

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Adopt Section 6722; Amend Sections 6000, 6618, 6619, 6720, 6723,
6723.1, 6724, 6726, 6732, 6734, 6738.3, 6738.4, 6744, 6761, 6761.1,
6762, 6764, 6766, 6768, 6769, 6770, 6771, 6776, and 6782
Pertaining to Worker Protection Standard

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

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM ACTIVITIES
AFFECTED

The Department of Pesticide Regulation (DPR) proposes to adopt 3 CCR section 6722; and to amend sections 6000, 6618, 6619, 6720, 6723, 6723.1, 6724, 6726, 6732, 6734, 6738.3, 6738.4, 6744, 6761, 6761.1, 6762, 6764, 6766, 6768, 6769, 6770, 6771, 6776, and 6782. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to pesticide worker safety. In summary, the proposed action would amend existing worker safety regulations to align with the newly revised federal Worker Protection Standard (WPS) regulations [Title 40 Code of Federal Regulations, Part 170 (40 CFR)] that become effective January 2, 2017. The proposed action revises requirements for training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and emergency decontamination when using a pesticide for the commercial or research production of an agricultural commodity.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR's mission is to protect public health and the environment from adverse effects of pesticide use. DPR regulates: pesticide product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and pesticide residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

The FAC also specifically requires that DPR adopt regulations to ensure safe working conditions for persons handling pesticides and working in and about pesticide-treated areas. DPR's current regulatory requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment, restricted-entry intervals after pesticide application, decontamination supplies, and emergency medical aid are designed to reduce the risk of pesticide exposure and injuries among pesticide handlers and workers exposed to pesticides.

In 1992, the U.S. Environmental Protection Agency (U.S. EPA) issued the federal Worker Protection Standard (WPS), which became final in 1995. U.S. EPA acts under the authority and

mandate of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The federal WPS regulations are found at 40 CFR, part 170, Agricultural WPS. The purpose of the federal WPS is to provide protection to pesticide agricultural workers and handlers through training, notification, pesticide safety and hazard communication information, use of personal protective equipment, and emergency decontamination requirements.

U.S. EPA granted DPR primacy for pesticide enforcement in California and, in 1997 after DPR made changes to its regulations to conform to the federal WPS, U.S. EPA determined California's worker safety program to be equivalent to the federal WPS. In addition to the requirements that were equivalent to the federal WPS, over the years, DPR has put into place several regulatory requirements that are stricter than those in the federal WPS through rulemaking.

On November 2, 2015, U.S. EPA revised portions of its federal WPS to enhance protections in its existing WPS. The purpose of its revisions is to further reduce occupational pesticide exposure and incidents or related illness among agricultural workers and pesticide handlers when using pesticides for the production of an agricultural commodity.

In general, California's regulatory requirements are more stringent and U.S. EPA based many of their new requirements on those in California. While DPR's worker protection regulations are already consistent or more restrictive than most of the regulatory changes mandated by the newly revised federal WPS rules, DPR needs to revise some of its existing California worker safety regulations in 3 CCR to ensure they are consistent with the newly revised federal WPS.

DPR proposes the following amendments in order to maintain at least the same level of protection as the revised federal WPS. DPR is not proposing any additional requirements beyond what will become effective nationwide by U.S. EPA in January 2017.

This regulation will go into effect on January 2, 2017.

PROPOSED AMENDMENTS

- Section 6000. Definitions

DPR proposes to add some of the definitions found in 40 CFR 170.305, and to amend some existing definitions to further clarify terms used in this proposed action.

DPR proposes to add the definition of "application exclusion zone" to specify the area that must be free of all persons other than trained and equipped handlers during pesticide applications.

DPR proposes to revise the definition of "enclosed cab" to remove references to the "American Society of Agricultural Engineers Standard" since the American Society of Agricultural Engineers no longer certifies enclosed cabs in accordance with the WPS, and to add "prevents dermal contact with pesticides being applied outside of the cab" to be consistent with federal definition.

DPR proposes to delete the definition of "enclosed cab approved for respiratory protection" since, as mentioned above, the American Society of Agricultural Engineers no longer certifies enclosed cabs in accordance with the WPS.

