

June 27, 1996

WHS 96-6

TO: COUNTY AGRICULTURAL COMMISSIONERS

SUBJECT: 15-DAY NOTICE OF MODIFICATIONS TO
REGULATIONS TO IMPLEMENT THE U.S. EPA
WORKER PROTECTION STANDARD (WPS) IN
CALIFORNIA

Attached is a copy of the 15-day notice and the text of changes in the proposed regulations to implement the U.S. EPA WPS in California, developed in response to public comment.

You are encouraged to share this information with those in your county you think may be interested and might wish to make additional comment on these specific issues. Comment on these changes will be accepted for 15 days from the date of notice.

We are still anticipating an effective date of January 1, 1997.

If you have any questions about this action, contact either Robert Chavez of the Pesticide Enforcement Branch, at (916) 445-3886, or myself. Rulemaking file should be addressed as specified in the Notice.

Sincerely,

[Original signed by John M. Donahue]

John M. Donahue, Chief
Worker Health and Safety Branch
(916) 445-4222

Attachment

cc: Mr. Robert Chavez
Mr. Daniel J. Merkley

**Notice of Modifications to Text of
Proposed Changes in the Regulations Pertaining to
Implementation of the Federal Worker Protection Standard for
Agricultural Pesticide Handlers and Fieldworkers**

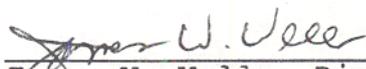
The Department of Pesticide Regulation (DPR) is responding to information gained during the public comment period by proposing modifications to certain portions of the original proposal. The public comment period on the originally proposed regulatory action closed on March 15, 1996. The Director finds that these modifications are sufficiently related to the original proposed action so that the public was adequately placed on notice that they could have resulted. The modified text is being made available to the public for 15 days from the date of this notice, during which written comments on the modifications will be received as provided in section 11346.8(c) of the Government Code. Other nonsubstantive grammar, punctuation, and format changes are also being considered, but are not included in this notice.

DPR is also taking this opportunity to add to the data relied upon, namely: (1) the Federal Register notice of August 21, 1992, which adopted the federal worker protection standard, and (2) a memorandum from Dennis Gibbons to Roy Rutz (May 29, 1996) on the subject of request for clarification of number of trained persons at introduction of solid fumigants, with attachment.

Written comments or questions relevant to the modifications that are shown in italics or bold type may be directed to Roy Rutz, Worker Health and Safety Branch, Department of Pesticide Regulation, 1020 N Street, Room 200, Sacramento, California 95814-5624, or by calling (916) 445-4279.

Current wording of the regulations is shown in normal type. Current wording originally proposed for deletion is shown by ~~strikeout~~. Originally proposed new wording is shown by underline.

New wording to be added by the modifications is shown in **Bold** type. Wording in the original proposal that would now be deleted by the modifications is shown by *italics*. (This would include text shown by ~~strikeout~~ or underline).

Approved: 
James W. Wells, Director

Date: July 1, 1996

Attachment

Regulation Text Modified
After Close of Public Comment Period
Title 3. Food and Agriculture
Chapter 6. Pesticides and Pest Control Operations

6000. Definitions.

"Assure" or "Ensure" means to take all reasonable measures so that the behavior, activity, or event in question occurs. When the behavior, activity, or event in question involves or concerns an employee, reasonable measures by an employer include determining that the employee has the knowledge to comply; providing the means to comply; supervising the work activity; and having and enforcing a written employee workplace disciplinary action policy covering the employer's requirements, as well as other measures required by pesticide law or this division.

"Display" means to make information available to the employee so that he or she may readily see and read the document, during normal business hours, without having to make a specific request of any person. An employee shall not be hindered or impeded from examining documents required to be displayed. This definition does not preclude using a binder or filing cabinet, that otherwise meets these criteria, to contain documents for display.

6130. *Fine Guidelines. Civil Penalty Actions by Commissioners.*

(a) In applying When taking civil penalty action pursuant to section 12999.5 of the Food and Agricultural Code county agricultural commissioners shall use the provisions of this subsection to determine the types of the violations for which fines may be assessed and the amounts of the fines violation class and the fine amount.

(a) (1) for purposes of this subsection, Violation types are classes shall be designated as "serious," "moderate," and "minor."

(1) (A) "Serious": Violations that are repeat violations of those in subparagraph (2) (B) or violations which created an actual health or environmental hazard. The appropriate fine level range for these serious violations is \$400 \$401-\$1,000.

(2) (B) "Moderate": Violations that are repeat violations of those in subparagraph (3) (C) or violations which posed a reasonable possibility of creating a health or environmental effect. The appropriate fine level range for these moderate violations is \$150-\$400 399 \$151-\$400.

