

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED CHANGES
IN THE REGULATIONS PERTAINING TO
PESTICIDE USE NEAR SCHOOLSITES**

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), the Department of Pesticide Regulation (DPR) is providing notice of changes made to the proposed text of sections 6690, 6691, 6692, and 6693 of Title 3, CCR. These changes are in response to comments and for the reasons stated below. The public comment period on the originally proposed regulatory action closed on December 9, 2016. The Director finds that the modifications are sufficiently related to the original text of the proposed action. The modified text is being made available to the public for 15 days, during which written comments on the modifications will be received as provided in Government Code section 11346.8(c).

DPR will accept written comments relevant to the modifications between March 20, 2017 and 5:00 p.m. on April 4, 2017. Written comments relevant to the modifications may be sent via e-mail <dpr16004@cdpr.ca.gov>; or may be directed to Ms. Linda Irokawa-Otani, Regulations Coordinator, Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento, California 95812-4015. FAX: (916) 324-1491.

- Amend section 6690 to revise the definition of “schoolsite” as used in proposed sections 6690, 6691, and 6692. DPR previously cited Education Code section 17609(f), excluding the family day care homes as defined in Health and Safety Code section 1596.78 for the definition of schoolsite to make the regulation consistent with the Healthy Schools Act. That definition could be interpreted as being more inclusive than intended for DPR’s regulation. For example, a museum visited by students during a field trip or a moving school bus might be considered schoolsites under the Education Code, but these sites should not be included in DPR’s regulation. The proposed revision clarifies the definition of schoolsite to address the property that will be used on weekdays by the children who attend such facilities or schools, or other similar areas identified by the commissioner, such as a park adjacent to a school that is used by the school for recess, sports, or other school activities. The property is specific to “used on the weekdays” since property used by these children on the weekend should not be included in the distance restrictions on pesticide applications or notification requirements. The agricultural commissioner will identify when these other areas are part of a schoolsite, and inform the schoolsite and operators of properties to be treated within ¼ mile. While deleting a reference to Education Code section 17609(f), the proposed revision tracks the definition of “schoolsite” in that subdivision while, as noted, excluding family day care homes.
- Revise proposed section 6691 to delete the October 1, 2017 effective date to implement pesticide application restrictions near a schoolsite. DPR previously anticipated the regulations would be adopted and go into effect in September 2017. However, due to the volume of comments, an additional public comment period, and the need for training and outreach, the anticipated effective date is likely to be delayed. Specifying an effective date in proposed section 6691 is no longer necessary. Pursuant to Government Code section 11343.4(a)(1), the regulations are anticipated to become effective January 1, 2018.

- Revise proposed section 6691(a)(2) to clarify that ground application equipment with a pump that delivers spray into an air stream created by a fan are also subject to the minimum distance of ¼ mile. This type of equipment will have the same higher potential to drift and exposure to bystanders as an airblast sprayer.
- Revise proposed section 6691(c)(5) to clarify that a backpack sprayer attached to an airblast sprayer should not be exempt from requiring a minimum distance between the treated area and the schoolsite. An application using a backpack sprayer that is attached to an airblast sprayer will have the same higher potential to drift and expose bystanders as an airblast sprayer, and therefore requires the ¼ mile minimum distance.
- Revise proposed section 6692(a) by removing the first notification required by October 1, 2017. This was originally proposed as the first notification cycle with the intent to provide information to schoolsites on applications expected to be made from January 1, 2018 through June 30, 2018. However, as this regulation will not go into effect until January 1, 2018, this requirement must be deleted. Another notification before the April 1, 2018 annual notification would only provide additional information for a few months, so its value is minimal. Also, revise the requirement for the notification to include information on expected pesticides to be used, rather the applications to be made. This change was made to better conform with the wording of the notification requirements in section 6692(c).

