

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6000, 6424, 6428, 6432, and 6434
Pertaining to Statewide Notification of Agricultural Use of Restricted Materials

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 California Code of Regulations, title 14, section 15252 and Public Resources Code section 21080.5 pertaining to state regulatory programs certified 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 sections 6000, 6424, 6428, 6432, and 6434. This proposal will affect pesticide regulatory program activities pertaining to the submission of notices of intent (NOIs) for use of restricted materials. In summary, this action requires all agricultural use NOIs to be electronically submitted to the local County Agricultural Commissioner (CAC) via www.CalAgPermits.org (hereinafter referenced as just www.CalAgPermits.org or CalAgPermits) unless the CAC grants an exemption from the electronic submission requirement upon a finding of undue hardship. Additionally, it requires that all NOIs for soil fumigations be submitted to the local CAC via www.CalAgPermits.org a minimum of 48 hours before the intended start of the application. It also requires that specific information from NOIs for use of restricted materials requiring a permit for the production of an agricultural commodity (hereinafter referred to as “specific information” or “specific NOI information”) be electronically submitted to DPR via www.CalAgPermits.org at least 24 hours in advance of the intended start of a non-soil fumigant application and at least 48 hours in advance of the intended start of a soil fumigation. Upon a permittee’s submission of an NOI to www.CalAgPermits.org, the CalAgPermits program will automatically electronically transmit the NOI to the appropriate CAC and the specific NOI information to DPR. This regulatory action requires DPR to make publicly available upon receipt or as soon as practicable the specific NOI information it receives. Finally, it requires DPR to evaluate its system and process for making this information publicly available and issue a report three years after the system’s implementation or as soon as practicable.

SPECIFIC PURPOSE AND FACTUAL BACKGROUND

Background

There is increasing public interest in obtaining equitable and routine access to information about agricultural pesticide applications prior to the applications occurring. DPR is the lead state agency responsible for administering California’s pesticide regulatory program. DPR’s mission is to protect human health and the environment by regulating pesticide sales and use, and by fostering reduced-risk pest management. DPR encourages the use of environmentally sound pest management, including integrated pest management (IPM). DPR’s IPM Program promotes risk

reduction through information, encouragement, incentives, and community-based problem solving. DPR's statewide regulation of pesticides includes: evaluating pesticide products for human health and environmental risks and registering products prior to sale or use within the State; protecting worker health and safety; regulating and mitigating adverse human health and environmental effects of pesticide use; licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; overseeing local enforcement of pesticide laws and regulations; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

Local CACs, governed by state laws and regulations and overseen by DPR in its statewide regulatory role, are responsible for local pesticide use enforcement. (FAC sections 2281; 12977; 14004.) In its statewide role, DPR assists CACs in planning and developing effective county pesticide use enforcement programs. CACs regulate local pesticide use to promote compliance with pesticide label directions and applicable pesticide laws and regulations. CACs review restricted material permit applications and issue permits; issue operator identification numbers to property operators and others applying pesticides; and register companies and pest control pilots licensed by DPR to apply pesticides in their counties. CACs also inspect the operations of growers, pest control businesses, agricultural pest control advisers, pest control dealers, and other operations applying pesticides to promote compliance with California's pesticide laws and regulations to protect public health, worker health and safety, and the environment (including ground and surface water, endangered species, pollinators, and other wildlife).

California Restricted Materials

Pesticides must be registered with DPR prior to sale and use in California. (FAC sections 12803; 12993; 12995.) Under FAC section 14004.5, registered pesticides with greater potential to cause harm to public health, farmworkers, domestic animals, honeybees, the environment, wildlife, or crops other than those being treated are designated as restricted materials. Pesticides designated as restricted materials are listed in 3 CCR section 6400.

Due to their potential to adversely impact human health or the environment, DPR strictly controls the use of restricted materials in California. Controls include:

- California restricted materials can only be sold to end users by pest control dealers licensed by DPR. (FAC sections 11407; 12101.) Effective January 1, 2024, dealers can only sell restricted materials to certified applicators if the category or scope of certification matches the intended use. (3 CCR section 6564(c).) If a restricted material permit is required to possess or use the pesticide, the dealer must obtain a copy of the permit prior to sale or delivery of the pesticide. (3 CCR section 6568(a).)
- Everyone who uses or supervises the use of a California restricted material is required to be a certified private or commercial applicator. (FAC section 14015.) Additionally, effective January 1, 2024, the certified applicator must be operating within the scope of their license and with the Category or Branch applicable to the intended use. (3 CCR section 6404.)
- With a few narrow exceptions outlined in FAC section 14006.6 and 3 CCR sections 6400, 6414, and 6416, a restricted material permit is required to possess or use a restricted material. (3 CCR section 6412.)
- Restricted materials are subject to additional use restrictions beyond those on the product label. These additional use restrictions are outlined in DPR's regulations or restricted

material permit conditions issued by CACs (hereinafter referred to as “permit conditions”). (FAC section 14006.5; 3 CCR section 6445 et seq.) These restrictions can limit the amount of pesticide that may be applied, application methods that may be used, and where the pesticide may be applied.

- An NOI is required to be submitted to the local CAC prior to making an agricultural application of a restricted material requiring a permit. (3 CCR section 6434.)

This regulatory scheme limits sales of restricted materials to only those qualified to possess them and requires that individuals using or supervising the use of restricted materials have demonstrated a level of competency to do so safely and in a manner that will not result in harm to human health or the environment.

Restricted Material Permit Application

If a restricted material requires a permit (exceptions listed above), the property operator or their authorized representative must apply for a restricted material permit from the local CAC prior to applying or possessing the restricted material. The information required for a restricted material permit application is outlined in 3 CCR section 6428. Additionally, under FAC section 14006.5, the CAC must consider local conditions. The CAC must evaluate the restricted material permit application and determines if a substantial adverse environmental impact may result from the proposed restricted material use. If a substantial adverse environmental impact will likely occur from the use of the pesticide, the CAC then determines if there is a feasible alternative, including the alternative of no pesticide application, or feasible mitigation measure that would substantially reduce the adverse impact. (3 CCR section 6432(a).)

Issuing Restricted Material Permits

After evaluating a permit applicant’s qualifications, the restricted material permit application, and local conditions and alternatives, the CAC may issue a permit to possess and use a restricted material. Restricted material permits are categorized as either agricultural use or non-agricultural use. Agricultural use permits are further categorized as either for the production of an agricultural commodity or for non-production agriculture. “Agricultural Commodity” is defined in 3 CCR section 6000 to be any unprocessed products on farms, ranches, nurseries, or forests (except livestock, poultry, and fish). Examples of agricultural commodities include produce crops grown on orchards, groves, and fields; crops grown for seed; and poultry and egg production. Hereinafter, DPR will refer to pesticide applications “for the production of an agricultural commodity” as “agricultural commodity applications.”

CACs have flexibility to place conditions on a permit based on local conditions at the time of the intended application. (FAC section 14006.5; 3 CCR section 6432(b).) Use of restricted materials requiring a permit must always be carried out in accordance with the registered labeling and all county permit conditions. (FAC section 12973.) Additionally, every permit issued is automatically conditioned on compliance with the registered labeling and applicable laws and regulations. (FAC section 14007(a).)

Agricultural Use Notices of Intent (NOIs)

Agricultural use restricted material permits must be site and time specific. (3 CCR section 6422(a).) These terms are both defined in 3 CCR section 6000.

Time specificity is usually identified on the NOI submitted to the local CAC prior to applying a pesticide since the timing of an application depends on a variety of factors including the weather, pest pressure, and availability of an applicator. NOIs must be submitted to the local CAC a minimum of 24 hours prior to the start of the application. (3 CCR section 6434.) Generally, CACs require, via permit conditions, that NOIs for soil fumigants be submitted at least 48 hours prior to the start of an application. CACs may grant an exemption to the time requirement for NOI submission if the CAC determines that the prescribed amount of time is not necessary to adequately review the NOI or if there is an emergency pest issue requiring immediate pest control. (3 CCR section 6434.)

The specific application site is described when the agricultural restricted material permit is issued. NOIs also must identify the specific application site. Currently, this information is generally submitted on an NOI in the following formats:

1. Site ID number - This is a unique identification number given to each specific field on a property by the CAC and property operator. There is no standard statewide convention for Site ID numbers. Moreover, since the Site ID number is specific to the property operator, and fields can be leased to different property operators from year-to-year, the same field could have a different Site ID number from year-to-year.
2. Location - The grower may identify the location by referencing the Site ID number, the address of the site, or some other location description. There is no standard statewide convention for identifying the location, so the location information format varies amongst NOIs and counties.
3. The Bureau of Land Management Public Land Survey System (PLSS) Base, meridian, township, range, and section - This provides the one square mile area where the application is intended to occur based on a standardized survey system. PLSS is the only standardized location information currently being used for all NOIs for the production of an agricultural commodity in all counties.

