

DEPARTMENT OF PESTICIDE REGULATION

1020 N Street, Room 332
Sacramento, California 95814

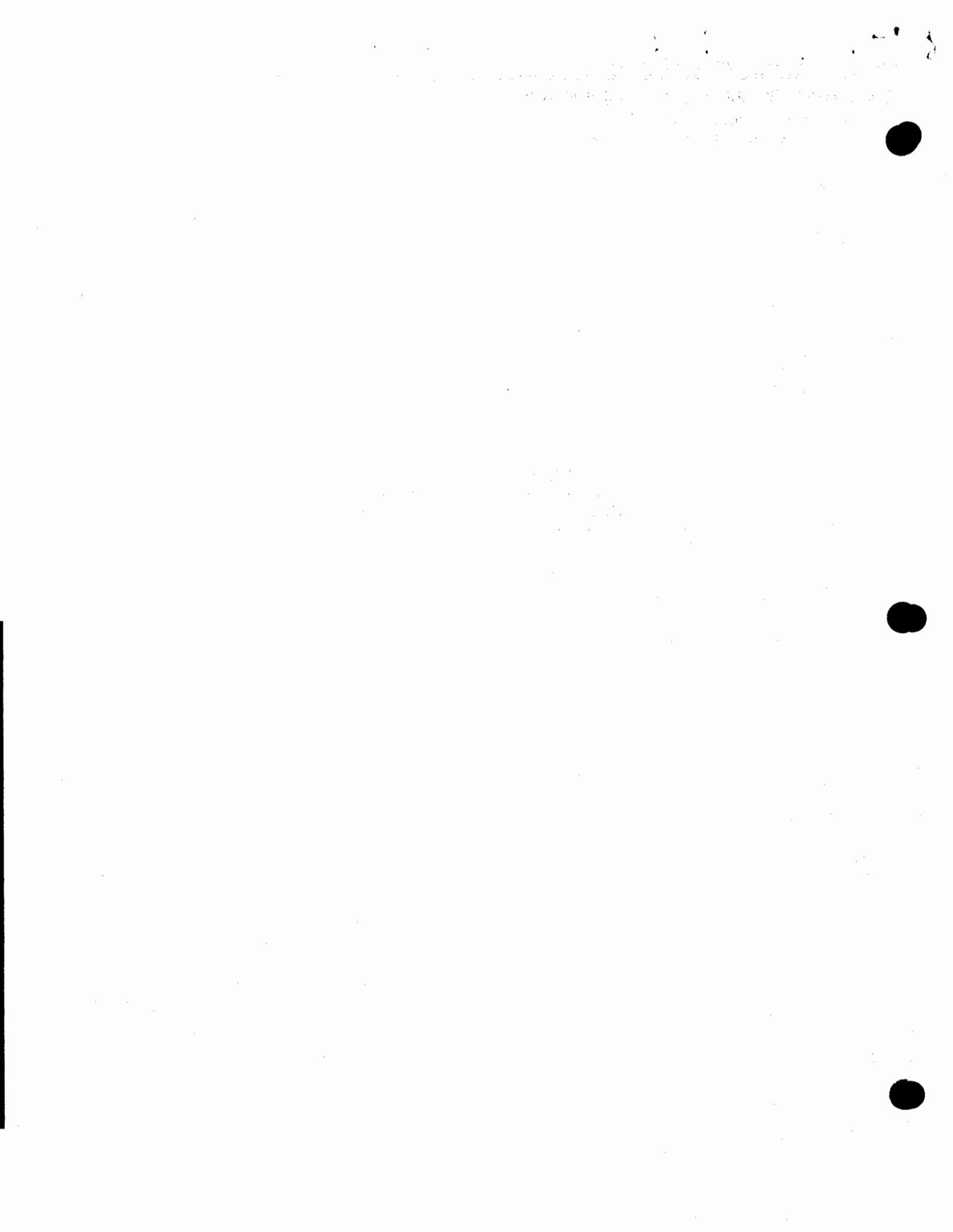


California Notice 94-2

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE DEPARTMENT OF PESTICIDE REGULATION
REGARDING THE ESTABLISHMENT OF A FEE
FOR THE INTERIM REGISTRATION PROCESS

AB 771

January 21, 1994



TITLE 3. DEPARTMENT OF PESTICIDE REGULATION (TITLE 26. TOXICS)

NOTICE IS HEREBY GIVEN

The Department of Pesticide Regulation proposes to adopt Section 6168 in Titles 3 and 26 of the California Code of Regulations. The purpose of the regulatory change is to establish a fee for each application for a certificate of interim registration.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person, or his/her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department, on its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Any interested person may present statements or arguments in writing relevant to the proposed action to the agency officer named below no later than 5:00 p.m. on April 4, 1993.

