

FINAL STATEMENT OF REASONS AND PUBLIC REPORT  
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations  
Amend Sections 6618, 6619, 6761.1, 6770, and 6771  
Pertaining to Notification and Application-Specific Information for Fieldworkers

UPDATE OF THE INITIAL STATEMENT OF REASONS

The originally proposed regulatory action was noticed in the *California Regulatory Notice Register* on July 4, 2008.

The 45-day public comment period was extended three times. The Department of Pesticide Regulation (DPR) received a request for a public hearing. A public hearing was held on November 18, 2008, in Santa Barbara. The comments are discussed under the heading “Summary and Response to Comments Received” of this Final Statement of Reasons. Based upon comments received from the public and for reasons below, DPR modified the text from that originally proposed. These changes and the reasons for them are found below under the heading “Changes to the Text of Proposed Regulations.”

DPR received comments addressing the modified text during the 15-day public comment period. These comments are discussed under the subheading “Comments Received During the 15-Day Public Comment Period” in this Final Statement of Reasons.

DPR made sufficiently related changes to the text from that which was originally proposed.

Modified sections 6618 and 6619:

- Revised subsections 6618(a) and (b), and 6619(a), (f), and (g) to clarify that notification is to be given orally or in writing.
- Revised subsections 6618(a) and (b) to address concerns, based on comments received during the public comment period, on the concept of “ample time.” The revisions acknowledge that the time needed to make all of the notifications required in this section, and the time needed for those persons receiving these notifications to take appropriate action, will differ depending on the circumstances of each notification. This offers flexibility to those persons responsible for giving the required notices and for those who are responsible for keeping employees away from areas scheduled to be treated with pesticides based on the variety of circumstances that can be encountered for each situation (i.e., prevailing local weather conditions, number of employees to notify, size of farming operation).
- Revised subsections 6618(a)(1)(D), (b)(1)(B), (b)(2)(B), and subsection 6619(a)(3) to require that spray adjuvants be included in notices given if their use is applicable to clarify that spray adjuvants are pesticides and are commonly included in pesticide applications.
- Revised subsections 6618(a)(1)(G) and (b)(1)(C) to clarify that other precautions printed on the pesticide product labeling, or those included in applicable laws and regulations, related to the protection of employees or other persons during or after an application must be included in

the notice. This is consistent with federal Worker Protection Standard (WPS) language found in Title 40 Code of Federal Regulations (40 CFR), Part 170.

- Revised subsections 6618(a)(3) and (a)(4) to clarify the scope of who needs to be notified of scheduled applications by referring to the group of employees specified in section 6700, as well as their employers. This replaces his or her employees of the operator of the property; any pest control business and its employees; and any hired contractor and their employees, including his or her fieldworker or pesticide handler employees who may walk within one-quarter mile of the field to be treated. Referring to section 6700 better defines the scope of who should be receiving the required notices in these sections, while remaining equivalent with the WPS and its use of the terms “handler” and “worker.” The significance of the one-quarter mile distance has been moved to proposed subsection 6618(a)(5) as an exemption to giving notice. Special emphasis is placed on exemptions to giving notice in proposed subsections 6618(a)(5)(A) and (B), and is consistent with the WPS under 40 CFR, Part 170. Subsections 6619(c), (d), and (e) have been revised as well to be consistent with this revision after an application has been completed.
- For enforceability purposes, in subsections 6618(a)(6) and 6619(g), clarify the requirement for the operator of the property to notify persons (i.e., irrigation district employees, Pacific Gas and Electric crews, etc.), other than their own or any hired employer's employees, who the operator of the property knows would likely enter a field to be treated or a treated field while a restricted-entry interval is in effect.
- Information required in the notice of completion has been moved from subsection 6619(e) to subsection 6619(f).

Modified section 6761.1 to:

- Replace references made to “agricultural establishment” with “operator’s property” to remain consistent within the regulations.
- Remove the originally proposed requirement for application-specific information (ASI) to be displayed before any fieldworkers are allowed to walk within one-quarter mile of the treated field. DPR has determined that current and proposed regulations in sections 6618 and 6619, as well as in the WPS, do not require fieldworkers to stay one-quarter mile from the field to be treated or a treated field. As revised in the modified text, the ASI must be displayed before fieldworkers are allowed to enter the treated field.
- Require that any spray adjuvants be included in the ASI if their use is applicable, to clarify that spray adjuvants are pesticides and are commonly included in pesticide applications.

Modified section 6770 to:

- Replace references made to employees of the operator of the property, any pest control business, and any hired contractor with “employees” and “employers” to remain consistent with the modifications made to subsections 6618(a)(3) and (4) and 6619(c), (d), and (e).
- Replace the term “air” in subsection (d)(2)(A), as this term was inadvertently deleted from the proposed regulatory text.
- Provide further clarification on requirements for early-entry employees operating tractors or other equipment while performing “no contact activities” based on the recommendation of U.S. Environmental Protection Agency (U.S. EPA) Region 9 from requirements set forth in the WPS under 40 CFR, Part 170.

A nonsubstantive clarifying change to add "which includes fieldworkers" was made to sections 6618(a)(3) and (5), 6619(c) and (e), and 6770(a) and (b).

Additionally, the Initial Statement of Reasons and Public Report for this regulatory action stated that U.S. EPA requested that DPR amend section 6761.1 as part of this rulemaking in order to bring all California worker protection regulations into full equivalency with the federal WPS. DPR revised section 6761.1 in order to fulfill U.S. EPA’s request and made the following statement in good faith, with the understanding that full equivalency would be achieved with the changes made to the proposed text changes in the Initial Statement of Reasons: *“As mentioned above, this amendment would bring all California worker protection regulations into full equivalency with the federal WPS.”*

After U.S. EPA reviewed the proposed regulatory changes made to section 6761.1, they determined DPR’s revisions would not bring this part of California regulations into full equivalency with the federal WPS. DPR acknowledges U.S. EPA’s concern and rescinds the statement made in the Initial Statement of Reasons. Both U.S. EPA and DPR have agreed to maintain an interim equivalency status with the proposed regulatory changes made to section 6761.1.

#### PUBLIC HEARING

A public hearing was requested during the public comment period. A hearing was held in Santa Barbara. Transcript of the hearing and the hearing attendance register are contained in the rulemaking file.

#### SUMMARY AND RESPONSE TO COMMENTS RECEIVED

*Comments Received During the 45-Day Public Comment Period - See Attachment A.*

COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD

*Comments Received During the 15-Day Comment Period - See Attachment A.*

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 proposed regulatory change.

POSTING REQUIREMENT

Section 6110 of Title 3 of the California Code of Regulations 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.