The site and time specific information on an NOI allows the CAC to evaluate the intended application for potential substantial adverse environmental and human health impacts. When reviewing an NOI, the CAC may reference the restricted material permit application, which also indicates the PLSS section and which usually includes a map indicating the Site ID number, location information associated with each field, and nearby sensitive sites. (3 CCR section 6428(c).) CACs may also conduct an onsite pre-application site evaluation to confirm the application can be made safely in compliance with all relevant pesticide laws, regulations, and permit conditions.

Currently, NOIs may be submitted via phone, fax, email, mail, or in person unless otherwise specified on the permit. Written NOIs must be submitted on a form approved by the Director. (3 CCR section 6424.) Agricultural use NOIs must include the information enumerated in 3 CCR section 6434. Any interested person can request the CAC review their action in issuing, refusing, revoking, suspending, or conditioning a permit or an NOI. A directly affected person may appeal the CAC's decision on review to DPR. (FAC section 14009; 3 CCR section 6442.)

In fiscal year 2021/22, roughly 79,000 agricultural use NOIs were submitted. (PRAMR 2021/22.) Roughly 70,000, or 89 percent, of these NOIs were submitted electronically via CalAgPermits. Of these, roughly 56,000 NOIs or 80 percent were for the production of an agricultural commodity. (CalAgPermit Data 2021/22.)

CalAgPermits

CalAgPermits is a free to use statewide pesticide permitting and pesticide use reporting system for regulators, property operators, and both public and private pest control applicators. It is intended to streamline the restricted material permitting process. It can be accessed via www.CalAgPermits.org. Using CalAgPermits, property operators and pest control applicators and businesses may electronically prepare and submit NOIs and pesticide use reports (PURs) to the CAC where the pesticide applications take place. CACs use CalAgPermits to accept and process NOIs to apply restricted materials and accept and validate PURs.

Public Interest in Advance Notification of Restricted Material Applications

As stated above, there is increasing public interest in equitable and routine access to information about agricultural pesticide applications prior to the applications occurring. The overwhelming majority of the interest supporting notification comes from stakeholders concerned about agricultural commodity pesticide applications around homes, children's schools, places of work, and other areas of interest. They desire increased transparency and access to information about intended applications before they occur. (Webinar Summary, 2022.) This proposed action will allow DPR to develop and implement a statewide system to provide information to the public in advance of intended restricted material agricultural commodity applications.

In 2019, the Shafter Community Steering Committee formed under Assembly Bill 617 (Ch. 136, Stats. 2017) and the San Joaquin Valley Air Pollution Control District prepared a Community Emissions Reduction Program (CERP). The CERP included complementary pesticide measures, including a local pesticide notification system. Since the preparation of Shafter's CERP, other AB 617 communities, including Arvin/Lamont and Eastern Coachella Valley, have expressed interest in a public pesticide notification component when developing their respective CERPs.

In response to the above-described public interest and recognizing the statewide benefit in advance information about pesticide applications, the 2021-2022 California state budget allocated \$10 million to DPR for the development of a statewide pesticide notification system over four years. Since this allocation, DPR has provided numerous opportunities for the significant level of public engagement and input it has received regarding the development of a statewide notification system. DPR hosted a series of public participation events beginning in August 2021 to collect feedback and inform the development of a statewide system. To begin, DPR met with around 50 representatives of communities, growers, regulated industries and regulatory agencies during four focus group sessions (one session for each group) to hear their thoughts and concerns about the potential benefits and challenges of a statewide pesticide notification system and potential system design parameters. (Focus Groups Summary, 2022.) In November 2021, over 600 unique participants attended two virtual webinars regarding the guiding principles and practical considerations to inform the design of the system, and over 300 emails were submitted by stakeholders on this topic. (Webinar Summary, 2022.) In June 2022, over 750 participants attended three virtual workshops regarding development updates, including

proposed design elements for the statewide system, and about 1,800 emails were submitted on this topic. And over 500 participants attended workshops in November 2022 (one virtual, two in-person, one in Oxnard, CA and one in Orosi, CA) regarding four county-led pilot projects, which are discussed below, and developments on the statewide notification system. Separately, DPR received over 350 emails on these topics. UC Davis researchers, contracted by DPR to plan, facilitate, and summarize the participation and feedback received at the November 2022 workshops, summarized that “[t]here is a sense of urgency voiced by many participants that notifications are long overdue, and are needed now.” (UC Davis, 2022.)

Restricted Material Notification Pilot Projects

Four CACs volunteered to partner with DPR to conduct local pilot notification projects in 2022 to support the development of a statewide notification system. Each local CAC developed its own pilot notification project in coordination with DPR. The county-led pilot projects each covered a limited geographic area and tested different approaches to notification to help inform the design and implementation of a statewide system. Riverside’s pilot project in Eastern Coachella Valley ran from March to July 2022; Santa Cruz’s pilot project in the Senior Village Community of Watsonville ran from July to December 2022; Stanislaus’ pilot project in the Grayson Community ran from April 2022 to March 2023; and Ventura’s pilot project in the Nyeland Acres Community ran from May 2022 to June 2023.

DPR contracted with the same UC Davis researchers who facilitated and evaluated the November 2022 workshops to evaluate the local pilot notification projects. UC Davis researchers noted that the Santa Cruz pilot project had roughly 100 subscribers each opting-in for email and/or text message notifications, and the website for the pilot project was accessed roughly 700 different times. In the first nine months of the Ventura pilot project, roughly 40 subscribers each opted-in for email and/or text message notifications, and the website for the pilot project was accessed roughly 200 different times. The Stanislaus pilot project reported roughly 45 subscribers to their system over the first four months of their project. DPR did not receive data regarding the Riverside pilot project. Considering the limited geographic scope, participant concern about providing personal information to sign up for the pilot projects, limited public marketing and outreach, participation in the pilot project workshops (described above), and public interest in additional pilot projects, participation in the pilot projects indicate there is public interest in receiving information about upcoming restricted material applications.

Other Notification Programs

Beginning prior to and separate from the pilot projects discussed above, two counties in California independently run programs to provide limited advance notice of pesticide applications in their respective counties. Kern County currently provides email notice of upcoming restricted material applications requiring a permit to growers surrounding the area to be treated to protect farmworkers. However, the general public does not receive advance notice through this program. The notice includes a Kern CAC generated map identifying the area to be treated, the material to be applied, the date of the intended application, and the contact information for the grower of the field to be treated. Monterey County currently allows the public to sign up to receive notice via email and/or text message of soil fumigant applications five days (120 hours) prior to an application commencing within ¼ mile any of ten designated

schools. The notice includes the scheduled day of the application, what school is within ¼ mile of the application site, and the materials to be applied.

Statewide, DPR requires property operators to provide annual notice to schools of any anticipated agricultural commodity pesticide applications that will occur within ¼ mile of a school site. (3 CCR section 6692.)

Additionally, statewide, applicators applying a pesticide toxic to bees to a blossoming plant must provide advance notice to beekeepers with apiaries within one mile of an application site who request notice. The notice must be provided 48 hours in advance of the application and must include the time and place of the intended application, the crop and acreage to be treated, the method of application, the active ingredient and dosage rate of the pesticide to be applied, and how the person performing pest control may be contacted by the beekeeper. Applications made to citrus/bee protection areas are subject to additional requirements. (3 CCR sections 6983; 6984.)

Benefits of Proposed Regulatory Action

Increased Transparency of Agricultural Commodity Restricted Material Use

The public lacks regular, readily available, and ongoing information about upcoming restricted material applications before they occur. While information about restricted material pesticides is contained in public records subject to the Public Records Act (PRA), Government Code section 7920 et seq., that information is not readily available on an ongoing basis to the public, or to DPR, in advance of the subject pesticide applications commencing. The public may submit a PRA request to a CAC for information about a particular restricted material pesticide application. However, the process to submit a PRA request varies by county and generally does not afford the opportunity for regular and ongoing public access to information in advance of restricted material applications. Additionally, government agencies have 10 days to respond to a PRA request, so the pesticide application of interest likely will have already commenced by the time the requestor receives the requested information.

This proposed action's requirement that specific NOI information for agricultural commodity applications be electronically submitted to DPR via www.CalAgPermits.org at the same time it is submitted to CACs will support and increase the transparency of restricted material use in California. Once an NOI is electronically submitted via www.CalAgPermits.org, the CalAgPermits program will automatically electronically transmit the NOI to the appropriate CAC and the specific NOI information to DPR. Upon receipt of the specific NOI information, or as soon as practicable, DPR will make specific NOI information it receives available to the public. This will provide the public equitable and routine access to information about intended agricultural commodity restricted material applications around homes, schools, places of work, and other areas of interest. Certain stakeholder groups and members of the public have stated that advance notification of intended pesticide applications will afford them an opportunity to voluntarily take additional precautions to avoid potential exposure, such as closing windows and bringing in or cleaning children's outdoor toys, if they desire, which could indirectly lead to human health benefits. (Focus Group Summary, 2022.)

Additionally, the proposed action will allow DPR to create a map identifying intended agricultural commodity restricted material use throughout the state, within each county, and within each PLSS section. Creating a statewide map of the NOI information received by DPR will allow the public and DPR to visualize where restricted material agricultural commodity applications are intended to occur throughout the state in real-time and at a county and PLSS section level in a way that cannot be done by reviewing information about individual restricted material applications. A statewide map could also support an increase in communication and collaboration between growers and the public about pesticide use generally, which could indirectly lead to human health and environmental benefits, such as growers and the public collaborating on IPM and safer solutions to pest problems. (Focus Groups Summary, 2022.)

