FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6000, 6702, 6720, 6724, 6738, 6739, 6764, 6771, 6793, and 6795
Adopt Sections 6738.1, 6738.2, 6738.3, and 6738.4
Repeal Sections 6486.7 and 6736
Pertaining to Personal Protective Equipment

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 November 21, 2014. 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 sections 6000, 6702, 6720, 6724, 6738, 6739, 6764, 6771, 6793, and 6795; adopted sections 6738.1, 6738.2, 6738.3, and 6738.4; and repealed sections 6486.7 and 6736. In summary, the regulatory action clarifies the personal protective equipment (PPE) requirements, reducing ambiguity, and reorganizes the regulatory requirements in a more logically cohesive format. Requirements for protective eyewear are consistent with a nationally recognized consensus standard, and the hand protection requirements are in alignment with U.S. Environmental Protection Agency (U.S. EPA) guidelines.

Nonsubstantive Change - DPR has made a nonsubstantive change in the proposed definition of "conflict with labeling" in section 6000. The University of California's Statewide Integrated Pest Management Program information has been updated to reflect the current name and address.

PUBLIC HEARING

No public hearing was scheduled or held.

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

Comment received from Tom Boster, Cal Ag Safety, LLC

Comment: The changes to the structure of the regulations, in particular, the addition of sections 6738.1 to .4 are very helpful in clarifying the requirements for PPE for employees that handle pesticides. The addition of compliance to ANSI Z87.1-2010, in section 6738.2(a) should reduce some questions of compliance of certain eyewear that existed with the current wording.

Section 6738.3(c)2 will be very useful, especially to those employees that work on spray equipment (adjustments, nozzle replacement, etc.) and allow them to wear chemical resistant protection for their hands while remaining in compliance. Likewise, section 6738.3(d) should lead to enhanced compliance by allowing employees to wear a liner that either will help keep their hands warmer during winter months or help keep hands dryer during hotter months. We observe employees opting to wear non-compliant gloves because the use of removable liners is not allowed.

Response: DPR agrees with the comments.

Comment: Nitrile gloves are used in nearly all pesticide handling activities. Enforcement of label material requirements has been virtually non-existent, while at the same time we have observed no injuries or exposures to pesticides when the nitrile gloves have been used in place of one of the other barrier materials.

Response: Nitrile gloves may continue to be used when there is no exclusive and specific glove required by the label.

Comment: Barrier laminate gloves, while very thin, are manufactured in a way that makes it very difficult to perform many of the jobs required of an agricultural handler. Unlike most of the other materials that better conform to the finger, the seam on the barrier laminate gloves make them much larger than the finger and making many hand activities very difficult. This is an instance that we believe would lead to non-conformance – employees will choose to use more work-friendly gloves.

Response: Though barrier laminate is an option in all glove categories, it is also not the only option. At least one other material is recommended for all categories, and three or more other options are available in four of the eight categories. The use of laminate is not compulsory. Other glove materials may continue to be used when there is no exclusive and specific glove required by the label.

Comment: Viton® gloves do not share the same usability issues that the barrier laminate gloves do, but they are cost prohibitive. A pair of 14 mil Viton® gloves under $100 is extremely hard to find. Although quite durable, agricultural use of these gloves will mean a shortened life and thus a cost nearly 50 times what growers are paying now.

Response: If the label requires the specific use of Viton®, that type of glove must be used. Other glove materials may be used when there is no exclusive and specific glove required by the label.

Comment: It is very common practice in agriculture to mix a number of different pesticides in one tank for a single application. Often, those pesticides require PPE from different U.S. EPA categories so there will no doubt be confusion on the part of all involved as to what material is to be used.

Response: This should not be an issue as U.S. EPA instructs registrants to identify ALL glove types that provide a high level of chemical resistance for the solvent category on the label as

acceptable glove types so users have flexibility to select the most cost-effective glove option that will provide the required protection. (U.S. EPA Label Review Manual Chapter 10. Worker Protection Label; http://www2.epa.gov/sites/production/files/2014-07/documents/chapter10-final-fd-jr.pdf).

Comment: If just one Category pesticide is used at a time and use of the different categories is enforced, there will most likely be confusion on the part of employees – trying to keep track of each material/glove and using at the appropriate time.

Response: Employers are required to train employees on the appropriate type of PPE for each individual pesticide they handle [section 6724 (a)].

Comment: A possible solution would be to introduce wording as presented on the "U.S. EPA Chemical Resistance Category Chart" - specifically looking at nitrile rubber. Referencing the notes below the chart, with moderate resistance to Category D materials, nitrile gloves can be worn until there is contact with the material. At that point, the gloves must be cleaned or replaced within one or two hours of that contact. Likewise, Category B, G, and H materials can be used, again until contact with the material and then cleaning or replacing must take place within ten minutes. If wording can be added that allows use of these other glove materials (specifically nitrile) with the caveat of washing the gloves immediately after contact with the pesticide (in the same light as the proposed use of removable glove liners) this will allow for great compliance while still providing proper protection for employees handling pesticides.

Response: Other glove materials may be used when there is no exclusive and specific glove required by the label.

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.

POSTING REQUIREMENT

Title 3, California Code of Regulations, 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.