DPR proposes to add the definition "enclosed space" and delete the definition of "greenhouse" to align with the WPS usage of the term "enclosed space production." "Enclosed space" is the space enclosed, entirely or in part, with a nonporous covering of sufficient size to permit entry, and includes hoop houses, greenhouses, etc. Since the proposed definition of "enclosed space" includes a "greenhouse", DPR proposes to delete the definition of "greenhouse" from section 6000.

DPR proposes to amend the definition of "field" to reference the term "enclosed space" instead of "greenhouse" since the definition of "greenhouse" is being deleted.

DPR proposes to add the definition of "worker housing area" to be any place or area of land on or near an agricultural establishment where the agricultural employer, owner, labor contractor, or any other person responsible for recruitment or employment of agricultural workers provides housing or space for housing for workers or handlers. This definition is consistent with the newly revised WPS definition of worker housing area.

- 40 CFR 170.309 - Agricultural Employer Duties

In general, 40 CFR 170.309 requires agricultural employers to ensure safe work practices for their employees. Most of these requirements are already addressed in 3 CCR sections 6619, 6702, 6723.1, 6724, 6726, 6742, 6744, 6761.1, 6766, and 6770. However, DPR proposes to adopt section 6722 and amend sections 6726 and 6766 to address new age restrictions and information required to be provided to medical personnel.

DPR proposes to adopt section 6722 prohibiting the employer from allowing an employee under the age of 18 years old to handle pesticides used in the commercial or research production of an agricultural commodity or to enter a field under a restricted entry interval to comply with 40 CFR 170.309(c).

Section 6726 provides emergency medical care requirements for employees handling pesticides and section 6766 provides emergency medical care requirements for employees who enter fields that have been treated with pesticides. However, these sections do not address the information that must be provided to the treating medical personnel pursuant 40 CFR 170.309(f)(2). DPR proposes to amend sections 6726 and 6766 to require that the employer provide the following information to medical personnel treating an employee for a suspected pesticide exposure: product name, active ingredient, Safety Data Sheet, and circumstances that could have resulted in exposure to the pesticide.

Section 6744 requires employers to inform employees of the pesticide hazards they may encounter while cleaning pesticide equipment and how to protect themselves. DPR proposes to amend section 6744 to also require that the owner or operator of the equipment notify the person in charge of cleaning, servicing, or repairing the equipment of the hazards and methods to protect themselves. This proposed amendment is consistent with 40 CFR 170.309(g).

- 40 CFR 170.311- Display Requirements for Pesticide Safety Information and Pesticide Application and Hazard Information

In general, 40 CFR 170.311 requires employers to provide application and hazard information to their employees, employee representatives, and treating medical personnel. Most of these requirements are included in 3 CCR sections 6723, 6723.1, 6761, and 6761.1. However, DPR needs to more specifically detail the application and hazard information required to be displayed, where it is required to be displayed, and under what circumstances it is required to be provided to medical personnel and employee representatives.

Sections 6723 and 6761 require employers to display the Pesticide Safety Information Series (PSIS) A-8 and/or A-9 leaflet at a central location. The PSIS provides the employee with information for pesticides on farms and how to protect themselves from potential pesticide hazards. Additionally, sections 6723 and 6761 require the employer to identify an emergency medical care facility capable of treating pesticide related illnesses on A-8 and A-9, but there is no requirement for updating this information if it changes. Therefore, in order to be consistent with 40 CFR 170.311(a)(4), DPR proposes to add to section 6723(b)(2)(B) and amend 6761(a) to require employers to update their medical care information on the A-8 and A-9 within 24 hours of a change to the information.

Section 6723 and 6761 require employers to display the PSIS A-8 and/or A-9 leaflet at a central location. DPR proposes to add to section 6723(b)(2)(A) and amend 6761(a) to require the A-8 and A-9 to be displayed at all decontamination sites servicing 11 or more employees in addition to the central location as required by 40 CFR 170.311(a)(5).

Sections 6723.1 and 6761.1 already require the property operator to display application-specific information. DPR proposes to amend the requirements under 6723.1(a) and 6761.1(a) to include: crop and site treated, date and time of application, start and end time, and corresponding Safety Data Sheet(s) to be consistent with 40 CFR 170.311(b)(1).