INFORMATIVE DIGEST

Existing law requires, with specified exceptions, that every manufacturer of, importer of, or dealer in any economic poison obtain a certificate of registration from the Department of Pesticide Regulation before the economic poison is offered for sale in California. Assembly Bill 771, which was signed by the Governor in October of 1993, added Article 16 of Chapter 2 of Division 7 (Sections 13161-13170) entitled "The Interim Data Gap Exemption for Qualified Federally Registered Pesticides" to the Food and Agricultural Code (FAC). Effective January 1, 1994, Article 16 establishes a process whereby applicants for registration of a pesticide product may apply for a certificate of interim registration where specified data requirements are not yet met. Article 16 also requires the Department to impose a fee to cover the Department's cost of reviewing and processing applications for these certificates. The proposed action would establish a \$5,000 fee to cover the costs of reviewing and processing each application for a certificate of interim registration.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Department has determined that the proposed regulation 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 regulation 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.

NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES

The Department has determined that no nondiscretionary costs or savings to local agencies will result from the proposed action.

COSTS OR SAVINGS TO STATE AGENCIES

The Department has determined that no savings or increased costs to any State

agency will result from the proposed action. The fee imposed by the regulatory change will not result in any costs or savings because the amount only covers the Department's costs of reviewing and processing an application for a certificate of interim registration.

COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE

The Department has determined that no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed action will have no effect on housing costs.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

2 The Department finds that the adoption of this regulation may have a significant adverse economic impact on private persons or businesses, including the ability of California businesses to compete with businesses in other states. The regulation would establish a fee on any applicant requesting a certificate of interim registration. However, no one is required to apply for a certificate of interim registration. Furthermore, the certificate would allow the sale and use of a product in California that otherwise could not be sold or used in California. Where the certificate is not granted, the applicant will have incurred the cost of the fee. Where the certificate is granted and the applicant is the manufacturer of the product, the applicant could well realize profits on sales far in excess of the \$5,000 fee. Where the applicant is a user group (as authorized by FAC Section 13164) applying for registration of a pesticide that will "(R)educe a substantial economic hardship to a segment of California's agricultural industry due to a pest infestation for which there is no other feasible alternative" [FAC Section 13164(a)(4)], it is probable that the user group, when the certificate is issued, will gain substantially more than the \$5,000 fee as a result of reduced "substantial economic hardship." Also, the fee can be prorated among the members of the group.

No new recordkeeping requirement will result from the proposed action. The Department has not considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit such proposals. Submissions may include the following considerations:

- (A) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (B) Consolidation or simplification of compliance and reporting requirements for businesses.
- (C) The use of performance standards rather than prescriptive standards.
- (D) Exemption or partial exemption from the regulatory requirements for businesses.

The Department has made an assessment that it is unlikely that the proposed action would create or eliminate jobs, create new businesses, or eliminate existing businesses. The proposed action may have a positive effect on the expansion of businesses currently doing business within California by allowing the sale and use of a product that otherwise could not be sold or used in California.

ALTERNATIVES CONSIDERED

The Department must determine that no alternative considered by it 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 than the proposed action.

AUTHORITY

This action is taken pursuant to the authority vested by Section 13168 of the FAC.

REFERENCE

This action is to implement, interpret, or make specific Section 13127 of the FAC.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department has prepared an Initial Statement of Reasons for the proposed action and has available the express terms of the proposed action as well as the rulemaking file. A copy of the initial statement of reasons and the proposed regulation may be obtained from the agency officer named below. The information upon which the Department relied in preparing this proposal and the rulemaking file are available for review at the agency officer's address specified below.

After the close of the comment period, the Department may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If the Department makes changes to the regulation, the modified text will be made available for at least 15 days prior to the adoption. Requests for the modified text should be addressed to the agency official designated in this notice. The Department will accept written comment on any changes for 15 days after the modified text is made available.

AGENCY OFFICER

Written comments relevant to the action proposed and inquiries about the Initial Statement of Reasons, proposed regulation, location of the rulemaking file, and requests for a public hearing may be directed to: Ann Prichard, Program Specialist, Pesticide Registration Branch, Department of Pesticide Regulation, 1020 N Street, Room 332, Sacramento, California 95814, (916) 324-3931.

DEPARTMENT OF PESTICIDE REGULATION

1-21-94

Date

E. S. Mull

Director