DPR proposes to add subsection 6692(a)(1) specifying the notification required by a new property operator who assumes control of a property that is expected to be treated with pesticides. When the operator of the property to be treated changes, the new property operator shall provide notification to the affected schoolsite and commissioner within 30 days of assuming control of the property. This notification will include expected pesticide(s) to be used from the time this notification is provided through June 30 of the following year, as well as the information specified in proposed (c). This notification will give the affected schoolsites and commissioners updated information to assist them in responding to potential inquiries from parents, and to react appropriately to any problems associated with nearby pesticide applications.

An April 1, 2018 effective date is necessary to prevent new property operators assuming control between the time the regulations become effective (January 1, 2018) and April 1, 2018, from having to submit the notification earlier than other property operators who will be required to provide the annual notification by April 30. Without this effective date, a new property operator assuming control on January 1, 2018 would be required to submit notification by January 31, 2018. Further, without this effective date, those who become new owners between April 1 and April 30, 2018 would have an unreasonable short time to submit a notification. For example, without an April 1, 2018 effective date, pursuant to proposed section 6692(a) a new property operator who assumes control on April 29, 2018 could be required to submit the annual notification by the next day. The April 1, 2018 effective date will make implementation during the first year of the regulations effective and fair for all property operators, and for those new property operators assuming control before April 1, 2018. A 30-day period provides adequate time for a new property operator to identify schoolsites within ¼ mile, compile the list of pesticides expected to be used, and, if needed, consult with the commissioner.

The proposed regulation includes the clarifying provision that if the notification by the new owner under section 6692(a)(1) includes information about the pesticides expected to be used July 1 of the current year through June 30 of the following year, then notification required by April 30 under subsection (a) does not apply. This will prevent new property operators from having to submit two notifications within the same year. For example, if a new property operator assumed control on March 1, 2019, that property operator would have to provide notification by March 31, 2019 for expected pesticides to be used between that time and June 30, 2020. Without this provision, the new property operator will have to provide the annual notification by April 30, 2019 for expected pesticides to be used July 1, 2019 through June 30, 2020. It would be unnecessary for the property operator to provide another notification by April 30 covering the same time period of expected pesticides to be used. After that, subsequent notifications will be required pursuant to proposed subsection (a).

- Propose to re-letter subsection 6692(a) specifying that the operator of the property to be treated must provide the annual notification to the school principal, the child day care facility administrator, and the county agricultural commissioner when application of pesticides is expected within one-quarter mile of the schoolsite, to proposed subsection 6692(b). Also, proposed subsections (a)(1), (a)(2), and (a)(3) have been re-lettered to subsections (b)(1), (b)(2), and (b)(3).
- In section 6692(b)(1) and (b)(2), DPR proposes to delete the option for the principal and administrator to designate up to two employees to receive the annual notification. With the proposed deletion of the application-specific notifications, as discussed below, a schoolsite will likely receive only one set of annual notifications each year. The notifications will no longer be provided 48 hours prior to every application within ¼ mile; therefore, the principal or administrator is the appropriate person to determine what, if any, actions are needed for the annual notification. Moreover, the Department of Education and Department of Social Services databases listing the schoolsites update the names of the principals and administrators. Therefore, personnel changes will not affect the ability to identify the person who needs to be notified.
- Propose to re-letter subsection 6692(b) to 6692(c). This proposed subsection specifies the information to be included in the annual notification. In addition, propose to change the following:
 - delete proposed (2) – the requirement to provide a summary explaining when the school or child day care facility will receive application-specific notifications, and that there is an opportunity for the principal or administrator to waive their right to receive such notification is no longer necessary. This is further discussed below.
 - renumber proposed (3), (4), (5), (6), and (7) to (2), (3), (4), (5), and (6), respectively.
 - Renumber proposed (8) to (7) and remove the time period in when expected pesticides will be used. This is duplicative of subsection (a) and is inconsistent with the time period in (a)(1).
 - delete proposed (9) - the option for the principal or administrator to designate up to two employees to receive annual and application-specific notification. As previously mentioned, the requirement to designate up to two employees, since application-specific notification is proposed to be deleted as discussed below, is no longer necessary.