Supports DPR Statewide Regulation of Restricted Material Use

CACs are responsible for administering the restricted material permitting program, including receiving and approving NOIs, at the local level. As such, DPR typically does not receive information about intended restricted material applications before they occur.

DPR collects and analyzes information about restricted material applications (and other pesticide applications) after the applications are made through its PUR Program. (3 CCR sections 6624-6628.) The deadline to submit a PUR to the CAC is determined based on the type of the person or business submitting the PUR and the type of application. Under 3 CCR section 6626(b), agricultural pest control businesses that make an agricultural commodity application are required to submit their PUR to the CAC within seven days of completion of the application. 3 CCR section 6626(a) requires the property operator producing an agricultural commodity to submit their PUR to the CAC by the 10th day of the month following the application. FAC section 14012(b) requires the CAC to submit PUR data for restricted material applications to DPR within one calendar month after they are received.

Roughly 80 percent of the agricultural use NOIs submitted via CalAgPermits are for the production of an agricultural commodity. (CalAgPermit Data 2021/22.) This proposed action will allow DPR to obtain real-time data about intended agricultural commodity restricted material applications throughout California. This information can provide DPR data on intended restricted material use that can enhance DPR's understanding of restricted material use trends and support its statewide regulation of restricted materials in support of its mission.

Streamlines CAC review of NOIs and Compliance Inspections

The vast majority of NOIs are currently submitted electronically to CACs via CalAgPermits. (Zheng, 2023.)

CalAgPermits is integrated with CalPEATS, an electronic system used by CACs and DPR staff for recording pesticide inspection activity and compliance history. NOIs submitted electronically via CalAgPermits auto populate in CalPEATS.

This proposed regulation requires that all agricultural use NOIs be electronically submitted via CalAgPermits. This will enable CACs using CalAgPermits to maintain an accurate electronic record of all agricultural use NOIs submitted and to efficiently complete their review under

3 CCR section 6432. Additionally, it will allow CACs using CalPEATS to quickly start an inspection, such as a pre-application site evaluation or a use monitoring inspection without needing to manually input all the NOI information into CalPEATS. This eliminates potential human error from inputting NOI information into a separate electronic system and minimizes the required CAC staff resources. Further, it allows CACs to decrease their reliance on paper, while still maintaining accurate records should the NOI be necessary for a future enforcement action, responsive to a PRA request, or for some other reason.

Explanation of Each Proposed Amendment

In addition to the proposed changes described below, DPR is proposing non-substantive changes to 3 CCR sections 6000, 6424, 6428, 6432, and 6434 to capitalize “Commissioner” and “Director” and to lowercase “section,” when referring to a code section. These changes are for consistency and have no regulatory effect.

3 CCR section 6000 Definition of “Notice of Intent”

DPR is proposing to amend the definition of “Notice of Intent” in 3 CCR section 6000 to delete “oral or written.” This proposed amendment is necessary for clarity and consistency with proposed changes to sections 6424 and 6434. As discussed below, proposed changes to section 6434(b) will require all agricultural use NOIs to be submitted electronically via www.CalAgPermits.org, unless the CAC grants an undue hardship exemption. CalAgPermits can only accept written NOIs submitted electronically. Additionally, when the CAC grants an undue hardship exemption, proposed sections 6424(b) and 6434(e) will require the NOI to be submitted on a form provided or approved by the Director. Therefore, it is unnecessary and contradictory to include “oral or written” in the definition of “Notice of Intent.”

DPR is also proposing to delete “, as specified by the commissioner,” from the definition of “Notice of Intent” to be consistent with proposed revisions to section 6434(b). Currently, CACs use restricted material permit conditions to require NOIs for agricultural restricted material applications. However, as discussed below, DPR is proposing to amend section 6434(b) to explicitly require an NOI for all agricultural use restricted material applications. Therefore, it is necessary to amend the definition of NOI to remove the conflicting requirement that NOIs must be specified by the CAC.

3 CCR section 6000 Definition of “Time Specific”

DPR is proposing to amend the definition of “time specific” to include “and time” in addition to the “date.” Under 3 CCR section 6422, restricted material permits must be “site and time specific.” As described above, an NOI provides the time specificity for intended restricted material applications. DPR is proposing to amend 3 CCR section 6434(b) to require that an NOI state the intended date and time an application is to commence. Therefore, DPR is proposing to amend the definition of “time specific” to include the time an intended application is to commence, in addition to the date of the intended application, to be consistent with the proposed amendments to section 6434(b) discussed below.

DPR is also proposing to add “a” between the words “or” and “permit” to read “or a permit”. This proposed revision is non-substantive, for clarity, and will have no regulatory effect.

DPR is also proposing to delete the last sentence of the definition that states that an NOI makes a restricted material permit time and site specific and that specifies who is responsible for submitting an NOI. This provision is being relocated to section 6434(b) for clarity and this deletion is necessary to avoid potentially duplicative requirements.

3 CCR section 6424, subsection (b)

Existing section 6424(b) requires all information for a written NOI to be submitted on a form either provided or approved by the Director. DPR is proposing to amend subsection (b) to clarify that this requirement will only apply to NOIs that are not electronically submitted via www.CalAgPermits.org. As outlined below, in the proposed changes to section 6434(b), DPR is requiring that all agricultural use NOIs be submitted electronically via www.CalAgPermits.org unless the CAC grants an exemption under proposed section 6434(e). The proposed amendment to section 6424(b) is necessary to clarify that an NOI must continue to be submitted on a form provided or approved by the Director when the CAC grants an exemption under section 6434(e) and for any other NOIs that are not required to be submitted electronically.

DPR is also proposing to delete “for a written notice of intent” to be consistent with proposed amendments to the definition of “notice of intent” in section 6000, which no longer specifies that an NOI must be oral or written.

3 CCR section 6428, subsection (a)

DPR is proposing to change “permittee” to “permit applicant” throughout this subsection. These proposed revisions are for clarity as “permittee” refers to a person that has obtained a permit, not a person applying for a permit. This proposed revision is for clarity and will have no regulatory effect.

3 CCR section 6428, subsection (b)

DPR is proposing to add “and base, meridian, township, range, and section” to 3 CCR section 6428(b). Section 6428 outlines the information required for a restricted material permit application. Requiring the base, meridian, township, range, and section on a restricted material permit application is consistent with current practice as restricted material permit applications already request the base, meridian, township, range, and section. Requiring the base, meridian, township, range, and section on a permit application will identify the one square mile area where the application is intended to occur. The PLSS is a standardized system managed by the United States Bureau of Land Management, which subdivides land in the United States into one square mile sections. It is the only standardized location information that is consistent across all agricultural use restricted material permits in all counties. As discussed below, DPR is also proposing to require base, meridian, township, range, and section information on an NOI in proposed 3 CCR section 6434(b)(12). The proposed amendment to section 6428(b) will make the PLSS location information required on a restricted material permit application consistent with the information required on an NOI for the reasons discussed below and to maintain the parallel nature of the restricted material permit and the NOI.

3 CCR section 6432, subsection (a)

DPR is proposing to revise section 6432(a) to state “the Commissioner” instead of “he.” This is a non-substantive change and has no regulatory effect.

3 CCR section 6432, subsection (b)

The existing language “, if any,” in subsection 6432(b) suggests that an NOI may not always be required for an agricultural use restricted material application. Under the proposed amendments to section 6434(b), an NOI will be required for all agricultural use restricted material applications. As a result, DPR is proposing to delete “, if any,” to ensure it is clear that an NOI will be required for all agricultural use restricted material applications. This proposed amendment is necessary for consistency with the proposed amendment to section 6434(b) and to eliminate conflicting language within the regulations.

3 CCR section 6434, subsection (a)

DPR is proposing to amend 3 CCR section 6434(a) to include a cross reference to section 6428(j). In a recent rulemaking action (Office of Administrative Law File Number 2023-0518-01S), DPR split section 6428(i) into subsections (i) and (j). However, DPR did not update the cross reference accordingly. This proposed amendment ensures the cross reference to the required information in former section 6428(i) remains consistent. This change will have no regulatory effect as this is an existing requirement.

3 CCR section 6434, subsection (b)

As discussed earlier, DPR is proposing to move the phrase “to make a permit time and site specific” from section 6000’s definition of “Time Specific” to the beginning of section 6434(b) for clarity. DPR is proposing to amend this phrase to state “To make a permit site and time specific” to be consistent 3 CCR section 6222.

