

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Prevention of Surface Water Contamination by Pesticides
DPR Regulation No. 11-004

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6000 and adopt sections 6970 and 6972 of Title 3 California Code of Regulations (3 CCR). The proposed action would identify pesticides that have a high potential to contaminate surface water in outdoor nonagricultural settings, and require pest control businesses, including maintenance gardeners, that apply these pesticides to take actions to minimize that contamination.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on December 12, 2011. Comments regarding this proposed action may also be transmitted via e-mail to <dpr11004@cdpr.ca.gov> or by facsimile at 916-324-1452.

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

EFFECT ON SMALL BUSINESS

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

State law mandates that DPR protect human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management.

Pesticides are applied to crops and other rural and urban sites to control diseases, insects, weeds, and other pests. Some pesticides have contaminated surface water as a result of those applications. If pesticides reach surface water at certain concentrations, they can cause toxicity to aquatic organisms, including fish, invertebrates such as water fleas, and nonvascular plants such as algae. They can also exceed drinking water levels that are protective of human health. Food and Agricultural Code (FAC) section 11501 states that one of the purposes of Division 6 (Pest Control Operations) and the parts of Division 7 (Agricultural Chemicals, Livestock Remedies, And Commercial Feeds) of the FAC that address pesticide regulation is, "To protect the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides."

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

Federal, state, and local entities have sampled surface water for pesticides, including the U.S. Geological Survey, Dow AgroSciences, DPR, the State Water Resources Control Board, the Central Valley Regional Water Quality Control Board, Deltakeeper, the San Francisco Estuary Institute, the Sacramento River Watershed Program, and various regional water quality coalitions, counties, and cities. These sampling results are stored in the DPR Surface Water Database. This sampling has shown that pesticides contaminate surface water both in agricultural and urban areas.

The proposed regulatory action pertains to the following 17 pyrethroid pesticides: bifenthrin, bioallethrin, S-bioallethrin, cyfluthrin, beta-cyfluthrin, gamma-cyhalothrin, lambda-cyhalothrin, cypermethrin, deltamethrin, esfenvalerate, fenpropathrin, tau-fluvalinate, permethrin, phenothrin, prallethrin, resmethrin, and tetramethrin. The pesticides addressed in this proposal were selected based on the following criteria: (1) subject to the U.S. Environmental Protection Agency's Environmental Hazard and General Labeling for Pyrethroid Non-Agricultural Outdoor Products Notification of June 4, 2009, and (2) registered for outdoor structural, residential, industrial, or institutional use in California.

This proposal would adopt mitigation measures that would apply to the outdoor use of these pesticides when applied by pest control businesses, including maintenance gardeners, in nonagricultural settings.

The proposal would adopt 3 CCR section 6970 to specify allowable application methods for the 17 pesticides mentioned above when used in outdoor nonagricultural settings, and when applied by pest control businesses, including maintenance gardeners. These proposed application methods would reduce the amount of pesticides available for runoff to surface water. Restrictions would include applications to the soil surface, mulch, gravel, lawn, turf, or groundcover; horizontal impervious surfaces; vertical structural surfaces, such as walls, foundations, windows, doors, and fencing; and granule formulations.

In addition to DPR's proposal to limit applications to specific methods in order to reduce surface water contamination, DPR proposes to prohibit any application under certain circumstances. These requirements are designed to prohibit applications during precipitation that can carry these pesticides in runoff water to surface water, and to reduce the amount of these pesticides applied that could be carried by rain water to surface water.

DPR proposes to adopt 3 CCR section 6972 to exempt certain applications of the listed pesticides from the proposed mitigation measures because they would not be subject to runoff to surface water or are being addressed by other agencies, or because specified uses are being addressed by the regional water quality control boards via National Pollutant Discharge Elimination System permits.

DPR also proposes to adopt definitions to help clarify terminology proposed in section 6970.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

County agricultural commissioner (CAC) offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR negotiates an annual work plan with the CACs for enforcement activities.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

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

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. This proposed action is expected to result in an annual net savings of \$2.7 million during 2012-2016. Home residents,

commercial and institutional property operators, and pesticide applicators are expected to incur a savings of \$6.1 million due to reduced pesticide use. However, it is expected there will be an increased cost to applicators of \$3.4 million (\$138 per business per year) as the proposed action specifies when pesticides cannot be applied (some lost business during rainfall and standing water). Applicators will also incur costs as they are expected to increase the frequency of return visits (call backs) resulting from less pesticide used on site.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11052, 12111, 12781, 12976, 12981, and 14005.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11408, 11410, 11501, 11701, 11702(b), 11704, 11708(a), 12042(f), 12103, 12971, 12972, 12973, 12980, 12981, 13145, 13146, and 14006.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Policy
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted below:

Mark Pepple, Staff Environmental Scientist
Environmental Monitoring Branch
916-324-4086

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR’s Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the proposed text can be made available in an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR’s Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION

Director

Date