INITIAL 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

This is the Initial Statement of Reasons (ISR) 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 certified state regulatory programs 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, 6702, 6720, 6724, 6738, 6739, 6764, 6771, 6793, and 6795; adopt sections 6738.1, 6738.2, 6738.3, and 6738.4; and repeal sections 6486.7 and 6736. The pesticide regulatory program activities affected by the proposal are those pertaining to pesticide worker safety. In summary, the proposed action will clarify the personal protective equipment (PPE) requirements, reducing ambiguity, and reorganize the regulatory requirements in a more logically cohesive format. Requirements for protective eyewear will be consistent with a nationally recognized consensus standard, and the hand protection requirements will be in alignment with U.S. Environmental Protection Agency (U.S. EPA) guidelines.

Note: In February 2014, U.S. EPA announced proposed changes to existing agricultural worker protection standards (WPS) to strengthen the protections provided to agricultural workers and handlers under the WPS by improving elements of the existing regulation, such as training, notification, communication materials, use of PPE, and decontamination supplies. DPR's proposed changes do not include any of U.S. EPA's proposed changes. DPR will address any additional changes through separate rulemaking.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR's mission is to protect public health and the environment from adverse effects of pesticide use. The Food and Agricultural Code (FAC) requires that DPR adopt regulations that provide for safe working conditions for persons handling pesticides and working in and about pesticide-treated areas, including regulations on the subject of PPE and other protective devices.

DPR's current PPE regulatory requirements are designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Over decades, requirements for pesticide safety training, notification of pesticide

applications, use of personal protective equipment, restricted-entry intervals after pesticide application, decontamination supplies, and emergency medical aid were adopted. In 1997, DPR's regulations were amended to incorporate the federal WPS to ensure California maintains equivalency. In addition to the WPS-equivalent requirements, DPR put into place several regulatory requirements stricter than those in the federal WPS.

Since the regulations were developed over a period of time, DPR's current PPE regulation structure is somewhat piecemeal with sections that include general requirements, specific PPE requirements combined with exemptions, and exemptions only. DPR proposes to reorganize and update the regulatory structure to improve clarity. DPR recognizes that compliance and protection would be increased with improved clarity.

In addition, DPR proposes to amend protective eyewear requirements specifying that the protective devices must comply with the American National Standard Institute (ANSI) for Occupational and Educational Personal Eye and Face Protection Device ANSI Z87.1-2010. Also, in the late 1990s, U.S. EPA adopted guidelines for chemical-resistant gloves when required to be worn by employees. DPR proposes to adopt these requirements to harmonize with U.S. EPA.

When a county agricultural commissioner (CAC) is determining whether a violation occurred by an employer and the event in question involves an employee, DPR's current regulatory definition, in section 6000, of "assure or ensure" makes it untenable and difficult for the CAC to prove whether an employer's internal company practices and policies were inadequate, and therefore PPE was not worn. "All reasonable measures" is vague and ambiguous, and CACs must prove what measures were not taken to prove their case. By repealing this definition, using the standard dictionary definition will provide clarity and predictability to the CACs enforcement of the PPE requirements, and will act as an incentive for employers to actively work to achieve the employees’ compliance with the PPE requirements.

In section 6000, DPR proposes to amend the definition "Chemical-resistant" or "Waterproof" by deleting "or Waterproof" since the intent of the definition is to describe movement of pesticides through a material, not water. In addition, "When a specific material is specified on pesticide product labeling, personal protective equipment constructed of that material shall be used." is being deleted. This is unnecessary since the PPE requirements are listed on the label and in specific code sections in regulation.

DPR proposes to amend in section 6000 "Conflict with Labeling" to clarify that "…the use of the product against the unnamed target pest is not expressly prohibited." Additionally, a reference citation is being corrected to reflect changes in this rulemaking.

As mentioned above, DPR proposes to reorganize the regulatory structure of section 6738 into general personal protective equipment care, followed by general PPE use requirements (proposed section 6738.1), specific selection of protective eyewear (proposed section 6738.2) and gloves (proposed section 6738.3), and specific situational exemptions and substitutions to PPE (proposed section 6738.4).

On November 16, 2006, U.S. EPA issued a decision to phase out all uses of azinphos-methyl by September 30, 2012; therefore, DPR proposes to repeal section 6486.7(a)(1). However, DPR proposes to relocate section 6486.7(a)(2) to proposed section 6738.4(e) as part of restructuring the PPE regulations. Work clothing and PPE, while utilizing an enclosed cab, is considered an exemption and does not only apply to the use of azinphos-methyl.

DPR proposes to amend section 6702(b)(3) and (5) to be consistent with the proposed deletion of the definition "assure and ensure."