- Renumber (10) to (8) and propose to include the following information, “This notification is informational only, and includes a list of pesticides expected to be used. Beginning July 1, 2018, schoolsites will be informed of pesticides not on the list at least 48 hours prior to their use.” This will ensure that the schoolsite will eventually receive a complete list of pesticides without the application-specific notifications as originally proposed. It also addresses the concerns expressed by growers that due to unforeseen circumstances, they may not always be aware of all the pesticides that will need to be used on a field when compiling the annual notification. The July 1, 2018 effective date is consistent with the first annual notification information provided by the property operator on the pesticide(s) expected to be used.
 - Renumber (11) to (9) and remove reference to application-specific notification since this notification is proposed to be deleted as discussed below.
- Delete proposed section 6692(c) that allows the school principal and child day care administrator the option to designate up to two employees to receive the notifications, and to provide the county agricultural commissioners the contact information in writing. With the proposed deletion of the application-specific notifications, a schoolsite will likely receive only one set of annual notifications each year. The notifications will no longer be provided 48 hours prior to every application within ¼ mile, so the principal or administrator is the appropriate person to determine what, if any, actions are needed for the notifications. Moreover, the Department of Education and Department of Social Services databases listing the schoolsites include the names of the principals and administrators. Therefore, personnel changes will not affect the ability to identify the person who needs to be notified.
 - Propose to add section 6692(d) to require the operator of the property to be treated to provide the pesticide to be applied to the schoolsite and commissioner at least 48 hours prior to the application if the pesticide was not included in the annual notification. This will ensure that the schoolsite will eventually receive a complete list of pesticides since DPR is proposing to delete the requirement of application-specific notifications pursuant to former proposed section 6693. It also addresses the concerns expressed by growers that due to unforeseen circumstances, they may not always be aware of all the pesticides that will need to be used on a field when compiling the annual notification. The July 1, 2018 effective date is consistent with the time period when the property operator will be begin providing information on expected pesticides to be used.
 - Re-letter proposed section 6692(d) to subsection (e) and require the commissioner to retain a copy of each annual notice for one year. This will provide an option for DPR and county agricultural commissioners to collect data on the notifications. The notifications will provide valuable data to estimate the impacts of the regulation, particularly if DPR proposes changes to the regulation in the future.
 - Delete proposed section 6693 that requires the operator of the property to be treated and the pesticide applicator to provide application-specific notification to the schoolsites for applications within a ¼ mile of a schoolsite made pursuant to section 6691, subsection (b), Monday through Friday, 6:00 a.m. to 6:00 p.m. The application-specific notifications may have minimal value since the proposed regulation prohibits many of the applications with the highest drift potential. Also, school administrators have several concerns about the notifications, including potential

liability and workload. Agricultural commissioners are concerned about the redirection of resources that may be needed to enforce the requirements and respond to inquiries generated by the notifications. Notification for all pesticides is unprecedented and DPR cannot accurately determine the impacts to all parties. Two separate pilot projects for application-specific notification to schools are being conducted, one in Kern County and one in Monterey County. DPR will reassess the need, impacts, and method for application-specific notification after the completion of these pilot projects.

Current wording of the regulation is shown in normal type. Originally proposed additions are shown by underline. Originally proposed deletions are shown by ~~strikeout~~. New proposed deletions are indicated by *italics and strikeout*. New wording to be added by the modifications is shown in **bold double underline**.

All written comments received by 5:00 p.m. on April 4, 2017 which pertain to the indicated changes, will be reviewed and considered in this rulemaking. Please limit your comments to the modifications of the text.

This Notice of Modifications to Text of Proposed Changes and the text of modified regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

Brian Leahy, Director
Department of Pesticide Regulation