

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6000, 6619, 6724, 6764, 6768, 6769, and 6776
Pertaining to Worker Protection Standard

UPDATE OF THE INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9(d), the Department of Pesticide Regulation (DPR) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking. No changes were made to the proposed regulations nor are any changes necessary to the Initial Statement of Reasons following the 45-day public comment period.

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on August 11, 2017. During the 45-day public comment period, DPR received comments on the proposed text. The comments are discussed under the heading "Summary and Response to Comments Received" of this Final Statement of Reasons.

DPR has amended Title 3 California Code of Regulations (3 CCR) sections 6000, 6619, 6724, 6764, 6768, 6769, and 6776. This action amends DPR's existing worker safety regulations to align with the recently revised federal Worker Protection Standard (WPS) (Title 40 Code of Federal Regulations, Part 170) that was noticed in the Federal Register, Vol. 80, No. 21 on November 2, 2015. This regulatory action deletes the application exclusion zone definition and revises requirements for notice of completed applications, fieldworker training, fieldworker decontamination supplies, and field posting when a pesticide is used for the commercial or research production of an agricultural commodity. In addition, this action revises the training program requirements for pesticide handlers working in production or non-production agriculture settings, or in non-agricultural settings.

The regulations will become effective on March 1, 2018.

PUBLIC HEARING

No public hearing was scheduled or held.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD

- *Roberta Firoved, California Rice Commission*

Comment: In reviewing the U.S. Environmental Protection Agency (U.S.EPA) 1997 Registration Eligibility Decision (R.E.D.) for thiobencarb, the restricted-entry interval (REI) is specifically 24-hours. The more recent thiobencarb reevaluation is in the completion phase and does not address changes to the REI. The only worker activity in rice following the thiobencarb application is to check the box (weir) holding the water in the field with occasional scouting by

the grower, or pest control adviser. Rice fields require no other worker related activities. We assume the thiobencarb 7-day REI is a result of misreading the R.E.D. document. The label change originates with the registrant, so we have informed the company of the apparent mistake in the label language.

Response: This comment is outside the scope of the proposed changes.

Comment: Support for field posting to assist in enforcement and recognition of thiobencarb treated fields. The field posting aids the enforcement staff from the county agricultural commissioner's office to locate the thiobencarb treated fields. In addition, the fields are more noticeable by neighboring farmers with an interest in compliance of the thiobencarb water holding requirements.

Response: No response necessary.

Comment: Concerns with language on field posting signs, which is consistent for pesticides with the Signal Word Warning, or Danger, and not Caution (thiobencarb), yet inconsistent with the U.S. EPA requirement.

The field posting was intended for the pesticides with the Signal Word WARNING, or DANGER. The thiobencarb label includes the Signal Word CAUTION. The CRC received several concerns from the rice industry about the wording on the field posting signs. We realize section 6776 meets requirements for posting per Title 40 CFR, Part 170.409. However, the difference in the California versus the U.S. EPA signage requirements causes concerns.

Response: This comment is outside the scope of the proposed regulation. In October 2016, U.S. EPA did not identify any differences between the State regulations and the newly revised federal WPS that preclude California worker protection regulations from achieving the same degree of protection of human health as the WPS.

Comment: Our comment about consistency stems from some county agricultural commissioner offices requiring field posting of all thiobencarb treated fields regardless of the worker status on the farm. From the reports we receive, the distinction of owner/operators versus owners with employees is not consistent from county to county, or non-existent. Chapter 6 Exemptions and Exceptions, of U.S. EPA's manual, "How to Comply With the 2015 Revised Worker Protection Standard for Agricultural Pesticides What Owners and Employers Need to Know," defines owners and immediate family members. The chapter lists specific exemptions that are not required, and identifies where the grower and immediate family members must comply. From the list of exemptions, it appears the owner employing immediate family members is not required to provide oral and posted notifications or worker entry restrictions. If our interpretation is correct, the owner/operator, even if they employ immediate family members, is not required to post the thiobencarb treated field(s). Verification of our interpretation, and consistency for enforcement throughout the rice growing counties could alleviate the previously mentioned signage concerns in sensitive areas.

Response: This comment is outside the scope of the proposed regulation.

- *Lisa Blecker, University of California*

Comment: Proposed section 6764(f)(5) references, "instructor trainer" programs whereas proposed section 6724(f)(3) references, "instructor training" programs. Both sections are referring to the same training program, and should be written in the same way (instructor training).

Response: DPR agrees and made a nonsubstantive change to section 6764(f)(5) changing "instructor trainer" to "instructor training" program in order to be consistent with the terminology used in section 6724(f)(3).

Comment: DPR informs Instructors of Train-the-Trainer Programs (synonym for "instructor training programs") in a letter dated February 5, 2017 (http://www.cdpr.ca.gov/docs/license/letter_t2_instructors_feb2017.pdf), that it must review and approve all instructor training programs for use after December 31, 2017. There is nothing in the proposed regulatory text to enforce this. Whereas DPR reviewed and approved instructor training programs prior to the proposed regulations, the revised WPS now requires them to be reviewed and approved. This requirement should be reflected in sections 6724 and 6764 as well.

