

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Ground Water Protection Areas
DPR Regulation No. 18-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6000 of Title 3, California Code of Regulations (3 CCR). This proposed action amends the document, "EH03-05 (Est. 08/03) Ground Water Protection Areas" that identifies ground water protection areas (GWPA) in California. DPR proposes to add new GWPA to this document. These GWPA have been identified based on pesticide detections. This document is incorporated by reference in the definitions "ground water protection area", "leaching ground water protection areas", and "runoff ground water protection areas." A copy of the proposed document is included in the rulemaking file and available upon request.

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 July 9, 2018. Comments regarding this proposed action may also be transmitted via e-mail to <dpr18001@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 protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private pesticide 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.

The Pesticide Contamination Prevention Act (Act) (Statutes of 1985, Chapter 1298) added Article 15 (sections 13141-13152) to Chapter 2 of Division 7 of the FAC. The purpose of the Act is to prevent pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

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.

The Act requires DPR to conduct soil and ground water monitoring for pesticides listed in 3 CCR section 6800(b), maintain a database of wells sampled for pesticide residues, and formally review the continued use of pesticides found in ground water as the result of legal agricultural use. 3 CCR section 6800(a) currently consists of a list of seven chemicals--atrazine, simazine, bromacil, diuron, prometon, bentazon, and norflurazon--that have been detected in ground water or soil pursuant to FAC section 13149. FAC section 13150 allows the continued sale and use of these chemicals provided that certain conditions have been met.

Section 6000 includes definitions for: GWPA, an area of land that has been determined by the Director to be sensitive to the movement of pesticides to ground water; leaching GWPAs, areas of land where pesticide residues move from the soil surface downward through the soil matrix with percolating water to ground water; and runoff GWPAs, areas of land where pesticide residues are carried in runoff water to more direct routes to ground water such as dry or drainage wells, poorly sealed production wells, soil cracks, or to areas where leaching can occur. DPR has identified these areas of land where ground water contaminations have been detected and are currently identified in the DPR document EH03-05 (Est. 08/03) entitled "Ground Water Protection Areas" that is incorporated by reference within these definitions.

One method used to establish GWPAs are detections of active ingredients listed in section 6800(a) or their degradation products due to legal agricultural use in one well in a section that is adjacent to an existing GWPA; or two or more wells within a four section area that is not adjacent to an existing GWPA. DPR has identified 121 additional GWPAs based on pesticide detections.

DPR proposes to amend the document, EH03-05 (Est. 08/03) entitled "Ground Water Protection Areas" by adding 121 GWPAs, and identifying each area as either a leaching GWPA or runoff GWPA as defined by section 6000. DPR proposes to retitle the document to "Ground Water Protection Areas 2017 (Rev. 8/17)", incorporated by reference.

Adoption of this regulation will be a benefit to the environment. It will protect ground water from contamination resulting from the agricultural use of pesticides thus preventing pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

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

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. 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. DPR has determined that some nondiscretionary costs or savings imposed upon local agencies may result from the proposed regulation action. In rural counties where most GWPAs are located, the suppression of weeds along county roads is generally assigned to the county agricultural commissioner's office. Applications of section 6800(a)-listed chemicals in the proposed GWPAs will be prohibited if certain criteria designed to prevent leaching and runoff cannot be met. Alternative pesticides and/or revised weed management practices may be needed in some situations. Alternative methods are available. The funds needed for this purpose are paid from the county transportation road maintenance budgets. Any additional costs required by the mitigation measures would therefore need to be incorporated into the affected counties' maintenance budgets.

This analysis assumes that the share of county roads that fall within the boundaries of the proposed GWPAs is uniform across the counties, and that cost per sprayed acre is equal for all affected counties. DPR estimates that the mitigation and other regulatory costs of the proposed regulation for the 15 counties is \$18,288.

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 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. It is likely to have adverse economic impacts within the 15 counties with proposed GWPAs. Flexibility was built into the proposal to give businesses options that would best fit their individual situations and still ensure ground water is protected. DPR made this determination based on an economic impact

assessment that is listed in the “Documents Relied Upon” section of the Initial Statement of Reasons for this proposed regulatory action and is available from DPR.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

Businesses may be impacted if they conduct vegetation management programs using section 6800(a)-listed chemicals in areas that are designated as GWPAs. Applications of section 6800(a)-listed chemicals will be prohibited in GWPAs if certain criteria designed to prevent runoff and leaching cannot be met. Some businesses are already meeting those criteria with current practices while others will need to revise weed management practices and/or use alternatives pesticides in some situations.

The impacts will affect growers who use section 6800(a)-listed chemicals primarily on six crops within the proposed GWPAs. These crops are alfalfa, almonds, grapes, oranges, peas, and walnuts. The peak annual cost, estimated to be \$11,281, is expected to occur in the first year of the regulations, with recurrent annual cost impacts of \$11,043 in subsequent years. Impacts on affected grape (except wine) and walnut growers, which account for 86 percent of the total cost impacts, are estimated to be \$2 per acre.

Growers who farm crops within the designated areas can expect to see minor increases in operating costs that will result in reductions of gross revenues. The level of reductions in gross revenue is not expected to result in noticeable shifts in crop selection both because the reduction is expected to be minor and most of the crops affected are permanent crops.

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.

The proposed regulations are not expected to have a significant adverse effect on employment. Minor changes in either direction are possible. If the selected mitigation practices result in a net increase of additional chemical treatments, there could be some increase in demand for labor. However, this should not be sufficient to lead to a permanent increase in the number of jobs. The proposed regulation is not expected to have any impact on the creation or elimination of businesses. Any additional costs resulting from changes in application practices or pesticides selected should not have a significant adverse economic impact on farmers. Pesticide dealers currently selling listed chemicals may experience some decreased sales that might be offset by increased sales from alternative substituted chemicals.

Adopting this regulation will be a benefit to the environment. It will protect ground water from contamination resulting from the agricultural use of pesticides thus preventing pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

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, 13145, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 13145, 13150, 14001, 14102, 14004.5, and 14006.

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 above:

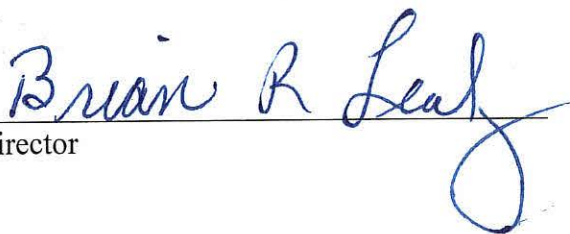
Vaneet Aggarwal, Environmental Scientist
Environmental Monitoring Branch
916-445-5393

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