DPR proposes to amend section 6720(b), (c), and (d) to reference the correct sections as proposed in this reorganization.

DPR proposes to amend sections 6724(b)(9) and 6771(a)(6) to clarify that employers are required to comply with 8 CCR section 3395 on the appropriate heat illness prevention measures. Additionally, the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) Heat Illness Studies show the importance of frequent drinking of water to prevent heat illness, yet this critical preventive measure is often overlooked unless the supervisors and employees have received appropriate heat illness prevention training as required by section 3395. Therefore, DPR proposes to include this subject as part of the fieldworker training requirements in section 6764(b)(9). Also, reference to the correct sections will be added to 6771(b).

DPR proposes to repeal section 6736 since most of the requirements for employers to provide coveralls to their employees is already contained in section 6738(a)(1-6). However, the current requirement in section 6736(b)(1) for employers to have each employee start each work day wearing coveralls when handling a pesticide with the signal word "Danger" or "Warning" will no longer be required since it is not reasonable or feasible until handling of the target pesticides begins. The requirement for employees to wear coveralls when handling pesticides with the signal word "Danger" or "Warning" is being relocated from subsection (b)(2) to section 6738.1(e). Coverall care and handling requirements in section 6736(b)(3-5) are incorporated in proposed section 6738(a)(1-6). The exemption from coverall requirements when using fumigants in section 6736(c) has been moved to proposed section 6738.1(e).

DPR proposes to clarify section 6738(a)(1) by identifying the sources of PPE requirements -- pesticide product labeling, regulations, and restricted material permit conditions. Proposed subsection 6738(a)(2) clarifies that the designated place where clean PPE is kept should also be clean.

As mentioned above, DPR proposes to clarify that employers are required to comply with 8 CCR section 3395 training on appropriate heat illness prevention measures and to reference this section in proposed sections 6734(b)(9), 6764(b)(9), and 6771(a)(6). Since heat-related illness protection is not normally a direct result of PPE use, DPR proposes to deleted current section 6738(a)(3).

DPR proposes to repeal section 6738(a)(5) requiring the employer to discard any absorbent material heavily drenched or contaminated with a pesticide with the signal words, "danger" or "warning." Current section 6738(a)(1) addresses the employers responsibility on the condition of PPE an employer provides to employee--regardless of the signal word. Therefore this subsection is redundant to requirements in section 6738(a)(1). Subsections (a)(4-9) have been renumbered as proposed subsections (a)(3-7). The provisions in current section 6736(b)(5) have been relocated to proposed subsection 6738(a)(5).

Current section 6738(b) pertaining to employers assuring employees wear protective eyewear has been moved to proposed section 6738.1(a), and the exceptions when protective eyewear is not required [6738(b)(1)(C)(1-3) and 6738(b)(1)(D)(1-3)] has been moved to proposed section 6738.4(b)(1-3) or 6738.4(a)(1 and 3), respectively. Current section 6738(b)(1)(E) requires flaggers to wear protective eyewear except when the flagger is in an enclosed cab. DPR proposes to repeal this requirement since use of flaggers has been replaced by global positioning system "GPS" navigational systems.

Relocate current section 6738(b)(2)(A-C) to proposed section 6738.2(a)(1-3). Proposed section 6738.2 specifically addresses selection of appropriate protective eyewear. Although most of the protective eyewear requirements remain unchanged, proposed section 6738.2 will be discussed later in the ISR. Current subsection 6738(b)(2)(E) has been relocated to proposed section 6738.4(h).

Current section 6738(c) requires an employer to assure gloves are worn when the employee is working under certain conditions. Subsection (c)(1-3) has been relocated to proposed section 6738.1(b). Proposed subsection 6738.1(b) specifically requires employees to wear chemical-resistant gloves. This is consistent with pesticide product labeling and U.S. EPA guidelines. Current section 6738(c)(2) has been relocated to proposed section 6738.3 which expands glove requirements and will be discussed in further detail below. The current exemption from wearing gloves in subsection (c)(1)(C) has been relocated to proposed section 6738.4(a)(2).

DPR proposes to relocate section 6738(d)(1) to proposed section 6738.1(c), section 6738(e) to proposed section 6738.1(d) and 6738.4(h), and section 6738(f) to proposed section 6738.1(f). Current section 6738(d)(2) has been relocated to proposed section 6738.4(g). Section 6738(g) is relocated to proposed section 6738.1(g). DPR proposes to not allow the use of waterproof or impervious pants and coat or rain suit in proposed section 6738.1(g). This is consistent with the proposed amendment to remove "waterproof" from the definition in section 6000 discussed above, as well as product labeling.