Response: Sections 6724(f)(5)(B) and 6764(f)(3)(B) already require instructor training programs to be approved by the Director. The regulations provide the basis for the referenced letter, which provides specific guidance for compliance.

- *Terry Gage, California Agricultural Aircraft Association*

Comment: We support the revision that removes challenging definitions such as the application exclusion zone and the time specific application information requirement.

Response: No response necessary.

Comment: We still have a significant concern regarding the age requirement that all handlers be at least 18 years of age. It is requested that the minimum age for a worker be lowered at least to 16 years of age rather than the proposed 18 years of age.

Response: This comment is outside the scope of the proposed changes. However, the minimum age of at least 18 years old is a federal requirement for persons handling any pesticide used in the commercial or research production of an agricultural commodity, or enters a field under a restricted entry interval.

- *Anne Katten, California Rural Legal Assistance Foundation; Virginia Ruiz, Farmworker Justice; Amy Liebman, Migrant Clinicians Network; Margaret Reeves, Pesticide Action Network; Natalia Ospina, California Rural Legal Assistance, Inc.*

Comment: We commend DPR for taking the additional step of extending these additional training requirements to non-agricultural pesticide handlers.

Response: No response necessary.

Comment: We object to the proposed deletion of the definition of application exclusion zone and disagree with the conclusion that this definition is unnecessary and redundant to section 6762, which specifically defines the application exclusion zone.

Section 6000 is broader than section 6762, not redundant, because it defines the AEZ as the area surrounding the application equipment that must be free of all persons (emphasis added) other than appropriately trained and equipped pesticide handlers during pesticide applications. The definition of AEZ in section 6000 needs to be amended to include additional relevant sections, not be deleted.

An employer only has authority over the actions of employees or people on property they control, not "all persons" who could be in the AEZ on adjacent property in fields or residences for example. At the very minimum, notification of adjacent property owners before a planned pesticide application is needed so that fieldworkers and other potential bystanders will know to stay out of the AEZ.

In order to maintain at least the same level of protection as the revised WPS, additional text needs to be proposed to at minimum:

(1) amend 6762c to require handlers to stop agricultural applications whenever they see any person in the application exclusion zone.

(2) amend 6762 to require the operator of a property where a pesticide is being used for commercial or research production of an agricultural commodity to obtain permission from an adjacent property owner before making a pesticide application that requires an AEZ that would extend onto said property. If permission is granted require notification of any adjacent property operator of the date and time period when it will be in effect and the need to prevent employees from entering or remaining in the AEZ.

(3) amend regulations to specify that pesticides cannot be applied within 100 feet of worker housing or other residences by application methods that require a 100 foot AEZ or within 25 feet of worker housing or other residences by an application method that requires a 25 foot AEZ as specified in section 6762 unless the housing is vacated during application and occupants are compensated for alternate lodging. These requirements are not overly burdensome because even larger buffer zones are often needed to meet the requirement of preventing contamination of nontarget property and people not involved in a pesticide application (T3CCR section 6614.).

Response: To point (1): Existing regulations in California, such as CCR section 6614 already require applicators to take actions comparable to the WPS requirements and is not restricted by arbitrary distances in the WPS. U.S. EPA determined these regulations achieved the same degree

of protection of human health as the federal WPS and granted DPR's worker protection regulations equivalency.

The notification, compensation, and agreement requirements proposed in points (2) and (3) are outside the scope of the proposed regulation and goes beyond the revised federal regulations.

Comment: We are troubled by the proposed revision to section 6776(a)(4) Field Posting which would limit the field posting requirement to REIs greater than 48 hours only if these REIs are specified on the product label. California specific restricted entry intervals specified in sections 6772 and 6774 which are longer than 48 hours should also continue to require field posting in order to more effectively prevent accidental early reentry and resulting risk of illness or long term health impacts to fieldworkers. We note that sulfur requires a 3 day restricted entry interval in grapes in the warmer months in the central valley counties and Riverside County because of a history of fieldworker illnesses resulting from exposure to sulfur residues on the grapes.

Response: The proposed revision made to section 6776(a)(4) regarding field posting is necessary in order to be in alignment with 40 CFR 170.409(a)(1)(ii). In addition, 3 CCR sections 6618 and 6619 require the employer to notify their fieldworkers of all scheduled and completed applications, respectively, including the restricted entry interval and instructions not to enter a treated field until authorized by the operator of the property. The operator of the property or employer may post a treated field according to sections 6618(a)(5)(A) and 6619(e)(1).

MANDATE 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 requiring 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 B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from this regulatory action.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. These amendments are designed to align California worker safety regulation with the new federal WPS rules that were noticed in the Federal Register, Vol. 80, No. 21 on November 2, 2015.

POSTING REQUIREMENT

3 CCR section 6110, states in part that, "The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days." DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>. In addition, copies were provided to the offices listed above for posting.