40 CFR 170.311(b)(6) requires pesticide safety, hazard, and application information be retained for two years after the expiration of the restricted entry interval. Sections 6619(i) and 6624(g) require the property operator to retain application-specific information for two years. However, the application-specific information required to be retained in these sections does not include the application start time or the Safety Data Sheet(s). DPR proposes to amend sections 6619(b), 6723.1(c), and 6761.1(d) to ensure the application-specific information includes this information.

Sections 6723 and 6761 already require employers to provide employee representatives with application and hazard information. However, an employee representative is currently not required to make this request in writing, and is not required to include in the request information such as employee name, date of the records being requested, type of work conducted by the employee during the period for which the records are requested, and direction on where information should be sent. DPR proposes to amend sections 6723(d) and 6761(d) to specify these requirements to be consistent with 40 CFR 170.311(b)(9).

- 40 CFR 170.313 Commercial Pesticide Handler Employer Duties

In general, 40 CFR 170.313 requires commercial pesticide handler employers to ensure safe work practices for their employees. Most of these requirements are already addressed in 3 CCR sections 6618, 6619, 6702, 6723.1, 6724, 6726, 6742, 6744, 6761.1, 6766, and 6770. However, DPR proposes changes to 3 CCR sections 6618, 6722, 6726, and 6766 to include new application information required to be provided to the property operator by the person performing pest control, age restrictions, and information required to be provided to medical personnel.

As mentioned above, DPR proposes to adopt section 6722(a) prohibiting the employer from allowing an employee under the age of 18 years old to handle pesticides used in the commercial or research production of an agricultural commodity, which is consistent with 40 CFR 170.313(c).

Currently, section 6618 requires each person performing pest control to provide notice of a scheduled application to the operator of the property to be treated. 40 CFR 170.313(i) outlines the information the person performing pest control is required to provide to the operator of the property. To be consistent, DPR proposes to amend section 6618(a)(1)(A) and (F) to require persons performing pest control to inform the property operator of the expected start and stop times and whether the pesticide requires oral notification, posting of the fields, or both. Additionally, DPR proposes to amend section 6618(a)(2) to assure that the property operator receives notice of any such change pursuant to 40 CFR 170.313(j).

As mentioned above, DPR proposes to amend section 6726 and 6766 to require the employer to provide the information to medical personnel treating an employee for a suspected pesticide exposure as required in 40 CFR 170.309(f)(2). The proposed amendments are also consistent with the requirements in 40 CFR 170.313(k).

Section 6744 requires employers to inform employees of the pesticide hazards they may encounter while cleaning pesticide equipment and how to protect themselves. DPR proposes to amend section 6744 to also require that the owner or operator of the equipment notify the person in charge of cleaning, servicing, or repairing the equipment of the hazards and methods to protect themselves. This proposed amendment is consistent with 40 CFR 170.313(l), as well as 40 CFR 170.309(g).

- 40 CFR 170.401 – Training Requirements for Workers

This section requires employers to ensure fieldworkers are trained on pesticide safety before entering a treated field. Most of these requirements are already addressed in 3 CCR section 6764. However, changes will need to be made to ensure training is conducted annually, trainers are present throughout the training program, and employers maintain a record of field worker training for two years.

Section 6764(a) requires the employer to assure that each fieldworker assigned to work in a treated field has been trained within the last five years. DPR proposes to require fieldworkers be trained within the last twelve months as required by 40 CFR 170.401(a).

40 CFR 170.401(b) provides for exceptions to the training required in 40 CFR 170.401(a). 3 CCR section 6764(c) currently allows an employee who holds a valid DPR personal pesticide license or certificate or has received handler training pursuant to section 6724 within the past year to be exempt from fieldworker training requirements. DPR proposes to no longer exempt an employee with a valid verification of training card issued under the authority of U.S. EPA since U.S. EPA will no longer be issuing these cards.

Current section 6764(d) requires the training information be presented in a manner the employee can understand. DPR proposes to amend section 6764(d) to require trainers to be present throughout the training program and to require that the training be conducted in a location reasonably free from distraction. This is consistent with 40 CFR 170.401(c)(1).