Current section 6738(h) allows for exceptions and substitutions to PPE. Subsection 6738(h)(1-4) has been relocated to proposed section 6738.4(c) and (d). However in proposed section 6738.4(c), the exception to wearing protective eyewear when using a closed mixing system that operates under positive pressure is no longer allowed. Eye protection should be worn in all cases regardless of the system's characteristics.

Current section 6738(h)(5) has been moved to proposed section 6738.4(e) and (g); and subsections (h)(6) and (7) have also been moved to proposed section 6738.4(e). The language has been revised to improve clarity.

DPR proposes to repeal section 6738(h)(8) that allows a chemical-resistant suit to be worn instead of coveralls and/or a chemical-resistant apron. An employer can always allow for a higher standard of protection and since a chemical-resistant suit is more protective than coveralls or a chemical-resistant apron, this language is unnecessary.

Current section 6738(h)(9) exempting a pest control aircraft pilot from the use of gloves during operation has been moved to proposed section 6738.4(a)(5), and the requirement for pilots to wear gloves when entering or exiting an aircraft contaminated with pesticide residues has been moved to proposed section 6738.1(b). The current requirement to store gloves in a chemical-resistant container is now located in section 6738.4.

DPR proposes to adopt section 6738.2 specifying more restrictive protective eyewear that conforms to the recognized national standard American National Standards Institute's (ANSI®) Standard for Occupational and Educational Eye and Face Protection Device ANSI Z87.1-2010. Current regulatory text is imprecise as to the type of eye protection required and does not cite any recognized authority as to the definition of "safety glasses." Citation of ANSI Z87.1 will establish the minimum requirements for eye protection and simultaneously eliminate non-conforming eyewear that is presently restricted by the somewhat vague phrase in section 6738(b)(2)(A) "Safety glasses that provide front, and supplemental brow and temple protection (Common eyeglasses, including sunglasses, do not meet this requirement)." It will also harmonize with Cal/OSHA eye protection standard (8 CCR section 3382), ensuring an equivalent level of eye protection for pesticide workers as afforded workers in all other industries. Proposed subsection (b) and (c) further clarifies labeling requirements, and that a National Institute for Occupational Safety and Health (NIOSH)-approved respirator with a full-face mask approved may be worn instead of protective eyewear. Proposed subsection (d) clarifies current section 6738(a)(4) by expanding on the requirement that PPE is used correctly for its intended purpose. Wearing prescription lenses should not interfere with protective eyewear fit and function and vice-versa.

DPR proposes to set standards in section 6738.3 for glove type and thickness related to both the U.S. EPA guidelines (http://www.epa.gov/oppfead1/safety/workers/equip.htm) and recognized industry recommendations. Proposed subsection (a) requires the employer to assure that the appropriate required glove material be worn by the employee as specified on product labeling. The barrier material is identified by a category. The categories and materials listed in (a)(1-7) is consistent with U.S. EPA guidelines and is currently recommended by DPR.

Existing section 6738(c)(2) has been relocated to proposed subsection (b) with clarification that if chemical-resistant gloves are required and the category or material is not specified on the product labeling then the barrier material may be any cited in (a). This clarification is consistent with U.S. EPA guidelines to address vague labeling. Also, proposed subsections 6738.3(c) and (c)(1) have been added for consistency with U.S. EPA.

DPR recognizes that a person wearing a barrier material that is at least 14 mils thick loses dexterity and motor control skills when making fine adjustments, therefore causing inaccurate or improperly adjusted spray nozzles. Proposed subsection (c)(2) would allow for the use of gloves less than 14 mils, for a maximum of 15 minutes, for those instances adjustments need to be made to equipment. DPR believes adjustment could be made within 15 minutes. Additionally, DPR will require that these gloves only be used once for the specific task and must be discarded and not reused since the structural integrity and durability is reduced and does not provide necessary protection.

Proposed subsection (d) allows for the use of glove liners to harmonize with U.S. EPA's guidelines. Glove liners are allowed for additional comfort. However, because of possible contamination, they must be discarded at the end of the workday, or immediately if the liner comes in contact with the pesticide during the day.

Current section 6738(c)(2) has been relocated to proposed section 6738.3(d)(1) and (e). Non-separable glove liner is also referred to as "flocked gloves."

