

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Worker Protection Standard
DPR Regulation No. 17-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6000, 6619, 6724, 6764, 6768, 6769, and 6776. This proposal will affect pesticide regulatory program activities pertaining to pesticide worker safety. In summary, the proposed action will amend DPR's existing worker safety regulations to align with the recently revised federal Worker Protection Standard (WPS) [Title 40 Code of Federal Regulations (40 CFR), Part 170] that was noticed in the Federal Register, Vol. 80, No. 21 on November 2, 2015. The proposed action deletes the application exclusion zone definition and revises requirements for notice of completed applications, fieldworker training, fieldworker decontamination supplies, and field posting when a pesticide is used for the commercial or research production of an agricultural commodity. In addition, the proposed action revises the training program requirements for pesticide handlers working in production or non-production agriculture settings, or in non-agricultural settings.

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 September 25, 2017. Comments regarding this proposed action may also be transmitted via e-mail to <dpr17001@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's mission is to protect public health and the environment from adverse effects of pesticide use. DPR regulates pesticide product evaluation and registration, statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers, environmental monitoring and pesticide residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

The FAC also specifically requires that DPR adopt regulations to ensure safe working conditions for persons handling pesticides and working in and around pesticide-treated areas. DPR's current regulatory requirements for pesticide safety training, field posting, and notice of completed

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.

applications are designed to reduce the risk of pesticide exposure and injuries among pesticide handlers and workers exposed to pesticides.

The U.S. Environmental Protection Agency (U.S. EPA) acts under the authority and mandate of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The federal WPS regulations are found at 40 CFR, part 170, Agricultural WPS. The purpose of the federal WPS is to provide protection to pesticide agricultural workers and handlers through training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and emergency decontamination requirements.

U.S. EPA granted DPR primacy for pesticide enforcement in California and determined California's worker safety program to be equivalent to the federal WPS. On November 2, 2015, U.S. EPA revised portions of its federal WPS to enhance protections in its existing WPS. U.S. EPA noticed its revised federal WPS in the Federal Register, Vol. 80, No. 21. The purpose of its revisions is to further reduce occupational pesticide exposure and incidents or related illness among agricultural workers and pesticide handlers when using pesticides for the production of an agricultural commodity. These revisions included two sets of regulatory changes – one set was scheduled to go into effect on January 2, 2017, the second set is scheduled to go into effect on January 1, 2018.

In general, California's regulatory requirements are more stringent and U.S. EPA based many of its new requirements on those in California. While DPR's worker protection regulations were already consistent or more restrictive than most of the regulatory changes mandated by the revised federal WPS rules, DPR added regulations and revised some of its existing California worker safety regulations in 3 CCR to ensure that they are consistent with the revised federal WPS. These regulations went into effect on January 2, 2017 (Office of Administrative Law File No. 2016-0902-02S). U.S. EPA determined that those regulations achieved the same degree of protection of human health as the federal WPS, and in many ways were more stringent.

DPR proposes amendments to maintain at least the same level of protection as the remaining federal WPS revisions. The proposed action revises the training program requirements for pesticide handlers working in production or non-production agriculture settings, or in non-agricultural settings, and for fieldworkers. In addition, DPR proposes to make some clarifying changes to the regulations it recently adopted. The proposed action deletes the application exclusion zone definition and revises requirements for notice of completed applications, fieldworker decontamination supplies, and field posting when a pesticide is used for the commercial or research production of an agricultural commodity. All of the proposed amendments are consistent with the revised WPS with the exception of requiring all employees, agricultural and non-agricultural, who handle pesticides to be trained under the new WPS handler training topics. DPR believes the proposed additional training topics will provide handlers and fieldworkers with information designed to reduce work-related pesticide exposures and illnesses.

Adoption of these regulations will provide a benefit to worker safety. Expanding the required training content will improve worker safety by providing a more comprehensive description of rights and protections and how to reduce risks and behaviors associated with accidental exposure to pesticide handlers and fieldworkers.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and the California Department of Industrial Relations, Division of Occupational Safety and Health, have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR 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 also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

County agricultural commissioner (CAC) offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR establishes an annual work plan with the CACs, which already requires the CACs to conduct pesticide use inspections and investigations and to enforce compliance with California worker protection laws and regulations.

COSTS OR SAVINGS TO STATE AGENCIES

DPR 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 determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR 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. DPR is proposing amendments to California worker safety regulation to include additional training topics required for pesticide handler and fieldworker trainings. The proposed regulatory requirements will bring California worker safety regulations into alignment with the recently revised federal WPS 40 CFR Part 170 that was noticed in the Federal Register, Vol. 80, No. 21 on November 2, 2015.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Job/Businesses: DPR determined it is not likely 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 because the proposed regulation is designed to align with the new federal WPS rules by expanding the training content required for pesticide handlers and fieldworkers.

The proposed regulations will benefit worker safety by further strengthening current regulations that are already designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Ensuring that pesticide users comply with the newly adopted regulations will benefit worker safety. Implementation of the proposed regulations will not adversely affect the health and welfare of California residents 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, would be as effective and less burdensome to affected private persons 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, 12976, 12981.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 12973, 12980, and 12981.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making 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, 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 back-up person at the same address as noted below:

Kevin Solari, Environmental Program Manager I
Worker Health and Safety Branch
916-323-7614

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 documents can be made available in another language, or 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