

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6000, 6470, 6776 and 6784
Pertaining to Pesticide Handlers, Cotton Harvest Aids, and Field Fumigation Posting

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.

The proposed regulatory action was noticed in the *California Regulatory Notice Register* on July 5, 2019. In this Notice, DPR proposed to amend Title 3 of the California Code of Regulations (3 CCR) sections 6000, 6470, 6738.4, 6776, and 6784. During the public comment period, DPR received one comment on the proposed text. This comment is discussed under the heading “SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD” of this Final Statement of Reasons.

DPR has decided not to proceed with the proposed revisions to 3 CCR section 6738.4. The proposed revision would have required that persons using a closed system or enclosed cab have exempted personal protective equipment specified on the labeling within reach of the employee. Upon review and based on the comment received during the public comment period, DPR has determined that this change is not necessary to accomplish its goals of ensuring that employers follow requirements of product labeling, and that the section already requires the exempted personal protective equipment be present and available at the worksite. This determination not to amend section 6738.4 does not create conflict with federal law. In 2016, the U.S. Environmental Protection Agency (U.S. EPA) determined that 3 CCR section 6738.4 was adequate to provide protection equivalent to the Federal Worker Protection Standard requirements in Title 40 Code of Federal Regulations (40 CFR) Part 170. Pursuant to 40 CFR section 170.609(c), U.S. EPA authorized DPR to continue implementing the worker protection regulations in 3 CCR in lieu of WPS requirements in 40 CFR Part 170. Therefore, the proposed revision is not required to conform with federal law. The purpose and intent of the existing 3 CCR section 6738.4 exemptions are maintained. No additional notice is necessary as DPR is retaining existing regulatory text.

DPR has amended 3 CCR sections 6000, 6470, 6776 and 6784. The pesticide regulatory program activities affected by this action are those pertaining to pesticide worker safety and pesticide enforcement. In summary, this action amends DPR’s existing regulations to increase clarity, enforceability and consistency with federal standards, and align field soil fumigation posting requirements with pesticide product labeling.

No other changes or updates to the Initial Statement of Reasons are necessary.

PUBLIC HEARING

No public hearing was scheduled or held, and none was requested.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC COMMENT PERIOD

- *Mariah Taylor*

Comment no. 1: The way the proposed text is written in section 6738.4(a)(2), it seems that an employee using towed equipment would not need exempted PPE within reach, just available at the worksite if it is in an open cab. The proposed text does not list open cabs with towed equipment. Does the requirement to have PPE within reach *not* apply when someone is applying in an open cab but with nozzles below them, but *does* apply when in an enclosed cab with nozzles below them? The wording is confusing because it does not address this type of PPE exemption.

Response: In considering this comment, and as stated above in the “UPDATE OF THE INITIAL STATEMENT OF REASONS,” DPR has decided not to proceed with the proposed amendment to 3 CCR section 6738.4. No response necessary.

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 clarify and reduce the ambiguity of current requirements, more closely align California’s requirements with the federal WPS and pesticide labeling, and help ensure that pesticide users correctly comply with requirements that benefit worker safety.

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.