(3) (C) "Minor": Violations that are violations which are procedural or had no effect on human health or the environment did not create an actual health or environmental effect or did not pose a reasonable possibility of creating a health or environmental effect. The appropriate fine level range for these minor violations is \$50-150 \$149 \$150_.

~~(b) (2) The county agricultural commissioner shall consult with the Department prior to each notification, as specified in subsection (e) notifying a person charged with a violation of the proposed fine action.~~

(2) The currently alleged violation shall be considered a repeat violation if the following criteria are met:

(A) the person against whom the civil penalty action is proposed had a prior violation that was, or would have been, in the same class as the currently alleged violation; and

(B) a civil penalty was levied for the prior violation within two years of the date of the Notice of Proposed Action by the county proposing the current action.

~~(e) (3) The person charged with a violation(s) shall be notified of the proposed fine action, including the amount of the proposed fine(s). When a penalty is proposed resulting in a repeat violation, the Notice of Proposed Action shall identify the prior violation and the record of the proceedings shall include a copy of the decision regarding that prior violation. The commissioner shall send a copy of the notice to the Department at the same time the notice is provided to the person charged with a violation(s). The notification shall include the right to appeal to the Director pursuant to the procedures provided in section 12999.5(e).~~

~~(4) If the person against whom the commissioner levied a fine requested and appeared at the hearing offered by the commissioner, the commissioner's decision shall include information concerning the person's right to appeal the commissioner's decision to the Director.~~

~~(d) (5) The county agricultural commissioner shall send a copy of the notice to the Department at the time of notice to the person charged with the violation(s). The Department, on at least an annual basis, shall inform county agricultural commissioners of violations for which fines have been assessed levied.~~

(b) When acting pursuant to Food and Agricultural Code section 12999.5 or Business and Professions Code section 8617, an agricultural commissioner may bring an action against an employee employed person who is licensed or certified pursuant to Chapter 14, Division 3, of the Business and Professions Code; Chapters 5 or 8, Division 6, of the Food and Agricultural Code; or Chapters 3.4 or 3.6, Division 7, of the Food and Agricultural Code, who failed to utilize personal protective equipment or other safety equipment as required by section 6702(c) provided the commissioner determines that all of the following conditions are met:

(1) The employer provided the equipment to the employee licensee and the equipment was available at the work site in a condition that would have provided the safety or protection intended by the equipment;

(2) The employer, through its written employee workplace disciplinary action policy, required the employee licensee to utilize the equipment;

(3) The employer has complied with applicable training requirements of this Division prior to the time the licensee failed to utilize the equipment. The employer, has the written records, required by this division, verifying compliance with the training requirements of this division prior to the time the employee failed to utilize the equipment;

(4) The employer adequately supervised the employee licensee to assure that the equipment was properly used by the employee licensee;

(5) At the time of the employee's licensee's failure to utilize the equipment, the employee licensee: (A) had knowledge of the discipline that would could be imposed under the employer's written workplace disciplinary action policy for failure to utilize the equipment; and

(B) was licensed or certified pursuant to Chapter 14, Division 3, of the Business and Professions Code; Chapters 5 or 8, Division 6, of the Food and Agricultural Code; or Chapters 3.4 or 3.6, Division 7, of the Food and Agricultural Code; and

(6) The employer, in accordance with its written disciplinary action policy, took disciplinary action against the employee for failure to utilize the equipment.

6601. General Application of Standards.

(a) Whenever pesticide product labeling requires the use of personal protective equipment or specifies other restrictions or procedures be followed, the application of that labeling requirement to an owner or operator of the property to be treated, and their families, shall be consistent with any applicable standards for employees in Subchapter 3, commencing with section 6700.

(b) It is not the intent of these regulations to require separate or duplicate equipment or facilities. Equipment and facilities provided for compliance with the requirements of other agencies may also be used for complying with these regulations provided the equipment and facilities meet the requirements of these regulations.

6720. Safety of Employed Persons.

(d) The provisions of sections 6734 and 6768 (Decontamination), 6726 and 6766 (Emergency Medical Care), 6736 (Coveralls), 6738(b)-(i) (Personal Protective Equipment), and 6770 (Field Reentry) do not apply to licensed agricultural pest control advisers and registered professional foresters, or employees under their direct supervision, while performing, after the application is completed, crop adviser tasks, including field checking or scouting, making observations of the well being of the plants, or taking samples provided:

(1) They have been trained equivalent to the requirements of section 6724 (licensed agricultural pest

control advisers are considered trained for the purposes of this exception); and

(2) The licensed agricultural pest control adviser or registered professional forester responsible for the direct supervision has:

(A) Made specific determinations regarding appropriate personal protective equipment, needed decontamination facilities, and how to safely conduct crop adviser tasks;

(B) Informed each employee under his or her direct supervision of the pesticide product and active ingredient(s) applied, method and time of application, the restricted entry interval, and determinations made pursuant to (A) above; and

(C) Instructed each employee under his or her direct supervision regarding which tasks to perform and how to contact him or her if the need arises.

