPR, in consultation with OEHHA and ARB, evaluates the health effects of pesticides which may be, or are, emitted into the ambient air of California. FAC sections 14021-14022 describe this evaluation process. Upon completion of this evaluation, DPR prepares a report on the health effects of the pesticide in question. Pursuant to FAC section 14023, an independent Scientific Review Panel (SRP) reviews this report and submits its written findings to DPR. Within ten days following receipt of the SRP's findings, FAC section 14023(d) requires DPR to "prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a pesticide is a toxic air contaminant."

DPR evaluated endosulfan and the SRP has reviewed DPR's report "*Endosulfan Risk Characterization Document*, April 2008." The SRP recommended in its written findings that the Director initiate regulatory steps to list endosulfan as a TAC.

Based upon the results of the evaluation of endosulfan, the findings of the SRP, and the criteria in 3 CCR section 6890 for identifying pesticides as a TAC, the Director has declared endosulfan to be a TAC. The proposed regulatory action adds endosulfan to section 6860(a).

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. 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/BUSINESSES

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 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 FAC sections 11456 and 14023.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 14021 and 14023.

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

Note: In the event the contact person is unavailable, 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, Environmental Program Manager
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

Chief Deputy Director

Date