

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Spray Adjuvant Ingredient Statement Requirements
DPR Regulation No. 22-004

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt Title 3, California Code of Regulations (3 CCR) section 6247. The pesticide regulatory program activities affected by the proposal are those pertaining to the registration of spray adjuvant products. In summary, the proposed action will establish and standardize ingredient statement requirements, including principal functioning agent identification and nomenclature requirements, on spray adjuvant product labels. The proposed regulations will only apply to spray adjuvant products submitted for registration or an amendment on or after the effective date of this proposed action. Labels of currently registered spray adjuvant products will have to comply with the proposed regulations if and when an application for a label amendment is submitted.

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 20, 2022. Comments regarding this proposed action may also be transmitted via e-mail to <dpr22004@cdpr.ca.gov> or by facsimile at 916-324-1491.

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

EFFECT ON SMALL BUSINESS

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment by regulating pesticide sales and use and by fostering reduced-risk pest management. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

With certain exceptions, pesticides must be registered (licensed for sale and use) with the U.S. Environmental Protection Agency (U.S. EPA) before they can be registered in California. DPR's preregistration evaluation is in addition to, and complements, U.S. EPA's evaluation. Before a pesticide can be sold or used in California, both agencies require data on a product's toxicology and chemistry—how it behaves in the environment; its effectiveness against targeted pests and

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

the hazards it poses to nontarget organisms; its effect on fish and wildlife; and its degree of worker and bystander exposure.

The purpose of the registration process is to determine whether the pesticide product can be used safely and effectively in accordance with its label directions. The pesticide product label and scientific data must be reviewed and found acceptable before the product can be registered. Pesticide product labels provide critical information about the product, and must include certain information, including an ingredient statement that identifies the name and percentage by weight of each active ingredient and the percentage by weight of other, inert ingredients. Labeling requirements are generally set forth in Title 40, Code of Federal Regulations (40 CFR) section 156.10.

A “spray adjuvant” is any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, which is intended to be used with another pesticide as an aid to the application or effect of the other pesticide, and sold in a package that is separate from that of the pesticide other than a spray adjuvant with which it is to be used (FAC section 12758). Under California law, spray adjuvants are considered pesticides (FAC section 12753(a)). Therefore, DPR requires the registration of spray adjuvants, which are not considered pesticides under federal law. Because spray adjuvants are not considered pesticides under federal law, they are not covered under the labeling requirements in 40 CFR section 156.10.

California statute currently has limited requirements for spray adjuvant labeling. FAC section 12883(b) states that “a pesticide that is sold only as a spray adjuvant is not misbranded if the total percentage of the constituents ineffective as a spray adjuvant is stated on the label without mention of the terms ‘active ingredient’ or ‘inert ingredient’.” FAC section 12885 states that while the label must state the type or function and the names of the principal functioning agents, in cases where more than three functioning agents are present, only the three principal ones need be named. In addition, Article 10 of 3 CCR establishes limited requirements for items that must be identified on product labeling in California. However, DPR has the authority (FAC sections 11501 and 12824) to require additional label language if it is determined that the omission of such label statements would pose a hazard to humans or the environment.

Because the federal government does not register spray adjuvants, 40 CFR section 156.10 does not contain labeling requirements specific to spray adjuvant ingredient statements, including requirements for principal functioning agent nomenclature. Because California requires registration of stand-alone spray adjuvant products, spray adjuvant labeling requirements are necessary to establish clear ingredient statement requirements and distinguish principal functioning agents from active and inert ingredients covered by federal regulations. In addition, as spray adjuvants are considered pesticides under California law, this will ensure some consistency among ingredient statements of all pesticides.

The proposed regulations will specify ingredient statement requirements for spray adjuvant products, including which ingredients must be named and how the concentrations of certain ingredients must be listed. They will also clarify nomenclature requirements for principal functioning agents listed on the label by specifying how certain principal functioning agents must be identified. The proposed regulatory action does not impose additional data requirements, and will only apply to labels of spray adjuvant products submitted for registration or an amendment on or after the effective date of this proposed action.

The broad objective of the proposed action is to benefit the health and welfare of California residents, worker safety, and the State's environment by defining consistent and meaningful methods of identifying principal functioning agents on spray adjuvant product labels. Many principal functioning agents used in spray adjuvant formulations are polymers or mixtures that lack common names that would be more easily identifiable to the general public. Such chemicals often have long and complex chemical names that do not provide readily identifiable information regarding chemical structure and general physicochemical properties. The use of chemical class provides a way to group chemicals with similar properties into distinct classes that are more meaningful to end-users. In cases where chemical class is inadequate in distinguishing properties among members of a class, the proposed regulation requires the use of chemical or common name to better protect the public and the environment.

During the process of developing these proposed regulations, DPR conducted a search of any similar regulations on this topic and has concluded that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposal will not interfere or otherwise impact other state agencies as DPR is the only agency that regulates spray adjuvants within the State.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

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

EFFECT ON FEDERAL FUNDING TO THE STATE

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

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR determined it is not likely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California. This action is consistent with current law and will not significantly restrict or increase the use of spray adjuvant products in California. The proposed action will specify ingredient statement requirements, including nomenclature that must be used to identify principal functioning agents on new and amended spray adjuvant labels.

The proposed regulations will benefit the health and welfare of California residents, worker safety, and the State's environment by defining consistent and meaningful methods of identifying principal functioning agents on spray adjuvant product labels. Many principal functioning agents used in spray adjuvant formulations are polymers or mixtures that lack common names that would be more easily identifiable to the general public. Such chemicals often have long and complex chemical names that do not provide readily identifiable information regarding chemical structure and general physicochemical properties. The use of chemical class provides a way to group chemicals with similar properties into distinct classes that are more meaningful to end-users. In cases where chemical class is inadequate in distinguishing properties among members of a class, the proposed regulation requires the use of chemical or common name to better protect the public and the environment.

CONSIDERATION OF ALTERNATIVES

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

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11501 and 12781.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 12753, 12758, 12883 and 12885.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AGENCY CONTACT

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

Lauren Otani, Senior Environmental Scientist (Specialist)
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-5781

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

Jason Eiserich, Environmental Program Manager I
Pesticide Evaluation Branch
916-324-3899

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

AVAILABILITY OF FINAL STATEMENT OF REASONS

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