DPR is also proposing to revise 3 CCR section 6434(b) to require an NOI for all agricultural use restricted material applications, as opposed to just when the CAC requires an NOI. Currently, CACs require, via permit conditions, an NOI for nearly all agricultural use restricted material applications to make the permit time specific. The primary exception is a “job permit” where all the information required by section 6434(b), including the intended time the application is to commence, is already stated in the restricted material permit application. DPR’s understanding is that agricultural use “job permits” are relatively rare. In contrast, pursuant to 3 CCR sections 6430 and 6432(b)(2), NOIs for non-agricultural use restricted material applications are only required until the monitoring requirement in 3 CCR section 6436 is met. “Job permits” are also somewhat more common for non-agricultural restricted material uses (for example, a one-time commodity fumigation at a facility). Therefore, DPR’s proposed amendment to require an NOI for all agricultural use restricted material applications is consistent with current practices and regulatory requirements. Proposed section 6434(b) pertains to all agricultural use restricted materials; it does not pertain to pesticides subject to CAC-permitting pursuant to FAC section 14006.6, as they are not restricted materials.

DPR is proposing to require that agricultural use restricted material NOIs be submitted to the CAC electronically via www.CalAgPermits.org. CalAgPermits is the electronic permitting system utilized by CACs. It will automatically electronically transmit the NOI to the appropriate

CAC and the specific NOI information outlined in proposed subsection (d) to DPR. This will allow property operators, authorized representatives, and pest control businesses to simultaneously submit an NOI to the CAC and specific NOI information to DPR. This capitalizes on technological advancements that allow for a more efficient flow of information between CACs and DPR. Requiring all agricultural use restricted material NOIs to be submitted electronically on CalAgPermits also allows CACs to maintain documentary evidence of the NOI should it need to be referenced in the future while minimizing reliance on paper NOI records or a CAC staff's recollection of an oral NOI.

DPR is proposing to specify that agricultural use restricted material NOIs be submitted to the CAC by the operator of the property, the operator's authorized representative, or the pest control business who is to apply the pesticide. This is an existing requirement in subsection (b) and in the definition of "Time Specific" in section 6000. However, DPR is also proposing to use more contemporary and common terminology and refer to "grower" as "operator of the property." This change is for clarity as "operator of the property" is defined in section 6000 and for consistency with section 6420 and the rest of proposed section 6434(b). This proposed revision has no regulatory effect.

DPR is proposing to delete "If the information required by this paragraph has been provided on the permit it may be referenced on the notice of intent." As described below, DPR is proposing to require that specific information from restricted material NOIs for the production of an agricultural commodity be submitted to DPR so that DPR can incorporate this information into a statewide pesticide notification system. CACs can easily access information provided on a permit submitted to them. However, an NOI that references a restricted material permit would have limited utility to DPR and the public since DPR and the public do not have regular and routine access to individual restricted material permits. Additionally, this proposed amendment will create a consistent standard for all agricultural use restricted material NOIs in all counties. DPR understands that it is standard practice to include all the information outlined in subsection (b) in an NOI so deleting this provision is unlikely to create additional work for permittees that submit NOIs or CACs.

DPR is also proposing to amend the list of items required on the agricultural use restricted material NOI.

- DPR is proposing to amend subsection (b)(1) to add "and county" to require the county number to be stated on the NOI. This proposed amendment is consistent with current practice. The county number is established by the Secretary of State and is used to identify counties within California. County numbers are currently used by CACs to identify the county where the application is intended to occur. The county number will be indicated on the restricted material permit issued by the CAC. Since specific NOI information is being submitted to DPR, as required by proposed section 6434(d) discussed below, requiring this information is necessary for DPR to inform the public of the county in which the intended application will commence. This will also allow DPR to indicate the county of the intended application on a statewide map so the public can determine the intended applications in a county at any given time.

- DPR is proposing to amend subsection (b)(3) to change “farm operator” to “operator of the property” to utilize more contemporary and common terminology, and to be consistent with 3 CCR sections 6000 and 6420 and the rest of the proposed amendments to section 6434.
- Existing language in section 6434(b)(5) is vague. DPR is proposing to amend subsection (b)(5) to add “to be treated” to clarify what “approximate acres or other units” are required. This will allow DPR and CACs to assess compliance with subsection (b)(5) more easily and will provide clarity to NOI submitters.
- DPR is proposing to amend section 6434(b)(7) to add “product name(s) and registration number(s) to be applied” for clarity. The existing language in subsection (b)(7) is vague. Clarifying that agricultural use restricted material NOIs must include the specific pesticide product name as well as the registration number to be applied allows CACs to more efficiently promote compliance with this requirement as well as to focus their NOI review on the specific product to be applied since many pesticides have similar product names. As specific NOI information is proposed to be submitted to DPR under new section 6434(d), discussed below, this requirement is also necessary so DPR can provide this information to the public for agricultural commodity applications pursuant to proposed section 6434(g). Providing this information to the public will inform the public about what pesticides will be applied near areas of interest and allow the public to look up additional information about the pesticide on U.S. EPA or DPR’s respective website databases.
- DPR is proposing to amend section 6434(b)(10) to add “and time” after the word “Date”. This proposed amendment will require all agricultural use restricted material NOIs to include both the date and time of the intended application. This proposed amendment is necessary so that CACs and DPR can determine whether, and to document that, the NOI was submitted in compliance with proposed subsections (c), (d), and (e)’s respective time requirements. This proposed amendment is consistent with DPR’s proposed amendment to section 6000’s definition of “time specific.” DPR also understands that many CACs already require the intended time on NOIs via permit conditions. Additionally, this proposed amendment is necessary so DPR can provide the public information about the intended date and time an agricultural commodity application will commence, as required by proposed section 6434(g), discussed below.
- New proposed subsection (b)(12) adds a requirement to include the “Base, meridian, township, range, and section of the area to be treated” in agricultural use restricted material NOIs. This proposed amendment aligns the regulatory text with current practices to provide CACs and DPR with location information in a useful and standardized format. Since the base, meridian, township, range, and section stated on the NOI will be submitted to DPR, as required by proposed section 6434(d), discussed below, this information will enable DPR to inform the public of the one square mile section where an agricultural commodity application is intended to occur, as required by proposed section 6434(g), discussed below. DPR will also utilize the base, meridian, township, range, and section information to create a statewide map identifying the section where an intended agricultural commodity restricted material application may occur. As discussed above, all the other location information on an NOI, is non-standardized and varies county-to-county and year-to-year.

DPR understands that the current NOI practice is to include the PLSS base, meridian, township, range, and section so this proposed amendment is consistent with that practice. Moreover, this information is already included on agricultural restricted material permits

issued by the CAC. Additionally, 3 CCR section 6624(c)(1) currently requires the operator of the property and an agricultural pest control business applying pesticides to maintain PUR for all applications for the production of an agricultural commodity, including the “section, township, range, base and meridian”. Therefore, this proposed amendment is consistent with current practice and existing requirements.

Lastly, existing section 6434(b) specifies that the CAC shall be notified at least 24 hours prior to commencing the use of a pesticide requiring a permit. DPR is proposing to move this requirement to new subsection (c)(2), which is discussed in the next section.

3 CCR section 6434, subsection (c)

First, DPR is proposing to clarify the manner in which notice must be submitted to the CAC. Existing section 6434(b) requires the CAC to be notified but does not specify how. This proposed amendment clarifies how the CAC must be notified – by submitting an NOI to the CAC.

Second, DPR is proposing to add cross references to proposed subsections (e) and (f), which outline exceptions to the requirement that an NOI be submitted at least 48 hours in advance of the intended date and time of a soil fumigation and at least 24 hours in advance of the intended date and time of all non-soil fumigant applications. This proposed amendment is for clarity.

Third, the proposed amendment to section 6434(c) clarifies that the NOI must be submitted prior to the date and time the application is intended to commence, as opposed to prior to the application commencing. Under section 6000’s definition of “time specific,” applications may commence up to four days after the date specified on the NOI if there are “delays caused by uncontrollable conditions such as adverse weather or unavailability of equipment.” This proposed amendment provides clarity to the regulated community as to when the NOI must be submitted – 24 or 48 hours prior to the date and time the application is intended to commence that is stated on the NOI. It also will allow CACs to clearly assess and document whether an NOI met the time requirements for submission.

Under proposed subsection (c)(1), DPR is requiring an NOI for soil fumigations to be submitted at least 48 hours prior to the date and time a fumigation is intended to commence to be consistent with current practices and so that DPR will receive the specific NOI information in time to provide the public notice of intended soil fumigations at least 48 hours before they commence. Current, restricted materials used as soil fumigants, also referred to as field fumigants, include the active ingredients: 1,3-dichloropropene, chloropicrin, dazomet, metam sodium, metam potassium, methyl bromide, and methyl isothiocyanate (MITC). Under 3 CCR section 6447.1(a)(1), NOIs for soil fumigations containing methyl bromide are required to be submitted at least 48 hours in advance. Following DPR’s recommendation and under their authority in FAC section 14006.5 and 3 CCR section 6432(b)(1), the general practice is for CACs to require NOIs for all other soil fumigants to be submitted at least 48 hours and sometimes up to a week in advance of an intended application. Requiring an NOI for soil fumigations to be submitted at least 48 hours prior to the time and date a fumigation establishes a minimum standard for all

agricultural use soil fumigations throughout the state, while still leaving the CAC discretion to require NOIs to be submitted earlier if desired based on local conditions. It is also necessary so, pursuant to proposed section 6434(g), DPR can receive the specific NOI information and provide the public notification of intended soil fumigant applications at least 48 hours prior to the time and date the fumigation is intended to commence or as soon as practicable.