Recordkeeping for fieldworker training is currently not required. DPR proposes to require employers to maintain a record of each fieldworker's training for two years. The information to be retained is the same as required in 40 CFR 170.401(d)(1). Proposed subsection (e) will also require the employer to provide a copy of the training record to the employee upon request, which is consistent with 40 CFR 170.401(d)(2).

- 40 CFR 170.403 – Establishment Specific Information for Workers

In general, 40 CFR 170.403 requires employers to ensure workers are notified of the location of the pesticide safety information, pesticide application and hazard information, and the decontamination supplies. Most of these requirements are already addressed in 3 CCR sections 6761 and 6768. However, changes will need to be made to section 6768(b) to ensure employees are notified of the location of the decontamination supplies prior to working in a treated field.

DPR proposes to amend section 6768(b) to require employers to notify employees of the location of the decontamination supplies prior to working in a treated field pursuant to 40 CFR 170.403(c).

- 40 CFR 170.405 - Entry Restriction Associated with Pesticide Applications

In general, 40 CFR 170.405 specifies application exclusion zones for enclosed space production and outdoor production based on the application method and droplet size. Application exclusion zones are new to WPS and are an expansion of the previous "entry restricted areas" for greenhouses and nurseries. DPR is proposing to amend section 6762 to incorporate U.S. EPA's new application exclusion zone restrictions.

Currently section 6762 prohibits employers from directing or allowing any person, other than the persons making the application, to enter or remain in a treated area during the application or to enter or remain in specified areas surrounding treated nurseries or greenhouses based on the application method. DPR proposes to amend 3 CCR section 6762(b) to broaden the scope of the area in which a person may not enter or remain to a field, which is consistent with 40 CFR 170.405.

3 CCR 6762(c) currently specifies that an employer must not allow any person, other than the person making the application, to enter or remain in a treated nursery or greenhouse. DPR

proposes to amend subsection (c) to change the "entry restricted area" to an "application exclusion zone" and to make more specific the application exclusion zone for different the application areas and application methods, which are outlined in proposed subsections (c)(1) and (2). Proposed subsection (c)(1) defines the application exclusion zones for outdoor production based on application method and spray quality. Proposed subsection (c)(1)(A) and (B) clarifies the existing requirements and removes references to pounds of pressure per square inch since this is no longer used to determine spray quality. These changes are consistent with 40 CFR 170.405(a).

DPR proposes to amend section 6762(c)(2) to change "greenhouse" to "enclosed space." This will broaden the scope to not only include greenhouses, but to also include hoop houses, poly houses, etc. The application exclusion zones for applications in an enclosed space are defined in proposed subsection (c)(2)(A-C). This is consistent with 40 CFR 170.405(b).

DPR proposes to reword section 6762(c)(2)(A) for clarity and to require the application exclusion zone to be the entire enclosed space plus any adjacent area that is not sealed when a pesticide is applied as a fumigant, smoke, fog, aerosol, or mist, or is a pesticide for which the product labeling requires respiratory protection. Although this is more restrictive than 40 CFR 170.405(b), DPR intends to maintain this current requirement but revise the terminology of this requirement to match U.S. EPA's new terminology.

DPR proposes to amend section 6762(c)(2)(B) to specify the application exclusion zone to be the entire enclosed space when the pesticide is applied using a fine spray quality, which is consistent with 40 CFR 170.405(b).

DPR proposes to re-letter section 6762(c)(2)(B) to (C), to reword for clarity, and to remove the reference to pounds of pressure per square inch since this is no longer used to determine spray quality. This is consistent with 40 CFR 170.405(b).

Also consistent with 40 CFR 170.405(b), DPR proposes to add section 6762(c)(1)(C) and to amend section 6762(c)(3) to specify there is no application exclusion zone if the pesticide is not applied in a manner specified in proposed section 6762 subsections (c)(1)(A-B) or (c)(2)(A-B), respectively.

In order to determine the spray quality when making applications for outdoor production or in enclosed spaces, proposed section 6762(d) specifies using the American Society of Agricultural and Biological Engineer S572.1 or comparable standard to interpret spray quality.

