

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Sections 6000, 6470, 6738.4, 6776 and 6784  
Pertaining to Pesticide Handlers, Cotton Harvest Aids, Personal Protective Equipment  
Exemptions and Field Fumigation Posting

This is the Initial Statement of Reasons 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 state regulatory programs certified under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM  
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR sections 6000, 6470, 6738.4, 6776, and 6784. This proposal will affect pesticide regulatory program activities 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.

SPECIFIC PURPOSE AND FACTUAL BASIS

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.

FAC section 12980 requires that DPR work jointly with the Office of Environmental Health Hazard Assessment (OEHHA) to develop regulations to ensure safe working conditions for persons handling pesticides and working in and around pesticide-treated areas. FAC section 12981 requires DPR to adopt regulations to accomplish the Legislature's intent relative to ensuring safety in the pesticide workplace. DPR's current regulatory requirements for pesticide safety training, personal protective equipment (PPE), field posting, and notice of completed applications are designed to reduce the risk of pesticide exposure and injuries among pesticide handlers and workers exposed to pesticides.

DPR proposes to amend 3 CCR section 6000 definition of "Handle" to replace the term "greenhouse" with the term "enclosed space." In 2017 and 2018, DPR amended California's pesticide worker safety regulations to be consistent with the U.S. Environmental Protection Agency's (U.S. EPA's) revised federal Worker Protection Standard (WPS) [Title 40 Code of Federal Regulations (40 CFR), Part 170] that was noticed in the Federal Register, Vol. 80, No.

21 on November 2, 2015. During the 2017 rulemaking action [Office of Administrative Law (OAL) File No. 2016-0902-02S], the definition of “greenhouse” was deleted from section 6000 and the definition of “enclosed space,” which includes greenhouses, was added to section 6000 to align with the federal WPS usage of the term “enclosed space production.” Since the definition of “greenhouse” was deleted, DPR changed “greenhouse” to “enclosed space” throughout 3 CCR Division 6 where its use is consistent with the federal WPS. The section 6000 definition of “Handle” was inadvertently overlooked when the earlier changes were made. This proposed action amends the definition of “Handle” by changing the term “greenhouse” to the new term “enclosed space.” Additionally, the definition is proposed to be split into subsections to aid in clarity and readability. This proposed action relates to worker safety because it clarifies the types of activities that are considered “handling” pesticides for worker safety requirements.

DPR proposes to amend 3 CCR section 6470(a), which describes requirements for employers using the listed pesticides as cotton harvest aids. This regulation relates to worker safety because the requirements protect workers who mix and transfer the listed pesticides. Effective January 1, 2016, the definition of “closed system” was removed from section 6000 as DPR adopted a new performance-based standard for this equipment (OAL File No. 2015-0924-01S). As a result, subsection 6470(a) references a definition that no longer exists. For clarity, this proposed action removes the reference to section 6000 from subsection 6470(a) and makes minor grammatical edits.

DPR proposes to amend 3 CCR section 6738.4 to establish that certain exempted PPE must be within immediate reach of an employee using special equipment for mixing, loading and applying pesticides. This is a worker safety regulation because it relates to PPE requirements when employees handle pesticides and is one of the regulations that DPR adopted in 1996 to incorporate the federal WPS requirements (OAL File No. 96-1127-05). Prior to 2015, subsection 6738(h) allowed employers to modify labeling- or regulation-required PPE worn by employees. Those modifications included exceptions and substitutions to PPE when persons were using a closed system or enclosed cab. Although required PPE could be modified, labeling-required PPE was required to be *immediately available* to employees using closed systems or enclosed cabs. In 2015, DPR reorganized the requirements in section 6738 and adopted section 6738.4 (OAL File No. 2015-0305-04S). Section 6738.4 currently allows PPE to be modified in certain situations and states that exempted PPE must be “*available* for use at the worksite.” The federal WPS requires labeling-exempted PPE to be immediately available to the handler when the handler is using a closed system or enclosed cab [40 CFR Part 170 section 170.607(d)(3)(v) and 170.607(e)(2)]. If exempted PPE is just *available* “at the mixing and loading site” or generically “at the field,” it is not necessarily *immediately available*. To maintain equivalency with the federal WPS, DPR proposes to amend section 6738.4 to restore the immediately available PPE requirement when handlers use closed systems or enclosed cabs by making sure that the exempted PPE required by the labeling is within immediate reach of the employee. Additionally, minor edits are being made for readability.