In new subsection (c)(2), DPR is proposing to require non-soil fumigant pesticides requiring a permit to be submitted to the CAC at least 24 hours prior to the date and time an application is intended to commence. This is an existing requirement in section 6434(b).

3 CCR section 6434, subsection (d)

DPR is proposing to adopt 3 CCR section 6434(d) to require that specific NOI information for use of a restricted material requiring a permit for the production of an agricultural commodity be electronically submitted to DPR via www.CalAgPermits.org by the property operator, property operator's authorized representative, or the pest control business who will apply the pesticide. Under the proposed changes in subsection (b), all agricultural use NOIs must be submitted to the CAC electronically through CalAgPermits. As stated above, CalAgPermits will allow NOI submitters to submit an NOI automatically and simultaneously to appropriate CAC and the specific NOI information outlined in subsection (d) to DPR. For consistency, DPR is requiring the specific NOI information be submitted to DPR via CalAgPermits, as well.

For an agricultural commodity application of a restricted material requiring a permit, DPR is proposing to require the specific NOI information to be submitted to DPR at least 48 hours prior to the date and time a soil fumigation is intended to commence and at least 24 hours prior to the date and time an application a non-soil fumigant is intended to commence. This is consistent with the timing requirements for submitting an NOI to the CAC outlined in proposed subsection (c).

Finally, DPR is proposing to require that the operator of the property, their authorized representative, or the pest control business be responsible for submitting the specific NOI information to DPR. This is consistent with NOI submission requirements in section 6434(b). Aligning the time, method, and responsibility requirements for submitting the specific NOI information to DPR with proposed NOI submission requirements in subsections (b) and (c) will support compliance and minimize impact to NOI submitters. DPR is proposing to remove the reference to "licensed" since, pursuant to FAC section 11701, all pest control businesses are required to be licensed to operate in California.

New section 6434(d) is necessary so that DPR can provide the public advance notification of intended agricultural commodity restricted material applications as required by proposed section 6434(g). This will increase the transparency of agricultural commodity restricted material use in California by providing the public equitable and regular access to information about intended applications around homes, workplaces, schools, or any other areas of interest. It will also support DPR's statewide regulation of restricted material use by providing DPR information about intended agricultural commodity restricted material use. As outlined above, currently, DPR obtains information about restricted material applications after they occur through PUR. This

proposed requirement will provide DPR additional data, in real-time, about intended restricted material use throughout the state.

DPR is proposing to require specific NOI information for agricultural commodity applications of restricted materials that require a permit. This is consistent with the intended scope of DPR's statewide notification system and the public's interest. (See UC Davis, 2022.) Restricted materials are pesticides that DPR has determined have greater potential to cause harm to public health, farmworkers, domestic animals, honeybees, the environment, wildlife, or crops other than those being treated. The majority of agricultural use NOIs submitted, roughly 80 percent, are for the production of an agricultural commodity.

DPR is proposing to receive the following specific NOI information for the following reasons:

- Proposed subsection (d)(1) – County number. This will allow DPR to inform the public of the county of the intended application by indicating the county of the intended application on a statewide map so that the public can determine the intended applications in a county at any given time in addition to the intended applications in counties throughout the state.
- Proposed subsection (d)(2) – Date and time the intended application is to commence. This will allow DPR to verify that information is submitted to DPR at least 48 hours in advance of the intended date and time a soil fumigation will commence and at least 24 hours in advance of the intended date and time an application of all non-soil fumigant restricted materials requiring a permit for the production of an agricultural commodity will commence. It will also allow DPR to inform the public at least 48 or 24 hours in advance of the intended start of the soil fumigation or other restricted material application, respectively, so that the public knows the start of the time window where an application may commence, as outlined in existing definition of “Time Specific” in section 6000.
- Proposed subsection (d)(3) – Base, meridian, township, range, and section of the area to be treated. This information is necessary so DPR can inform the public of the one square mile location where the restricted material application is intended to occur and so DPR can note this one square mile section on a statewide map so the public and DPR can identify where applications are likely to occur in real-time throughout the state. The PLSS base, meridian, township, range, and section is the only standardized location information on all NOIs in all counties that supports a statewide map and that provides the public identifiable location information.
- Proposed subsection (d)(4) – Pesticide product registration number to be applied. DPR is requiring this information for reasons similar to those outlined above regarding proposed amendments to section 6434(b)(7). DPR will use the pesticide product registration number to determine the pesticide product name. DPR will provide this information to the public in advance of the application so the public can know what pesticide is intended to be applied. The pesticide product registration number can be entered into DPR or U.S. EPA's respective website databases to obtain additional information about the particular pesticide(s), such as the target pests, environmental hazards, or restricted entry intervals. This could result in secondary public health benefits such as increased awareness and knowledge about chemicals and symptoms of exposure. (See Polsky, 2021.) DPR also intends to incorporate this information into a statewide map so DPR and the public can identify where certain

pesticides are intended to be used at any given time across the state and can analyze statewide or regional trends in the intended use of active ingredients.

- Proposed subsection (d)(5) – Method of application. Under proposed section 6434(g), DPR will provide this information to the public in advance of the intended application so the public is aware and will know what type of application is planned. For example, if the method notes “Air,” the public will be prepared to see an airplane or helicopter making an application in a general area. DPR also intends to incorporate this information into a statewide map to provide information about when and where certain intended methods of application are intended to take place.
- Proposed subsection (d)(6) – Approximate acres or other units to be treated. Under proposed section 6434(g), DPR will provide advance notice about the scale of an application to the public. This information, in conjunction with the application method, could provide context for the potential duration of the application. Additionally, adding this information to a statewide map will allow DPR and the public to assess and evaluate the scale of individual intended applications throughout the state at any given time.

3 CCR section 6434, subsection (e)

DPR is proposing to adopt 3 CCR section 6434(e) to provide CACs discretion to allow an NOI to be submitted on a form approved by the Director, instead of electronically via www.CalAgPermits.com, upon a finding of undue hardship. DPR recognizes there may be situations where it is unduly burdensome to electronically submit an NOI via www.CalAgPermits.org. To account for those circumstances, this proposed amendment provides discretion to CACs, upon a finding of undue hardship, to allow an NOI to be submitted on a form provided or approved by the Director under section 6424(b).

DPR is proposing to define that an “undue hardship” “may be a situation where it is not possible to electronically submit an NOI to CalAgPermits without significant difficulty or expense.” Examples of possible undue hardships could be situations where an NOI submitter does not have reliable access to high-speed internet, lacks access to electricity, or could be subject to a declared state of emergency that affects internet or electricity access. This proposed amendment provides clarity to NOI submitters and CACs while still providing CACs the discretion to determine whether an undue hardship exists.

Following a discretionary finding of undue hardship by the CAC, under proposed subsection (e)(1), the CAC, instead of the operator of the property, operator’s authorized representative, or pest control business, is required to electronically submit the information enumerated in subsection (d) for intended agricultural commodity applications requiring a permit to DPR via www.CalAgPermits.org. The CAC is required to submit the information in subsection (d) to DPR at least 24 hours in advance of the intended start of a non-soil fumigant restricted material application and at least 48 hours in advance of an intended start of a restricted material soil fumigation. This is consistent with the information and time requirements in subsection (d). It also ensures that DPR and the public will receive the same information in the same amount of time in advance of these intended restricted material applications as it will for all other intended agricultural commodity restricted material applications.

In proposed subsection (e)(2), when the CAC makes a discretionary finding of undue hardship, the CAC must require an NOI that receives an undue hardship exemption to be submitted to the CAC earlier than 24 hours prior to the intended start of a non-soil fumigant restricted material application or earlier than 48 hours prior to the intended start of a soil fumigation, as required by 3 CCR section 6434(c). CACs need to require these NOIs to be submitted earlier than NOIs that operators of the property, authorized representatives or pest control businesses electronically submit themselves because CACs will need additional time to enter and submit the specific NOI information to DPR electronically via www.CalAgPermits.org. The amount of time it will take a CAC to input the NOI information into CalAgPermits for submission to DPR will vary based on the county and the availability of CAC staff. Therefore, DPR is proposing to provide discretion for the CAC to determine how much earlier a particular non-electronic NOI should be submitted.

Finally, proposed subsection (e)(3) requires the CAC document that an undue hardship was found when the CAC makes a discretionary finding of undue hardship, so CAC's have record of when and why they made an undue hardship determination.

3 CCR section 6434, subsection (f)

Existing 3 CCR section 6434(b) authorizes CACs to waive the requirement that they receive notice 24 hours in advance of an intended restricted material application in certain situations. DPR is proposing to move this provision to new subsection (f) and to amend it to clarify that the CAC may grant an exemption from the time requirements outlined in subsection (c) for submitting an NOI to the CAC and the time requirements in subsection (d) for submitting specific NOI information to DPR. The CAC may also grant an exemption to the time requirements outlined in subsection (e) if the CAC determines there is both an undue hardship and then separately and distinctly determines there is an emergency circumstance necessitating an exemption from the time requirements under subsection (e).

