

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Pesticide Use Near Schoolsites
DPR Regulation No. 16-004

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt sections 6690, 6691, 6692, and 6693 of Title 3, California Code of Regulations (3 CCR). In summary, the proposed action would require growers to notify public K-12 schools, child day care facilities, and county agricultural commissioners when certain pesticide applications made for the production of an agricultural commodity near a schoolsite are planned in the coming year and also a few days prior to the applications. In addition, certain pesticide applications near these schoolsites will be prohibited at certain times.

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 November 17, 2016. Comments regarding this proposed action may also be transmitted via e-mail to <dpr16004@cdpr.ca.gov> or by facsimile at 916-324-1491.

Public hearings have been scheduled for the time and place stated below to receive oral or written comments regarding the proposed changes.¹

DATE: Tuesday, November 15, 2016
TIME: 6:00 p.m.
PLACE: Oxnard Performing Arts and Convention Center
Oxnard Room
800 Hobson Way
Oxnard, California 93030

DATE: Wednesday, November 16, 2016
TIME: 6:00 p.m.
PLACE: Tulare Veterans Memorial Building
1771 E. Tulare Avenue
Tulare, California 93274

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 5:00 p.m. to 6:00 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

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.

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 affect small businesses

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's statutory purpose is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. DPR's oversight includes: product evaluation and registration; statewide licensing of commercial and private applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7. Specifically, DPR is charged by FAC section 11501 to protect public health and safety while providing for the proper, safe, and efficient use of pesticides for the production of food and fiber and to protect the environment from harmful pesticides by regulating and ensuring proper stewardship of those pesticides. To effectuate this purpose, FAC gives the Director broad authority to adopt regulations that are reasonably necessary to carry out the provisions of the Code (FAC section 11456) including the authority to promulgate regulations governing the use of pesticides (FAC section 12976).

DPR continuously evaluates pesticides as mandated by FAC section 12824. DPR's evaluation of toxicity and exposure indicate that the risk to children from agricultural pesticides applied near schools is low for most pesticides. For pesticides and situations that are identified through the evaluation process as having the potential for posing unacceptable risks, DPR imposes mitigation measures to address the risks. Nevertheless, concerns about the risks associated with pesticide use at or near schools and child day care facilities have persisted through the years due to children's potentially increased sensitivity and exposure. The dose that may cause adverse effects in children may also be lower than adults. For example, based on current scientific findings some pesticides may cause effects to a child's developing nervous system. Also, children may have higher exposure than adults due to their higher breathing rate relative to their body weight. While DPR accounts for these factors in its evaluation of potential toxic effects and exposure, there may be disproportionate impacts to children when unintended drift occurs. Moreover, schools and child day care facilities are considered sensitive sites because large numbers of children can be located there for extended periods of time.

The California Department of Public Health completed a study of the use of certain pesticides near a number of schools in California. Relying on information provided by DPR and the county agricultural commissioners from 2010, the study identified pesticide uses ranging from 0.01 to 28,979 pounds within a one-quarter mile of schools in 15 agricultural counties. Although the report provided valuable data on pesticide use practices, the report did "not attempt to measure school children's exposures to pesticides and, therefore, study results cannot be used to predict possible health impact."

During the development of the proposed regulation, DPR investigated whether there was a need to provide greater protection for school children from risks associated with agricultural pesticide use near schools. DPR's evaluation of available data and current requirements indicates that the health risk to children and others is low when pesticides are used in compliance with the relevant regulations and label requirements. However, this low risk reflects compliance with current requirements in normal situations and does not account for exceptional circumstances or violations. More than a million pesticide applications are made to agricultural crops each year in California. Given the large number of applications that occur around schools, the risk of potential exposure, while small, is still present.

The current regulatory requirements for pesticide applications near schools vary from county to county, and are primarily designed to prevent unacceptable exposures from normal pesticide use. The purpose of this proposed regulation is to (1) provide minimum statewide standards for all agricultural pesticide applications near public K-12 schools and child day care facilities; (2) provide an extra margin of safety in case of unintended drift or when other problems with applications occur (e.g., equipment failure causes an unintended release of pesticide, or an abrupt change in weather conditions); (3) increase communication between growers and schools/child day care facilities; and (4) provide information to assist schools and child day care facilities in preparing for and responding to pesticide emergencies. The proposed regulation will address potential short-term acute exposures from pesticide applications.

DPR proposes restrictions for certain pesticide applications made within one-quarter mile of a schoolsite, Monday through Friday and during the hours between 6:00 a.m. and 6:00 p.m. Certain other pesticide applications are restricted within 25 feet or are not subject to restriction. The restriction will depend on the application equipment used and the type of pesticide applied. DPR also proposes to require the property operator to provide two separate notifications to a schoolsite -- annual notification of expected applications and application-specific notification. The annual notification will provide sufficient information to the affected schoolsites by identifying which pesticides will be applied and where, and who will make the applications within one-quarter mile of the schoolsite. The application-specific notification will provide more detailed information about a specific application that will take place within one-quarter mile of a schoolsite and are subject to the 25-foot restriction.

Adoption of these regulations will provide a benefit to public health by reducing pesticide exposure to children and other bystanders. Although this is not the primary objective of the regulation, the intent is to provide an extra margin of safety for unintended drift and other problems with pesticide applications. The proposed notification requirements will also enable schoolsites and others to take additional voluntary actions to reduce pesticide exposures.

During the process of developing these regulations, DPR conducted a search of any similar regulations on this topic and concluded that these proposed regulations are not inconsistent or incompatible with existing state regulations. DPR is the only agency that has the authority to regulate the use of pesticides.

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. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et.seq. There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulatory action.

County agricultural commissioner offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be a fiscal impact to these agencies that could be absorbed. DPR negotiates an annual work plan with the commissioners for enforcement activities.

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 have a significant cost impact on representative private persons or businesses. DPR estimated the costs required by the proposed regulation for a one-year period (July 2013 - June 2014). During this one-year period, the notification costs would have been \$3.3 million, and the loss due to the proposed prohibitions would have been \$1.2 million. Total grower cost would have been \$3.3-\$4.5 million for an average cost of \$1,328-\$3,480 for each affected grower, with the same cost per grower whether or not the grower was a small business.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Job/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.

Benefit to the health of California residents: The proposed action may reduce pesticide exposure to children and other bystanders, but the primary objective of the regulation is to provide an extra margin of safety for unintended drift and other problem with applications. The proposed notification requirements will also enable schools and others to take additional voluntary actions to reduce pesticide exposures. DPR does not anticipate any benefits to worker safety or the environment.

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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

AUTHORITY

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

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC section 11501.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and 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, and 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
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 below:

Randy Segawa, Special Advisor
Pesticide Programs Division
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>>. Upon request, the proposed text can be made available in an alternate form as a disability-related accommodation.

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