Current section 6769 establishes ventilation criteria for greenhouses only. DPR proposes to amend section 6769 to expand ventilation requirements to all enclosed spaces for commercial or research production of an agricultural commodity as required by 40 CFR 170.405(b). A non-substantive change has been made to (b)(5).

- 40 CFR 170.407 - Worker Entry Restrictions After Pesticide Applications

In proposed section 6770(d), "DPR changed the reference to 40 CFR Part 170.112(d)" to 40 CFR "Part 170.603(c)" to reflect the relevant new federal WPS regulation. DPR also changed the

reference to "greenhouse" to the proposed term "enclosed space" in proposed subsection (d)(2)(B) and (d)(3)(C).

- 40 CFR 170.409 - Oral and Posted Notification of Worker Entry Intervals

In general, 40 CFR 170.409 details the requirements for posting pesticide warning signs, specifically when and where they need to be posted and their content. Most of these requirements are already addressed in 3 CCR sections 6619 and 6776. However, DPR will need to revise the current requirement to post fields with restricted entry intervals of 7 days or more, to require field postings for restricted entry intervals greater than 48 hours for outdoor production, and greater than 4 hours for enclosed spaces.

DPR proposes to amend section 6776(a)(4) to require property operators to post fields treated with a pesticide that has a restricted entry interval greater than 48 hours instead of the current requirement to post when there is a restricted entry interval greater than 7 days, which is consistent with 40 CFR 170.409(a)(1)(ii).

40 CFR 170.409(a)(1)(iv) requires employers to post enclosed spaces with a restricted entry interval greater than 4 hours. Current section 6776(a)(2) requires employers to post all greenhouses unless access is controlled in a manner that assures no employee (other than the handlers making the application) will enter, work in, remain in, or pass through the greenhouse during the application and the restricted entry interval. Since U.S. EPA includes greenhouses in their definition of "enclosed space," the posting requirements for a greenhouse will not be as restrictive as DPR's current posting requirement. Therefore, DPR proposes to maintain the current posting requirements for greenhouses in section 6776(a)(2) and change "greenhouse" to "an entirely enclosed space" since the definition of greenhouse is proposed to be deleted from section 6000. All other enclosed spaces would require posting for restricted entry intervals greater than 4 hours in proposed subsection (a)(3) as required by 40 CFR 170.409(a)(1)(iv).

Current 6776(d) requires signs to be posted so that they are visible at all usual points of entry to the treated area, including each border with any labor camp adjacent to the treated field. DPR proposes to amend section 6776(d) to require property operators to post any treated area that shares a border with a worker housing area within 100 feet of the treated field, instead of any labor camp adjacent to the treated field. This is consistent with 40 CFR 170.409(b)(3)(ii).

Also, the reference to 40 CFR Part 170.120 in 3 CCR 6776(b), has been revised "Part 170.409" to reflect the correct section number.

DPR proposes to amend 3 CCR 6618(a)(7)(C) to require that notice of applications include instruction not to enter the application exclusion zone, which is consistent with 40 CFR 170.409(c)(3).

- 40 CFR 170.411 Decontamination Supplies for Workers

In general, 40 CFR 170.411 requires employers to provide decontamination supplies to fieldworkers working in treated fields. Most of these requirements are already addressed in 3 CCR

section 6768. However, DPR needs to include U.S. EPA's prescriptive standard for the amount of water that must be available to each worker, require decontamination supplies be located together, and clarify that wet towelettes and hand sanitizer are not considered acceptable decontamination supplies.

Consistent with 40 CFR 170.411(b) and (b)(1), DPR proposes to amend section 6768(a) to add section 6768(a)(1), which will require an employer to provide at least one gallon of water per employee, or three gallons of water per employee for employees engaged in early entry activities [discussed below in 40 CFR 170.605(h)]. The water will be required to be available at the start of the work day and of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes. Proposed section 6768(b) will further require the water to be stored separate from that used for mixing with pesticides unless the tank holding water for mixing with pesticides is equipped with appropriate valves to prevent back flow of pesticides into the water.