First, this proposed amendment clarifies that the exemption applies to NOI time submission requirements whereas the existing language just states that it applies to the “notice” requirement. Secondly, the existing provision that authorizes CACs to waive the time requirement for submitting an NOI to the CAC would be ineffective if specific NOI information was still required to be submitted to DPR at least 24 or 48 hours in advance of the application, as required by proposed subsection (d), since the information required to be submitted to DPR comes from the NOI. Therefore, this proposed amendment extends the CAC’s authority by authorizing the CAC to grant an exemption to the time requirement for submitting an NOI to the CAC in proposed subsection (c) and the time requirement for submitting information from the NOI to DPR in proposed subsection (d). If an exemption is granted, an NOI and information from an NOI is still required to be submitted to the CAC and DPR, respectively, however they do not need to be submitted 24 or 48 hours in advance of the intended start of the application.

Currently, CACs may grant a timing exemption when “because of the nature of the commodity or pest problem effective pest control cannot be attained or when 24 hours are not necessary to adequately evaluate the intended application.” DPR is proposing to revise this provision to delete “or when 24 hours are not necessary to adequately evaluate the intended application” to support this regulation’s purpose of providing advance notification of intended agricultural commodity restricted material applications. However, DPR is proposing to authorize CACs to grant a timing exemption when “safe and effective pest control cannot be attained”, rather than just when

“effective” pest control cannot be attained. While this proposed amendment will limit the exemption to apply only in emergency circumstances where an application must be made within the next 24 or 48 hours to achieve safe and effective pest control, it will continue to allow CACs to grant an exemption from the NOI submission time requirements when necessary to protect nearby public and worker safety – such as making an application at a time when adjacent fieldworkers and/or school children will not be present or when anticipated weather changes will result in a greater likelihood of offsite drift or danger to workers, residents or others.

Finally, when the CAC makes a discretionary decision to allow an exemption to the time requirements, DPR is proposing to require that the CAC note electronically through www.CalAgPermits.org that an exemption to the time requirements was granted. This is necessary so DPR can determine whether the NOI submission met the time requirements outlined in section 6434(c) and, if not, would be denied by the CAC in the absence of a timing exemption from the CAC under subsection (f). It will also allow DPR to evaluate when a timing exemption is granted, which can inform future regulatory and policy decisions.

3 CCR section 6434, subsection (g)

DPR is proposing to adopt 3 CCR section 6434(g) to require DPR to make the specific NOI information for agricultural commodity restricted material applications requiring a permit publicly available a minimum of 48 hours in advance of an intended soil fumigation and a minimum of 24 hours in advance of an intended non-soil fumigant restricted material application, or as soon as practicable. As described above, the public currently does not have routine and equitable access to information about upcoming restricted material applications. If the public wants information about upcoming applications, the public must request the information from the local CAC through a PRA request and likely will not receive information prior to the application commencing since government entities have 10 days to respond to PRA requests. Making the specific NOI information that DPR receives publicly available at the time DPR receives it or as soon as practicable will allow equitable and routine public access to information about upcoming agricultural commodity restricted material applications so that the public can know when applications are likely to occur around residences, workplaces, schools or other addresses of interest.

DPR is proposing to make the specific NOI information publicly available upon receipt, but at least 48 hours in advance of a soil fumigation and at least 24 hours in advance of all non-soil fumigant restricted material applications, or as soon as practicable. This is consistent with the time requirements in proposed subsection (d). DPR is specifying that it will make the information available upon receipt as it may receive the information earlier than the time requirements outlined in subsection (d). DPR is also including flexibility to provide public notification “as soon as practicable” to account for instances where the CAC grants an exemption to the time requirements for emergency circumstances under proposed subsection (f) or in the event there is an unexpected technological or other delay in providing public notification of the information.

Proposed subsection (g) specifies that DPR will make all the information it receives under proposed subsection (d) publicly available. The basis for providing the public each category of information is outlined in the discussion of subsection (d) above. DPR is proposing to provide

the public the county of the intended application so the public can determine the intended applications in a county at any given time using the statewide map. DPR is proposing to provide the intended date and time each application will commence so the public is aware of the beginning of the time window over which the application may commence. DPR is proposing to provide the public the base, meridian, township, range, and section of the intended application to allow the public to identify the one square mile section where the potential restricted material application is intended to occur so that the public will know of potential applications around residences, workplaces, schools, or other areas of interest. DPR is proposing to include the pesticide product registration number(s) so that the public can know what pesticide is being applied and, if interested, seek additional information on that pesticide, for example, on DPR or U.S. EPA's website databases. DPR intends to additionally use the pesticide product registration number to provide the public with the corresponding DPR-registered pesticide product name. Finally, DPR is proposing to provide the method of application and approximate acres to be treated to inform the public about what type of equipment may be used (ground vs. air application) and the scale of the intended application to provide context for the potential duration of application.

DPR is currently proposing for subsection (g) to become effective on a date to be determined after the regulation becomes effective to provide DPR sufficient time to perform necessary outreach regarding launch and use of the statewide notification system. This will also allow DPR sufficient time to test that its electronic system will be able to reliably provide public access to application information as required by subsection (g).

3 CCR section 6434, subsection (h)

DPR is proposing to adopt 3 CCR section 6434(h), which will require DPR to evaluate its system and process for providing the specific NOI information to the public and to issue a report three years after subsection (g) becomes effective or as soon thereafter as practicable. Three years is necessary to provide DPR sufficient data – notifications of intended agricultural commodity applications and public access to that information – to meaningfully evaluate the statewide system.

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 Memorandum of Understanding updated on January 15, 2019, that was developed per FAC section 11454.2.

DPR also consulted with numerous county agricultural commissioners and the California Agricultural Commissioners and Sealers Association.

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 achieve the purpose of the regulation with less possible adverse economic impacts, including any

impacts on small businesses, and invites the submission of suggested alternatives. DPR considered the following alternatives during development of this proposed regulation:

Alternative 1 - No requirement to electronically submit written notices of intent.

DPR considered not including a requirement to electronically submit NOIs to the CAC. However, this alternative would not feasibly allow DPR to obtain information about forthcoming agricultural commodity restricted material applications prior to the application commencing without requiring NOIs to be submitted further in advance of an intended application than is currently required.

Without the electronic NOI submission requirement, DPR would need to either require the CAC to input information from non-electronic NOIs into CalAgPermits or to manually transmit the non-electronic NOIs to DPR so that DPR could enter the information into CalAgPermits so that DPR could make the specific NOI information publicly available in a user-friendly electronic format before the application occurs. Under both of these alternatives, DPR would need to require the NOIs to be submitted to the CAC more than 24 hours in advance of the intended start of a restricted material application and more than 48 hours in advance of the intended start of a soil fumigation so that either the CAC or DPR would have sufficient time to enter the specific NOI information into CalAgPermits and so that DPR could provide public notice of the intended application 24 or 48 hours before it occurs.

Property operators have stated that it would be very economically burdensome to change the timing for NOI submission to require NOIs for non-soil fumigations to be submitted more than 24 hours in advance of an intended application as they potentially would be unable to promptly address pest pressures threatening the viability of their crop. (UC Davis, June 2022; UC Davis, November 2022.) CACs also expressed concern that requiring NOIs to be submitted earlier could negatively impact overall compliance with NOI submission requirements. Property operators may submit multiple NOIs to cover a range of dates/times of potential applications so they can be assured that they can promptly make necessary pesticide applications. Property operators also may increasingly try to rely on the timing exemption for emergency circumstances outlined in proposed 3 CCR section 6434(f). Requiring NOIs to be submitted 48 or 72 hours in advance of an application is estimated to annually cost the agricultural industry an additional \$54,842 or \$109,685, respectively. (Rudder, 2021.)

Moreover, requiring NOIs to be submitted earlier would potentially adversely economically impact all property operators using restricted materials in the state, whereas requiring electronic submission is likely to pose an economic impact on a limited number of NOIs in select counties since currently most NOIs are submitted electronically. (Compare Rudder, 2021 with Zheng, 2023.) To limit potential impacts to individual property operators for whom electronic NOI submission is unduly burdensome, the proposed regulations authorize CACs to grant an exemption from this electronic submission requirement. Accordingly, DPR determined that the alternative of not requiring electronic submission of NOIs would not achieve the purpose of this regulation with less possible adverse economic impact.

Alternative 2 - Providing public notice more than 24 hours in advance of an intended application of a non-soil fumigant restricted material and more than 48 hours in advance of an intended application of a soil fumigant.

DPR also considered providing public access to information about upcoming intended agricultural commodity restricted material applications more than 24 hours in advance of the intended start of the application for a non-soil fumigant restricted material and more than 48 hours in advance of the intended start of a soil fumigation. Community groups have requested public notice of upcoming restricted material applications 36-72 hours in advance of the application. (UC Davis, June 2022; UC Davis, 2023.) This would require NOIs to be submitted to the CAC and specific NOI information to be submitted to DPR 36-72 hours in advance of the intended application. Currently, NOIs are required to be submitted 24 hours in advance of an intended restricted material application and generally 48 hours or more in advance of an intended soil fumigation.

