

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6860
Pertaining to Toxic Air Contaminants

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR). Section 6110 meets the requirements of Title 14, CCR section 15252 and Public Resources Code section 21080.5 pertaining to certified state regulatory programs under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION / PESTICIDE REGULATORY PROGRAM
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR section 6860. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to air monitoring and evaluation under the general reevaluation mandate and under the mandates of Assembly Bill 1807 (Chapter 1047, Statutes of 1983, and amended by Chapter 1380, Statutes of 1984, AB 3219), the Toxic Air Contaminant Act. In summary, this action would designate the pesticide chemical chlorpyrifos as a toxic air contaminant (TAC) pursuant to Food and Agricultural Code (FAC) section 14023.

SPECIFIC PURPOSE AND FACTUAL BASIS

With the enactment of California's Toxic Air Contaminant Act, the Legislature created the statutory framework for the evaluation and control of chemicals as TACs. The statutes are contained in FAC sections 14021 through 14027. FAC section 14021 defines a TAC as "an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health."

DPR evaluates pesticides as TACs pursuant to FAC section 14022. FAC section 14022 requires the evaluations to be conducted in consultation with the Office of Environmental Health Hazard Assessment (OEHHA) and the Air Resources Board. Upon completion of the pesticide evaluation, FAC section 14023(a) requires DPR, in consultation and with the participation of OEHHA, to prepare a report on the health effects of the pesticide due to airborne emissions resulting from its mode of action, and other relevant biological factors. The report must include OEHHA's written findings. FAC section 14023(b) requires a review of the report by a panel of independent scientists known as the Scientific Review Panel (SRP). The SRP reviews the scientific data upon which the report is based, the supporting scientific procedures and methods used, and the conclusions and assessments on which the report is based. The SRP then submits its written findings to DPR. Based on the results of this comprehensive evaluation and review, the law requires the DPR Director to determine whether the candidate pesticide is a TAC.

3 CCR section 6864 provides the criteria the Director must use for identifying a pesticide as a TAC. If the candidate pesticide is determined to be a TAC, FAC section 14023(d) requires the Director to list that pesticide as a TAC in regulation.

Chlorpyrifos is a chlorinated organophosphate insecticide, acaricide, and miticide used to control foliar and soil-borne insects, ticks, and mites in a variety of agricultural crops. Chlorpyrifos products come in several different formulations including dry flowable, granular, liquid emulsifiable, and microencapsulate. Chlorpyrifos can be applied via aerial spraying (helicopter or fixed-wing), chemigation, ground-boom or air-blast sprayers, tractor-drawn spreaders, or hand-held equipment. Exposure to chlorpyrifos can occur during application from drift and/or volatilization from treated crops. A pesticide TAC can be determined based on its concentration in the air, either measured or modeled, that would exceed the reference concentration (RfC) divided by ten.

DPR has conducted an evaluation and risk assessment of chlorpyrifos. It is contained in the report, *Final Toxic Air Contaminant Evaluation of Chlorpyrifos*, July 2018. This report is listed in the “Documents Relied Upon” section of this initial statement of reasons and is available from DPR. The report identified two potential critical health effects: one based on acetylcholinesterase inhibition and one based on developmental neurotoxicity. Chlorpyrifos meets the criteria of TAC designation specified by 3 CCR section 6864(a).

The SRP has reviewed the chlorpyrifos reports (*Draft Evaluation of Chlorpyrifos as a Toxic Air Contaminant*, December 2017, and *Final Toxic Air Contaminant Evaluation of Chlorpyrifos*, July 2018) and submitted its written findings to DPR on August 15, 2018. In its findings, the SRP concluded that the SRP has reviewed the report prepared by DPR and reviewed by OEHHA, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based, as required by state law. The SRP found that chlorpyrifos should be classified as a TAC.

Based on the results of the evaluation of chlorpyrifos and the criteria listed in section 6864 for identifying pesticides as TACs, the Director has declared chlorpyrifos to be a TAC (Notice of Proposed Decision Concerning the Director’s Declaration of Chlorpyrifos as a Toxic Air Contaminant, August 24, 2018).

The proposed regulatory action adds chlorpyrifos to section 6860(a).

CONSULTATION WITH OTHER AGENCIES

DPR consulted with OEHHA as required by FAC section 14023.

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

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [(GOVERNMENT CODE SECTION 11346.2 (b)(4)]

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

ECONOMIC IMPACT ON BUSINESSES [GOVERNMENT CODE SECTION 11346.2(b)(5)(A)]

The proposed regulations will not have a significant adverse economic impact upon businesses. The document relied upon to make this determination is listed in the “Documents Relied Upon” section of this initial statement of reasons and is available from DPR.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO GOVERNMENT CODE SECTION 11346.3(b)

The proposed action would not create or eliminate jobs in California; result in the creation of new businesses or the elimination of existing businesses within the State of California; or result in an expansion of businesses currently doing business with the State of California as this action merely adds chlorpyrifos to the TAC list in section 6860(a) and does not further regulate use of the chemical by businesses.

The benefits of listing chlorpyrifos as a TAC would require DPR to further evaluate the need for additional protections to California residents pursuant to FAC section 14023.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

The proposal would designate the pesticide chemical chlorpyrifos as a TAC in section 6860(a). Under the TAC statute, the Director must designate a pesticide as a TAC prior to entering the process of determining the need for, and appropriate degree of, control measures. DPR’s review of the proposed action showed that no significant adverse environmental effect to California’s air, soil, water, plants, fish, or wildlife can reasonably be expected to occur from implementing this proposal. Therefore, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with the Code of Federal Regulations.

DOCUMENTS RELIED UPON

1. DPR. 2017. Draft Evaluation of Chlorpyrifos as a Toxic Air Contaminant. Department of Pesticide Regulation, Sacramento, California.
2. DPR. 2018. Final Toxic Air Contaminant Evaluation of Chlorpyrifos.
3. Kleinman. 2018. Findings of the Scientific Review Panel on Toxic Air Contaminants on the Proposed Identification of Chlorpyrifos as a Toxic Air Contaminant. August 15, 2018.
4. DPR. 2018. Notice of Proposed Decision Concerning the Director's Declaration of Chlorpyrifos as a Toxic Air Contaminant. Brian Leahy, Director, Department of Pesticide Regulation, August 24, 2018.
5. OEHHA. 2017. Findings on the Health Effects of the Active Ingredient Chlorpyrifos as a candidate Toxic Air Contaminant. David Ting, Office of Environmental Health Hazards Assessment. December 12, 2017.
6. DPR. 2018. Economic Analysis for Proposed Regulation DPR No.18-002. Edgar Vidrio, Department of Pesticide Regulation. August 16, 2018.