In proposed section 6768(b), DPR deleted the provision stating that handwashing facilities provided in conjunction with the toilet facilities pursuant to 8 CCR section 3457 are adequate since these facilities may not meet the minimum water requirements depending on the number of workers on site.

Current section 6768(a) requires the employer to provide soap and single use towels. DPR proposes to move these requirements to (a)(2) and (a)(3) and clarify that hand sanitizing gels and wet towelettes are not acceptable decontamination supplies, which is consistent with 40 CFR 170.411(b)(2). Also, DPR proposes to amend section 6768(a) to clarify that decontamination supplies must be located together at the decontamination site in accordance with 40 CFR 170.411(d). Current subsection (b) has been re-lettered to (c).

- 40 CFR 170.501 - Training Requirements for Handlers

In general, 40 CFR 170.501 requires employers to ensure handlers are adequately trained prior to handling pesticides. These requirements are already addressed in 3 CCR section 6724 except for the location of the training and some additional information that must be included as part of the recordkeeping requirements.

DPR proposes to amend section 6724(c) to require that handler training be at a location reasonably free from distraction and that trainers must be present throughout the entire presentation to be consistent with 40 CFR 170.501(c).

To be consistent with 40 CFR 170.501(d), DPR proposes to amend section 6724(e) to require the training records also include the employee's printed name, title(s) and source(s) of the training materials used, employer's name, trainer's name, and trainer's qualification.

A nonsubstantive change has been made to section 6724(f)(5)(A) to remove the date that is no longer necessary.

- 40 CFR 170.503 - Knowledge of Labeling, Application-Specific, and Establishment-Specific Information for Handlers

Consistent with 40 CFR 170.503, 3 CCR section 6723(c) requires employers to notify employees of the location of safety, application, and hazard information. As required under 40 CFR 170.503(b)(3), DPR proposes to require employers to notify handlers of the location of the decontamination supplies prior to handling pesticides in section 6734(b)(4).

- 40 CFR 170.505 - Requirements During Applications to Protect Handlers, Workers, and Other Persons

In general, 40 CFR 170.505 details requirements intended to protect handlers and persons not involved in the application. Most of these requirements concerning drift and visual/voice contact with handlers are already addressed in 3 CCR sections 6614, 6730, and 6782. However, DPR proposes to add U.S. EPA's requirement, outlined in 40 CFR 170.505(d)(1), that any employee in the enclosed space during fumigation must have continuous visual or voice contact with an employee immediately stationed outside the enclosed space to 3 CCR 6782(b).

To avoid confusion with the new proposed definition of "enclosed space" in section 6000, DPR proposes to change the terminology in section 6782 to "enclosed area." Also, current subsections (b) through (f) have been re-lettered to (c) through (g).

- 40 CFR 170.509 - Decontamination and Eye Flushing Supplies for Handlers

In general, 40 CFR 170.509 specifies what decontamination supplies are required to be provided to handlers. Most of these requirements are already addressed in 3 CCR sections 6732 and 6734. However, DPR proposes to codify U.S. EPA's prescriptive amount of water required to be available to handlers, clarify that hand sanitizers and wet towelettes are not acceptable decontamination supplies, and add the U.S. EPA's requirement for there to be an eyewash station at the mix and load site if the pesticide label requires protective eyewear.

DPR proposes to amend section 6734(b) to clarify that at least three gallons of water must be available for each handler at the beginning of each work day, and that hand sanitizing gels and wet towelettes are not acceptable decontamination supplies. These proposed amendments are consistent with 40 CFR 170.509(b)(1) and (2).

DPR proposes to amend section 6732 to require that the change area meets the requirements in section 6734(a) and proposed 6734(b)(1) and (b)(2), which is required by 40 CFR 170.509(a).

Current section 6734(c) requires one pint of eyewash water to be immediately available to handlers when the pesticide label requires protective eyewear. DPR proposes to renumber subsection (c) to (b)(5) and to specify when the pesticide label requires protective eyewear that there must be one pint of water available to each employee, and that when the handler is mixing or loading a pesticide that requires protective eyewear then only the requirements in proposed section 6734(b)(6) apply. These proposed amendments are consistent with 40 CFR 170.509(b). DPR's proposed section 6734(b)(6) incorporates U.S. EPA's requirement that an eyewash system capable

of flushing the eyes gently for 15 minutes be at each mix and load site if the pesticide label requires protective eyewear. This is consistent with 40 CFR 170.509(d).