As mentioned above, property operators and CACs have stated that increasing the amount of time that an NOI must be submitted before an intended application commences beyond the 24 hours in advance of non-soil fumigant restricted material applications and the 48 hours in advance of a soil fumigation will “cause economic damage”. (UC Davis, June 2022; Rudder, 2021.) Property operators may be unable to promptly respond to pest pressures resulting in crop loss. This could also result in increased pesticide use as the pests may spread to more acres and/or the infestation may become more severe and could result in the proliferation of invasive pests and jeopardize California’s agriculture economy. It is estimated that increasing the NOI submission requirement to 48 hours prior to a non-fumigant application will cost the agricultural industry an additional \$54,842 annually and increasing the NOI submission requirement to 72 hours in advance of a non-fumigant application will cost the \$109,685 annually. (Rudder, 2021.)

Moreover, as discussed above, requiring NOIs to be submitted further in advance of an intended application could result in property operators submitting multiple NOIs covering a range of dates/times of potential applications so they are assured that they can promptly make necessary pesticide applications during critical seasons. This could require CACs to review numerous NOIs for applications that property operators may not actually make. It could also result in DPR receiving and providing public notice of pesticide applications that property operators will not make. This does not accomplish the purpose of this proposed regulation, which is to provide the public with information about upcoming and actually intended restricted material applications. Accordingly, DPR determined that this alternative would be more economically burdensome to businesses and may not achieve the purpose of this proposed regulation.

Alternative 3 - Providing public notice about intended soil fumigations only.

As discussed above, the purpose of this regulation is for DPR to obtain information about upcoming intended agricultural commodity restricted material applications so that DPR can provide public notification of these intended applications and to support DPR’s regulation and oversight of all restricted material use statewide. Restricted materials are pesticides that DPR determined have a higher potential to cause harm to public health, farm workers, domestic animals, honeybees, the environment, wildlife, or other crops compared to other pesticides. DPR considered only requiring information from NOIs for intended soil fumigant applications to be submitted to DPR and only providing public notice about intended soil fumigations. This

alternative would decrease the number of NOIs that are required to be electronically submitted, which would lessen the potential economic impact of this proposed regulation. However, DPR determined that this alternative would not achieve the purpose of this regulation. While DPR and the public are interested in upcoming soil fumigant applications, DPR and the public are also interested in information about non-soil fumigant restricted material applications. (UC Davis, June 2022; Webinar Summary, 2022.) Therefore, DPR determined that limiting this regulation to only soil fumigant applications does not fully meet the purpose of this proposed action.

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

The proposed regulations 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.

California's current system of requiring an operator of the property to obtain an agricultural use restricted material permit and submit an NOI prior to applying a restricted material requiring a permit has been established for over 45 years. To meet the current needs of the proposed statewide notification system, DPR is proposing limited changes that build upon the established practices and requirements of the restricted material permitting program; most of which are consistent with current industry practices.

The proposed change with the most economic impact is the proposed requirement that all agricultural use NOIs be submitted electronically via www.CalAgPermits.org. Since CalAgPermits was first introduced in 2011, CACs have actively encouraged property operators, pest control advisers, pest control businesses, and others to take advantage of options to submit PURs and NOIs electronically. Based on the data used for the economic impact analysis, 89 percent of the 86,567 agricultural use NOIs received by CACs in fiscal year 2020-2021 were submitted electronically. (CDPR, 2023; Zheng, 2023.) The percentage of agricultural use NOIs received electronically in fiscal year 2020-2021 (89 percent) is consistent with USDA's 2021 *Farm Computer Usage and Ownership* report which showed that 90 percent of California farms had internet access in 2021.

The California Department of Food and Agriculture's (CDFA's) Office of Pesticide Consultation and Analysis estimated in their *Cost of Proposed Changes to Restricted Material Notifications of Intent for Growers and Applicators* report that 1,938 growers with restricted material permits will be affected by the proposed requirement that NOIs be submitted electronically.

DPR recognizes there may be situations where it may be unduly burdensome to submit an NOI electronically. To account for those circumstances, under proposed section 6434(e) the CAC may make a finding of undue hardship which would allow the permittee to submit the NOI via other means. DPR is proposing to define in section 6434(e) that an undue hardship "may be a situation where it is not possible to electronically submit an NOI to CalAgPermits without significant difficulty or expense." Of the 1,938 production agricultural use permittees identified by CDFA, DPR estimates that CACs may find 15 percent of these permittees (291) meet the conditions for an undue hardship exemption as proposed to be defined in section 6434(e).

While some of the remaining 1,646 permittees may already have computers, based on the 2021 and 2023 USDA *Farm Computer Usage and Ownership* reports, it seems reasonable to assume all these permittees do not have internet access. There are free alternatives to purchasing a computer and subscribing to internet access (such as going to the local library) and other lower-cost alternatives (such as an authorized representative, like Pest Control Adviser, or a Pest Control Business submitting the NOI on the permittee's behalf). Some of the permittees may be eligible for the federal government's Affordable Connectivity Program. This program helps eligible households afford internet and devices they need for school, work, healthcare, and more.

However, to ensure a conservative estimate of potential economic impact of this proposed regulation, DPR will assume these 1,646 permittees will need to purchase a laptop or computer to access the internet (approximately \$200) and will need to sign up for internet service (estimated to be \$70 per month, or \$840 per year). In addition, DPR estimates three (3) agricultural use job permit holders will incur the same expenses. DPR further estimates that approximately 2,359 agricultural use permittees (1,646 production agriculture permittees, 3 agricultural use job permit holders, and 865 other non-production agriculture permittees) will be required to learn how to submit an NOI electronically. Per CDFA, this learning time is estimated to take 30 minutes at a cost of \$12.85 per 30 minutes. Taken together, the total economic impact on businesses over a lifetime of 5 years is estimated at \$7,290,487. These are conservative estimates, the actual economic cost of this regulation for agricultural use permittees to submit agricultural use NOIs electronically will likely be lower. According to CDFA, in 2021 California's farms and ranches received \$51.1 billion in cash receipts for their output. (CDFA 2021-2022.)

Based on this data and analysis, DPR has made an initial determination that the action will not have a significant adverse economic impact on businesses. The document relied upon to make this determination is the *Economic & Fiscal Analysis of Amending 3 CCR Sections 6000 (Definitions), 6424 (Forms), 6428 (Agricultural Permit Applications), 6432 (Permit Evaluation), and 6434 (Notice of Intent)* memorandum dated October 2, 2023. This document is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs with the State of California: DPR determined that the proposed action would not create or eliminate jobs in California because NOIs are already currently required to be submitted prior to applying a restricted material.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California: DPR determined the proposed action is unlikely to create new businesses or eliminate existing businesses within the State of California because NOIs are already currently required to be submitted prior to applying a restricted material. Pest management will be necessary regardless of any decline in sales and use of pesticides subject to the proposed regulation, and thus businesses are not expected to be impacted.

The Expansion of Businesses Currently Doing Business within the State of California: DPR has determined that this proposal is unlikely to result in an expansion of businesses currently doing business within California. Impacted property operators may purchase laptops or computers and

may also purchase a subscription to the internet through a service provider. These purchases and subscriptions would be spread out among existing providers and are unlikely to cause an expansion of businesses currently doing business within California.

If property operators choose to use another pest control option instead of using a restricted material, any new demand for pest control services would be spread out among the existing pest control advisers, pest control businesses, and pest control dealers in the state and would likely be handled with existing staff.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed statewide notification system will provide the public, including California residents, equitable and routine access to information about intended agricultural commodity restricted material applications around homes, places of work, schools, and other areas of interest. Certain stakeholder groups and members of the public have stated that advance information about intended agricultural commodity restricted material applications will afford them an opportunity to voluntarily take additional precautions to avoid potential exposure, such as closing windows and bringing in or cleaning children's outdoor toys, if they desire, which could indirectly lead to human health benefits. (Focus Group Summary, 2022.)

Requiring all agricultural use NOIs to be submitted electronically may have a net positive impact on the environment as it could increase CAC staff efficiency by allowing them to accept and process NOIs on CalAgPermits. Additionally, CAC staff will only need to search CalAgPermits instead of both CalAgPermits and paper files. NOIs submitted electronically through CalAgPermits are available using CalPEATS, the electronic system CAC staff use to conduct inspections and investigations. This may allow more time for CAC staff to conduct investigations and inspections of pesticide applications, which could have an indirect positive impact on the environment. Additionally, it may reduce the use of paper. As discussed in the Economic Impact section above, 89 percent of the 86,567 agricultural use NOIs received by CACs in fiscal year 2020-2021 were submitted electronically. This means over 9,500 NOIs were submitted to CACs via other means (e.g., DPR-provided paper forms, faxes, phone calls).