(e) The provisions of this subchapter do not apply to employees handling consumer products packaged for distribution to, and use by, the general public, provided that employee exposure to the product is not significantly greater than the consumer exposure occurring during the primary consumer use of the product.

6724. Handler training.

(b) (8) The need for, limitations, and appropriate use, and sanitation of, any required personal protective equipment;

6738. Safety Personal Protective Equipment.

(b)(C)(2). Handling consumer products packaged for distribution to, and use by, the general public, provided that employee exposure to the product is not significantly greater than the consumer exposure occurring during the primary consumer use of the product and the product does not require protective eyewear;

(eh) (4) Employees shall be are trained initially and at least every year annually in the need, use, sanitary care, and limitations of any respiratory equipment they are required to wear. Respirators shall be inspected before each use and shall not be worn when conditions prevent proper operation. Every respirator wearer shall be trained in how to properly fit and test the respiratory equipment.

(i) (5) Persons properly mixing pesticides packaged in water soluble packets are considered to be using a closed (mixing) system for the purposes of this subsection. may substitute coveralls, chemical resistant gloves, a chemical resistant apron, and protective eyewear (if required by the pesticide product labeling) for personal protective equipment required by the pesticide product labeling. All personal protective equipment required by pesticide product labeling shall be immediately available for use in an emergency, such as a broken packet;

6772. Restricted Entry Intervals.

(b) The restricted entry intervals in days in the following table apply to the pesticide/crop combinations listed

Crop Pesticide	Apples	Citrus	Corn	Grapes	Peaches/Nectarines	Other Crops
Azinphos-methyl	14(B)	30		21	14(B)	14(A)(B)
Chlorpyrifos		2				
Diazinon	5			5	5	
Endosulfan	2	2	2	2	2	2
Malathion		1		1	1	
Methidathion (Supracide)		30				
Methomyl (Lannate)				7(C)		
Parathion-methyl	14	14(D)	14(D)	14(E)	21	14(D)
Phorate (Thimet)			7			
Phosmet (Imidan)				5	5	
Propargite (Omite/Comite)	21	42	7	30	21	21(F)(G)
Sulfur				3(H)		

Footnotes:

(A) This restricted entry interval applies to stone fruit only. Stone fruit does not include almonds.

(B) If the total Azinphos-methyl applied in the current calendar year is 1.0 pounds per acre or less, thinning may be done after seven days.

(C) Applications of methomyl made after August 15 have a 21-day restricted entry interval. This interval may be terminated after ten days if leaf samples tested pursuant to section 6774 (c)(4) show 0.1 micrograms per square centimeter or less of dislodgeable foliar residue of methomyl.

(D) This restricted entry interval applies only when more than one pound per acre of parathion-methyl is applied.

(E) The restricted entry interval for nonencapsulated parathion-methyl on grapes in Monterey County is six days.

(F) The restricted entry interval for strawberries and field grown roses treated with propargite is three days.

(G) The restricted entry interval for cotton fields treated with propargite is seven days. However, from the end of the restricted entry interval until the beginning of harvest, the employer shall assure that employees entering propargite-treated cotton fields wear work clothing with long sleeves and legs and gloves.

(H) This restricted entry interval for sulfur applies from May 15 through harvest in the counties of: Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare; and during March and April in Riverside County.

6782. Fumigation *Of in* Enclosed Spaces.

Enclosed spaces include, *but are not limited to* vaults, chambers, greenhouses, vans, boxcars, ships, planes, vehicles, and tarpaulin-covered structures and commodities. When fumigating tarpaulin-covered commodities inside *Of* buildings, and areas or things inside *enclosed* greenhouses, this section applies to the entire structure.

(a) Whenever a pesticide is used for fumigation inside an enclosed spaces, at least two trained employees shall be present at all times ~~when: during introduction of the fumigant, and entry into the enclosed space for purposes of facilitating aeration or determining the concentration of fumigants.~~

(1) The fumigant is introduced into the enclosed space;

(A) Except, only one trained person is required to be present when solid fumigants (including aluminum phosphide, magnesium phosphide, and smoke cartridges) are introduced into the enclosed space from outside the enclosed space;

(2) The enclosed space is entered for the purpose of facilitating aeration; and

(3) The enclosed space is entered to determine the concentration of the fumigant and personal protective equipment is required by pesticide product labeling or regulation.