In proposed section 6734(b)(3) and (b)(5), DPR deleted the reference to the requirements applying to employees handling pesticides for the commercial or research production of an agricultural plant or commodity since it is redundant, as well as some additional re-lettering or renumbering in section 6734.

- 40 CFR 170.601(b) – Exemptions

DPR proposes to amend section 6720(d) to remove the exemptions for employees of crop advisers relating to specific training, decontamination, and personal protective equipment requirements. DPR also proposes to limit the exemption for crop advisers to work after the pesticide application is complete. Both of these are consistent with 40 CFR 170.601(b).

- 40 CFR 170.603 - Exception for Entry by Workers During Restricted Entry Intervals

In general, 40 CFR 170.603 specifies the exemptions under which a worker is allowed to reenter a field under a restricted entry interval. Most of these requirements are addressed in 3 CCR section 6770. However, DPR proposes amend section 6770(d)(2)(A) to remove the clause allowing a person to work in an enclosed cab in a field under a restricted entry interval if personal protective equipment is immediately available should the worker need to exit the tractor. This is consistent with 40 CFR 170.603(a)(1). Also, DPR proposes to amend section 6770(d)(3)(G) to require the employer assure no hand labor activities are performed when an employee is allowed to enter a treated field during a restricted entry interval to conduct limited contact activities. This is consistent with 40 CFR 170.603(d).

- 40 CFR 170.605 - Agricultural Employer Responsibilities to Protect Workers Entering Treated Areas During a Restricted Entry Interval

In general, 40 CFR 170.605 specifies the safety requirements for early entry workers. Most of these requirements are addressed in 3 CCR sections 6768 and 6771. However, DPR proposes to add the minimum age requirement of 18 years old for early entry workers and to require additional safety information to be provided to early entry workers regarding the field where they will be working.

As previously mentioned, DPR proposes to adopt section 6722(b) prohibiting the employer from allowing an employee under the age of 18 years old to work in a field with an active restricted entry interval. This is consistent with 40 CFR 170.605(a).

DPR proposes to amend section 6771 to require an employer to inform any employee orally of specific safety requirements before that employee may enter a field under a restricted entry interval permitted by section 6770. Also, DPR proposes to amend subsections (a)(1), (2), (3), and (10) of section 6771 to specify additional information employers are required to notify early entry workers. This includes the location where they will be performing early entry activities, the pesticide(s) that were applied, the date and time the restricted entry interval begins and ends, and where they can

find the PSIS leaflets A-8 and A-9. These proposed amendments are consistent with 40 CFR 170.605(b).

DPR proposes to amend section 6771(g) to specify that at least 3 gallons of water per employee is required to be at the decontamination facilities where workers remove their personal protective equipment at the end of the exposure period. This is consistent with 40 CFR 170.605(j). The reference to 8 CCR, section 3457 has been deleted since these facilities may not meet the minimum water requirements.

DPR proposes to amend section 6771(j) to require the employer to provide one clean change of coveralls at the decontamination site for employees engaged in early entry activities. This is consistent with 40 CFR 170.605(h).

- 40 CFR 170.607 - Exception to Personal Protective Equipment Requirements Specified on Pesticide Product Labeling

Section 6738.4(e) allows employees to substitute work clothing for personal protective equipment when operating in an enclosed cab. DPR proposes to amend section 6738.4(e) to remove the exemption that allows applicators to forego using a respirator in enclosed cabs approved for respiratory protection since the American Society of Agricultural Engineers no longer certifies enclosed cabs for respiratory protection in accordance with WPS. DPR proposes to add U.S. EPA's exemption, outlined in 40 CFR 170.607(e)(3), allowing applicators to forego wearing a respirator when the only required respiratory protection is the use of a particulate-filtering respirator (NIOSH approval number prefix TC-84A) or a dust/mist filtering respirator, so long as the enclosed cab has a properly functioning air ventilation system used and maintained in accordance with the manufacturer's written operating instructions.