DPR proposes to make clarifying revisions to section 6739 (Respiratory Protection). The complexity of the amendments made to this section in 2008 caused some confusion on the part of the regulated community-- specifically the revisions pertaining to respirator inspections in section 6739(j)(1). In addition to detailing the elements required for respirator inspection, section 6739(j)(1) includes inspection requirements for self-contained breathing apparatus (SCBA) respirators that are used as emergency use equipment. Proposed subsection (j)(1)(B) specifies that emergency-use or second respirators are checked to ensure that the air cylinders are maintained at 100 percent just prior to each use of a pesticide requiring their presence. Currently subsection (j)(1)(C)4 requires the inspection be conducted before being brought into the workplace for use. This amendment is necessary because a monthly inspection does not guarantee that the air cylinder would be filled at 100 percent of manufacturer's recommended capacity just prior to each use and adequate when deployed to the field. Requirements pertaining to escape-only respirators in subsection (j)(1)(B) has been relocated to proposed subsection (j)(1)(D). Also, subsection (j)(1)(B) was reordered to proposed section (j)(1)(C), along with grammatical correction.

DPR proposes to amend section 6793 (Minimal Exposure Pesticide Safety Use Requirements) to change employer responsibilities from providing and maintaining work clothing to providing and maintaining coveralls because work clothing is not an employer requirement. This is consistent with the responsibility of what the employer has to provide to an employee. Proposed subsection (e)(1) has been amended to include protective eyewear to be worn when using a closed mixing system. This is consistent with the existing requirements that are now located in proposed section 6738.4(c) and (d). Additionally, proposed subsections (e)(3) and (f)(2) are deleted to remove reference to the use of flaggers for reasons mentioned above. Also editorial renumbering to this section has been made.

DPR proposes to amend section 6795 (Thiophanate Methyl) to remove reference to the Mine

Safety and Health Administration (MSHA). MSHA is no longer the federal agency for approving respirators. The National Institute of Occupational Safety and Health (NIOSH) has the lead authority. The term "dusts" is being replaced with "particulates" to reflect the language used by NIOSH.

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

DPR and OEHHA jointly and mutually developed the proposed regulation as specified in FAC sections 12980 and 12981, utilizing OEHHA's health-based recommendations as a factor in setting DPR's regulatory target level related to pesticides and worker safety. 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 proposed regulations, as specified in FAC section 11454, and the February 6, 1992, Memorandum of Agreement that was developed per FAC section 11454.2.

DPR has consulted with the Department of Industrial Relations and the University of California pursuant to FAC section 12981.

DPR has also consulted with the California Agricultural Commissioners and Sealers Association.

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

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any possible adverse economic impacts, including any impacts on small businesses, and invites the submission of suggested alternatives.

As discussed in the Notice of Proposed Regulatory Action that was published in the *California Regulatory Notice Register*, DPR has determined that the adoption of this regulation will not have a significant cost impact on private persons or businesses.

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 document relied upon to make this determination is listed in the "Documents Relied Upon" section of this initial statement of reasons and is available from DPR.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs within the State of California: The proposed action would not create or eliminate jobs in California because the proposed regulations are clarifying current PPE requirements, reducing ambiguity, and reorganize the regulatory requirements in a more logically cohesive format. Requirements for protective eyewear will be consistent with a nationally recognized consensus standard, and the hand protection requirements will be in alignment with U.S. EPA guidelines.

Creation of New Business or the Elimination of Existing Businesses within 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 current PPE requirements, reducing ambiguity, and reorganize the regulatory requirements in a more logically cohesive format. Requirements for protective eyewear will be consistent with a nationally recognized consensus standard, and the hand protection requirements will be in alignment with U.S. EPA guidelines. The potential increased cost for compliance for structural pesticide users 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 current PPE requirements, reducing ambiguity, and reorganize the regulatory requirements in a more logically cohesive format. Requirements for protective eyewear will be consistent with a nationally recognized consensus standard, and the hand protection requirements will be in alignment with U.S. EPA guidelines.

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 and about pesticide-treated areas, including regulations on the subject of PPE and other protective devices. The proposed PPE regulatory requirements are designed to reduce the risk of pesticide poisonings and injuries among pesticide handlers and other agricultural workers exposed to pesticides. Ensuring that pesticide users comply with PPE requirements will benefit worker safety.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

The proposed action would amend the PPE requirements that employers must follow when employees are required, by pesticide label, regulation, or restricted materials permit, to use PPE. 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 UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not conflict with federal regulations found in Title 40 Code of Federal Regulations (CFR) section 170.240. This section of the CFR contains the PPE requirements for agricultural pesticide workers. Though there is some overlap in the regulatory requirements, California and DPR maintain a separate regulatory structure from the Federal standards. As such, what little duplication may occur 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

1. American National Standard: Practice for Occupational and Educational Eye and Face Protection ANSI Z87.1-2010 (R-2010)

2. Economic Analysis for Proposed Amendment to Personal Protective Equipment Requirements. California Environmental Protection Agency, Agencywide Economic Studies Section, Research Division. Memorandum from Stephen Storelli to Linda Irokawa-Otani, DPR Regulations Coordinator. January 23, 2014.