

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Adopt Sections 6690, 6691, and 6692
Pertaining to Pesticide Applications Near Schoolsites

UPDATE OF THE INITIAL STATEMENT OF REASONS

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on September 30, 2016. Several requests were made to extend the close of the public comment period and to add an additional public hearing site. A Notice of Additional Hearing and Extension of the Public Comment Period was issued adding a public hearing in Salinas, and extending the public comment period for an additional 22 days.

During the “45-day” public comment period, the Department of Pesticide Regulation (DPR) received comments on the proposed text. The comments are discussed under the heading “Summary and Response to Comments Received” of this Final Statement of Reasons. Based upon the comments received from the public and for reasons below, DPR modified the text from that originally proposed.

DPR received comments addressing the modified text during the 15-day public comment period. These comments are discussed under the subheading “Comments Received During the 15-Day Public Comment Period.”

Changes to the Text of Proposed Regulations

- 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 locations of bus stops and routes can vary. Even if the locations can be determined, the boundaries of bus stops and routes are uncertain, making compliance and enforcement of the buffer distance problematic. Also, children do not occupy buses or bus stops during most of the time during the 6:00 a.m. to 6:00 p.m. time period, and therefore the application restrictions are unreasonable.

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 unreasonably 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 ¼ 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 which 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 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.
- DPR made a nonsubstantive editorial correction to proposed section 6692(b)(8).

Changes from Original Economic and Fiscal Impact Statement

DPR originally proposed a 2-part notification to schoolsites: an annual notification and a 48-hour application-specific notification. The 48-hour notification requirements have been deleted, resulting in a decrease in economic cost. The minor changes to the annual notification requirements and application prohibitions did not result in any change in estimated economic cost for those elements. The deletion of the 48-hour notification requirements resulted in a decrease in the estimated economic impact from \$19.7-22.6 million to \$15.3-21.2 million over five years.

The deletion of the 48-hour notification requirements also decreased the fiscal impact to county agricultural commissioners. Most of the fiscal impact was due to the investigations, compliance actions, and enforcement actions generated by the 48-hour notifications. There should be no investigations or actions needed for the revised regulation. The remaining costs are for outreach, training, and maintaining geographic information systems and other schoolsite data updates. The estimated fiscal impact decreased from \$826,260 to \$132,144 annually.

In Fiscal Year 2016-17, DPR incurred a one-time cost of \$290,000 to develop a geographic information system Website to assist CACs and growers with identifying agricultural properties near schoolsites affected by the annual notification requirements and application prohibitions.

Consultation with Other Agencies

DPR consulted with the California Department of Food and Agriculture during the development of the text of the proposed regulations, as specified in FAC section 11454 and the August 20, 2013, Memorandum of Understanding developed per FAC section 11454.2.

DPR has also consulted with the California Agricultural Commissioners and Sealers Association at a Pesticide Regulatory Affairs Committee meeting.

DPR has adopted Title 3, California Code of Regulations sections 6690, 6691, and 6692. In summary, this action requires growers to notify public K-12 schools, child day care facilities (except family day care homes), 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. In addition, certain pesticide applications near these schoolsites will be prohibited at certain times.

PUBLIC HEARING

DPR scheduled and held public hearings on November 15, 16, and December 1, 2016, in Oxnard, Tulare, and Salinas, California, respectively. Transcripts of the hearings are contained in the rulemaking file.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD

See Attachment A

COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

See Attachment B

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.

The proposed regulation will cause increased workload and cost to county agricultural commissioners. DPR estimates that the increased workload will cost \$132,144 statewide. The additional work will be redirected from the existing workload. The fiscal effect to the county agricultural commissioners will be the same over the next two fiscal years.

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

POSTING REQUIREMENT

Title 3, California Code of Regulations, 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.

ADDENDUM TO THE FINAL STATEMENT OF REASONS

In section 6690, the term "similar areas" was removed, but the discretion of the county agricultural commissioner is left intact. The term "property" aligns with other language in the definition.

This change is without material effect.