DPR proposes to amend section 6738.3 to add U.S. EPA's requirement, outlined in 40 CFR 170.607(f)(1), that chemical-resistant gloves must be stored in an enclosed chemical-resistant container if they are brought into the cockpit of an aircraft that has been used to apply pesticides.

DPR proposes to delete section 6738.4(a)(6) to remove the exemption that allows pilots to forego wearing chemical-resistant gloves and protective eyewear (unless they are operating in an enclosed cockpit), which is consistent with 40 CFR 170.607(f)(2). Also, DPR proposes to amend section 6738.4(g) and to add subsection (h) to now allow pilots to wear a helmet with the face shield lowered as chemical-resistant headgear and protective eyewear instead of a wide brim hat and protective eyewear.

DPR proposes to amend section 6738.4(f) to be consistent with 40 CFR 170.607(f)(2-3). Proposed section 6738.4 will allow work clothing to be worn instead of personal protective equipment when occupying an enclosed aircraft cockpit. Proposed section 6738.4 will also exempt persons occupying an enclosed aircraft cockpit from being required to wear protective footwear.

EFFECTIVE DATE

DPR anticipates this regulation will go into effect on January 2, 2017, which would be the same date as the implementation date for the newly adopted federal WPS.

COLLABORATION WITH OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT (OEHHA) PURSUANT TO FAC SECTIONS 12980 AND 12981

DPR and OEHHA jointly and mutually developed the proposed regulations as specified in FAC sections 12980 and 12981, utilizing OEHHA's health-based recommendations as a factor in setting DPR's regulatory target level related to pesticides and worker safety. DPR and OEHHA have set forth the rulemaking process used to meet these statutory requirements in a Memorandum of Agreement dated August 13, 2008.

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 August 20, 2013, Memorandum of Agreement developed per FAC section 11454.2.

DPR consulted with the University of California and the Department of Industrial Relations.

DPR has also consulted with the California Agricultural Commissioners and Sealers Association.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives. The adoption of this regulation will bring California worker safety regulations into alignment with the newly adopted federal WPS rules.

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

The proposed regulations will not have a significant economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states. DPR is proposing amendments to California worker safety regulation in order to maintain at least the same level of protection as the newly revised federal rules, and is not proposing any additional requirements beyond what will be required by U.S. EPA when the federal WPS becomes effective nationwide on January 2017.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs within the State of California: The proposed action is not likely to create or eliminate jobs in California because the regulation is designed to align with the new federal WPS rules by revising requirements for pesticide safety training, notification of pesticide applications, use of personal protective equipment, restricted-entry intervals after pesticide

application, decontamination supplies and emergency medical aid further reducing the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers.

Creation of New Business or the Elimination of Existing Businesses within the State of California: This proposal is not likely to create new businesses or eliminate existing businesses within the State of California. The proposed regulation is designed to align with the new federal WPS rules by revising pesticide worker safety requirements to further reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers.

The Expansion of Businesses Currently Doing Business within the State of California: This proposal is not likely to result in an expansion of businesses currently doing business within the State of California since the proposed regulation is designed to align with the new federal WPS rules by revising pesticide worker safety requirements to further reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulatory requirements will bring California worker safety regulations into alignment with the newly adopted WPS federal rules. This will further strengthen current regulations that are already designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Ensuring that pesticide users comply with the newly adopted regulations will benefit worker safety.

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

DPR's review of the proposed action showed that no significant adverse effect to California's environment can reasonably be expected to occur from implementing the proposal. Therefore, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not conflict with federal regulations found in Title 40 CFR section 170 that contain requirements for agricultural pesticide workers. Though there are some similarities in the regulatory requirements, California and DPR maintain a separate regulatory structure from the Federal standards. As such, what little duplication may occur with the Federal regulations is unavoidable, but necessary to allow California to have a fully operational and independent program of worker safety when using pesticides.

DOCUMENTS RELIED UPON

1. Federal Register Volume 80, No. 211, 40 CFR Part 170 Pesticides; Agricultural Worker Protection Standard Revisions; Final Rule. November 2, 2015. Environmental Protection Agency.