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

The Secretary of Natural Resources determined that DPR's pesticide regulatory program, including the adoption, amendment, and repeal of pesticide regulations, qualifies as a certified regulatory program under Public Resources Code section 21080.5 and 14 CCR section 15251(i). This determination means DPR's pesticide regulatory program is functionally equivalent to the California Environmental Quality Act's (CEQA) requirements for preparing environmental impact reports (EIRs), negative declarations, and initial studies, and is therefore exempt from such requirements. This initial statement of reasons serves as the public report required under 3 CCR section 6110 and satisfies the requirements of DPR's CEQA certified regulatory program for rulemakings at 3 CCR sections 6110-6116.

DPR's public report, as the substitute document satisfying CEQA functional equivalency

requirements, must include a description of the proposed activity, and either (A) alternatives to the activity and mitigation measures to avoid or reduce any significant effects that the project might have on the environment, or (B) a statement that DPR's review of the project showed that the project would not have any significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. (3 CCR section 6110). DPR shall not adopt a regulation that would cause a significant adverse environmental impact if there is a feasible alternative or mitigation measure that would substantially lessen those significant adverse environmental impacts. (3 CCR section 6116).

The restricted material permitting process, including the requirement that NOIs be submitted to the CAC for review, is also a CEQA certified regulatory program. (14 CCR section 15251(i)(4)). The Legislature determined that the restricted material permitting process should be a certified regulatory program, in part, because “[a]griculture is a major and essential component of California’s economy” and “individual permits to apply pesticides must often be issued on short notice, thereby making impracticable” to prepare an environmental impact report or negative declaration required by CEQA. (Stats. 1978, ch. 308, § 1.)

Under the restricted material permitting process, a property operator must obtain a restricted material permit prior to possessing or using a restricted material. (3 CCR section 6412.) Prior to making an agricultural restricted material application, a property operator must submit an NOI to the CAC that provides site and time-specific information so the CAC can evaluate whether the proposed application may cause a substantial adverse environmental impact. (3 CCR section 6432.) However, CACs are specifically exempt from the requirements to prepare written documentation and to provide public notice of a final decision. (1979 Decision on the Certification of the Pesticide Regulatory Program, signed by H. Johnson, December 28, 1979, p. 18.)

This proposed regulation will require NOIs to be submitted electronically to CACs and specific NOI information from to be simultaneously submitted to DPR a minimum of 24 hours in advance of the intended non-soil fumigant restricted material application and a minimum of 48 hours in advance of the intended soil fumigation. Additionally, this proposed regulation will require DPR to make the NOI information it receives publicly available in advance of the application.

DPR considered this proposed regulation’s potential impact on human health, flora (plants), fauna (fish and wildlife), water, and air. This proposed regulation does not affect the use of a restricted material or a CAC’s evaluation and approval of a restricted material permit or NOI – whether, when, and how a pesticide may be used.

DPR is proposing to require that all agricultural use NOIs be electronically submitted to CACs via www.CalAgPermits.org. Currently, NOIs may also be submitted orally or in a written paper format. As stated above, this may increase CAC efficiency by allowing CACs to only search CalAgPermits for an NOI submission, rather than having to search both CalAgPermits and paper files. In addition, CAC efficiency may also be increased because electronic NOIs are available to CAC staff using CalPEATS, the electronic system CAC staff use to conduct inspections and

investigations. CAC staff can search electronic NOIs in CalAgPermits and use an electronic NOI to automatically populate applicable fields on an inspection in CalPEATS. Increased efficiency in this area may allow CAC staff to devote additional time to conduct investigations and inspections of pesticide applications, which could have an indirect positive impact on human health and the environment.

Additionally, requiring NOIs to be submitted electronically may reduce the use of paper and as a result may have a net positive impact on the environment. That being said, in fiscal year 2020-21, 89 percent of NOIs were submitted electronically. Therefore, any positive environmental impact associated with a reduction in the use of paper is unlikely to be significant.

This regulation also requires DPR to make the specific NOI information it receives publicly available at least 48 hours prior to the intended start of a soil fumigation and at least 24 hours prior to the intended start of all non-soil fumigant restricted material applications for the production of an agricultural commodity. This may have a positive impact on human health. Currently, the public does not have regular and equitable access to information about intended restricted material applications. DPR's electronic notification system will inform the public of intended upcoming restricted material applications. DPR anticipates there may be human health benefits associated with the public having more knowledge about restricted material applications. First, certain stakeholder groups and members of the public have informed DPR that increased knowledge of restricted material pesticide applications will allow members of the public, including sensitive subpopulations, to voluntarily take common sense precautions to decrease the chance of potential exposure from a pesticide application that is not conducted in compliance with regulatory requirements. These measures may include closing doors and windows, keeping children and pets inside if possible, bringing inside or covering and washing toys that are left outside, bringing in laundry from outdoor clotheslines, cleaning blinds and windowsills, or other actions that may be generally appropriate for individuals living in areas of high pesticide use. (Focus Groups Summary, 2022.) Second, this regulation may increase communication and collaboration between property operators and the public about upcoming pesticide applications. This could indirectly lead to human health and environmental benefits, such as growers and the public collaborating on general IPM and safer solutions to pest problems in the community. (Focus Groups Summary, 2022.) There is no information available to quantify these potential human health and environmental impacts. However, any impact to human health and the environment is reasonably expected to be positive. The proposed regulation is not reasonably likely to have any other environmental impact, negatively or positively. As such, no significant adverse effect to California's environment can reasonably be expected to occur from implementing the proposed regulations. Accordingly, no alternatives or mitigation measures are proposed to lessen any significant adverse effect on the environment.

EFFORTS TO AVOID CONFLICT OR DUPLICATION OF FEDERAL REGULATIONS

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

DOCUMENTS RELIED UPON

1. CalAgPermits' Notice of Intent Data for FY 2021/22 (CalAgPermit Data 2021/22.)
2. California Department of Pesticide Regulation (October 2, 2023) "Economic & Fiscal Analysis of Amending 3 CCR Sections 6000 (Definitions), 6424 (Forms), 6428 (Agricultural Permit Applications), 6432 (Permit Evaluation), and 6434 (Notice of Intent)." (CDPR, 2023.)
3. California Department of Pesticide Regulation (2023) "Pesticide Annual Use Report, History and Background", https://www.cdpr.ca.gov/docs/pur/pur_history_background.pdf
4. California Department of Pesticide Regulation "Pesticide Regulatory Activities Monthly Report Summary 2021/22.", https://www.cdpr.ca.gov/docs/enforce/pramr/2021-22_pramr.xlsx (PRAMR 2021/22.)
5. California Department of Food and Agriculture (2021-2022) "California Agricultural Statistics Review 2021-2022.", available at https://www.cdfa.ca.gov/Statistics/PDFs/2022_Ag_Stats_Review.pdf (CDFA 2021-2022)
6. Polsky, C. (2021) "The Hidden Success of a Conspicuous Law: Proposition 65 and the Reduction of Toxic Chemical Exposures", *Ecology Law Quarterly*, <https://www.ecologylawquarterly.org/print/the-hidden-success-of-a-conspicuous-law-proposition-65-and-the-reduction-of-toxic-chemical-exposures/>
7. Sacramento State College of Continuing Education (May 3, 2022) "Focus Groups Summary.", https://www.cdpr.ca.gov/docs/pesticide_notification_network/notification_system_focus_groups_summary.pdf (Focus Groups Summary, 2022.)
8. Sacramento State College of Continuing Education (May 3, 2022) "Webinar Summary.", https://www.cdpr.ca.gov/docs/pesticide_notification_network/webinar_11-2_11-3_summary.pdf (Webinar Summary, 2022.)
9. UC Davis Center for Regional Change "Statewide Pesticide Application Notification System June 2022 Workshop Summary Report.", https://www.cdpr.ca.gov/docs/pesticide_notification_network/june_2022_workshop_summary.pdf (UC Davis, June 2022.)
10. UC Davis Center for Regional Change "Statewide Pesticide Application Notification System November 2022 Workshop Summary Report.", https://www.cdpr.ca.gov/docs/pesticide_notification_network/pesticide_notification_workshop_summary.pdf (UC Davis, November 2022.)

11. UC Davis Center for Regional Change “Outcome and Process Evaluation for Four Pilot Projects for the Statewide Notification System.”, https://www.cdpr.ca.gov/docs/pesticide_notification_network/outcome_process_evaluation_our_pilot_projects.pdf (UC Davis, 2023.)
12. United States Department of Agriculture (August 2021) “Farm Computer Usage and Ownership”, available at: <https://downloads.usda.library.cornell.edu/usda-esmis/files/h128nd689/j0990b03m/bk129904d/fmpc0821.pdf>
13. United States Department of Agriculture (August 2023) “Technology Use (Farm Computer Usage and Ownership)”, available at: <https://downloads.usda.library.cornell.edu/usda-esmis/files/h128nd689/4j03fg187/fj237k64f/fmpc0823.pdf>
14. Rudder, J., Zheng, Y., Mace, K., Goodhue, R. (2021). “Cost of Proposed Changes to Restricted Material Notifications of Intent for Growers and Applicators.”
15. Zheng, Y., Mace, K., Raburn, S., Rudder, J., Goodhue, R. (2023). “Cost of Proposed Changes to Restricted Material Notifications of Intent for Growers and Applicators.”