DPR proposes to amend the field fumigation posting requirements in 3 CCR section 6776(f), and relocate and amend the posting duration requirement in 3 CCR section 6784(a). Additionally, DPR proposes to restructure section 6776(f) for clarity and readability, and to incorporate new requirements within the subsection.

Pesticides, including their product labeling, must be approved and registered by U.S. EPA before they are registered in California. All labels must bear a misuse statement [40 CFR section 156.10(i)(2)(ii)] which explains that the label is the law. In addition, FAC section 12973 states that the use of any pesticide shall not conflict with labeling. Some of the proposed amendments in section 6776(f) are being made to ensure consistency with product labeling.

Currently, section 6776(f) requires that when a fumigant is applied to a field, the field must be posted with a sign, and section 6784(a) requires that the sign remain posted until aeration is complete. Both of these regulations relate to worker safety because fumigant field-posting requirements are intended to protect fieldworkers by keeping them out of fumigant-treated areas. The proposed amendments to these sections address: posting responsibility, sign content, and posting duration.

Currently, sections 6776(f) and 6784(a) do not identify the party responsible for posting the fumigant-treated field with signs. To be consistent with federal WPS requirements in 40 CFR section 170.409, DPR proposes to amend subsection (f), specifying the operator of the property as the party responsible for posting a warning sign when a soil fumigant is applied to a field.

Subsection 6776(f) presently states that instead of using signs complying with subsection 6776(b), signs must contain: “DANGER/PELIGRO”; “Area under fumigation, DO NOT ENTER/NO ENTRE”; “(Name of Fumigant) Fumigant in use”; date and time of the fumigation; and name, address, and telephone number of the applicator. In addition to the currently required information, DPR proposes to add a requirement for the field fumigation warning sign to include other information specified by product labeling. This is to ensure that product-specific information is included when required by the fumigant labeling. Product-specific information may include, but is not limited to, the date and time the Entry Restricted Period (ERP) ends, the product name, or information about the certified applicator supervising the application.

DPR proposes to relocate the posting duration requirements in section 6784(a), which requires that the field fumigation warning sign remain posted until aeration is complete, to proposed subsection 6776(f)(3) and make amendments to be consistent with field soil fumigant labeling, federal standards, and existing regulations. The term “aeration,” as currently used in subsection 6784(a), is not defined in regulation. The aeration phase for soil fumigants is generally considered the time after tarps are cut until 1-2 days pass. During this time, the field is left to off-gas allowing residual fumigant to leave the soil to reduce potential worker exposure to the fumigant. However, many soil fumigants do not use tarps and thus, have no aeration phase. In contrast, fumigant labeling approved by U.S. EPA and DPR now addresses this issue by defining ERP and setting the duration of the posting requirement based on the length of the ERP. In most cases, the labeling ERP may last 5-14 days after the application is complete. The fumigant labeling also requires the field to be posted prior to application and no sooner than 24 hours before the application begins, remain posted during the duration of the ERP, and removed within three days of expiration of the ERP. This new proposed subsection aligns the posting and removal of fumigant warning signs with the ERP specified by field soil fumigant labeling. Proposed subsection (f)(3)(B) additionally clarifies that the posting signs are to remain legible

for the duration of the ERP. Signs that are not capable of being read can create a hazard to fieldworkers and others working or traveling near the fumigated field.

Proposed subsection (f)(3)(C) requires field fumigation warning signs to be removed within three days after the ERP expires and “before any entry prohibited during the entry restricted period.” This requirement parallels the requirements of non-fumigant pesticides. Non-fumigant pesticides have a Restricted Entry Interval (REI) specified on the product labeling or in regulation. The REI is the time immediately after a pesticide application when entry into the treated area is restricted to certain handler or fieldworker activities. When fields are required to be posted, the federal WPS and 3 CCR section 6776(c)(3) require removal of field posting signs within in three days after the REI expires and prior to fieldworker entry prohibited during the REI. Fumigant labeling does not have an REI; instead, fumigant labeling has an ERP. As discussed in the paragraph above, fumigant labeling requires the application block to be posted for the duration of the ERP. During the ERP, the only entry to the application block allowed is by trained and protected handlers performing a handling task specified on the labeling; all other entry is prohibited. As soon as the ERP expires, the signs may be removed. However, fumigant labeling allows the signs to remain posted for up to three additional days after the ERP expires. During this three-day period, the operator of the property may wish to have fieldworkers enter the field to perform cultural activities prohibited during the ERP. To ensure fieldworkers do not enter posted fields and to maintain consistency with the posting requirements of non-fumigant pesticides noted above, field fumigation warning signs must be removed within three days of the ERP expiration and prior to any entry the product labeling prohibits during the ERP.

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

As discussed above, 3 CCR sections 6000, 6470, 6738.4, 6776, and 6784 are all regulations relating to the pesticide worker safety. Therefore, DPR and OEHHA jointly and mutually developed the proposed regulations as specified in FAC sections 12980 and 12981. 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 Memorandum of Understanding updated on January 15, 2019, that was 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 several county agricultural commissioners.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(4)]

DPR has not identified any feasible alternatives to the proposed regulatory action that would achieve the purpose of the regulation with less possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives. The proposed regulations will bring California worker safety regulations into alignment with the federal WPS 40 CFR Part 170.

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

The proposed regulations 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. The proposed amendments are primarily technical in nature to address inconsistencies between California and federal requirements, and to clarify current regulatory requirements. These amendments will more closely align California worker safety regulations with the federal WPS found in 40 CFR Part 170.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

**Creation or Elimination of Jobs with the State of California:** DPR has determined that the proposed action would not create or eliminate jobs in California. These are mainly technical changes to DPR's regulations to align them to the federal worker protection standards. Employers of pesticide handlers working in enclosed spaces (including greenhouses), growers using cotton harvest aids or soil fumigants, and employers using closed systems and enclosed cabs are likely already in compliance with these requirements.

**Creation of New Businesses or the Elimination of Existing Businesses with the State of California:** This proposal is not likely to result in the creation of new businesses or the elimination of existing businesses within the State of California since the proposed regulations are clarifying and designed to reduce ambiguity of current requirements and are intended to align our worker safety requirements with the federal standards. There are no potential increased costs for compliance by pesticide users, and the regulatory amendments should not significantly affect business operations or have a significant adverse economic impact on the sector.

**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 with the State of California since the proposed regulations are clarifying and designed to reduce the ambiguity of current requirements and align California's worker safety requirements with the federal standards.

**The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:** The FAC requires that DPR adopt regulations that provide for safe working conditions for persons handling pesticides and working in pesticide-treated areas, including regulations on the subject of PPE and other protective devices. The proposed

regulations will 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.

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 CONFLICT OR DUPLICATION OF FEDERAL REGULATIONS

The proposed regulatory action does not conflict with the federal WPS found in Title 40 CFR Part 170. Section 170.305 contains the definition of "Handler" for the purposes of interpreting the federal WPS. Section 170.409 contains posting and notification requirements for fieldworkers, but does not address field fumigation posting requirements (which are addressed instead on pesticide labeling). Section 170.607 contains the exceptions to PPE requirements specified on pesticide labeling. There is no federal analogue to 3 CCR section 6470. Though there is some overlap in the regulatory requirements, California and DPR maintain a separate regulatory structure from the Federal standards. As such, what duplication occurs 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

None.