

December 14, 1998

WHS 98-06

TO: County Agricultural Commissioners

SUBJECT: PROPOSED WORKER PROTECTION STANDARD CLEAN-UP REGULATIONS (DPR 97-012)

In mid-October, the Department noticed for public comment an action to update the Worker Protection Standard (WPS) implementation regulations to incorporate changes in the federal standard and recognize the national standard for enclosed cabs that has been adopted by the American Society of Agricultural Engineers. It was found necessary to re-notice this action. This was done on December 4, 1998. The public comment period has been extended until January 18, 1999. Attached are the supporting documents for this action. This action would make the following changes.

When the WPS was incorporated into California regulations, provisions relating to specific substitutions and exceptions from the need for labeling required personal protective equipment (PPE) were included in section 6738. However, these provisions were not referenced in the definition of "conflict with labeling" in section 6000. This resulted in uncertainty and confusion about the status of these provisions. This action would add a general reference, to all of the PPE exception and substitution provisions in section 6738, to the definition of conflict with labeling in section 6000 and make other related technical changes.

This action would modify the definitions of the terms "enclosed cab" and "enclosed cab suitable for respiratory protection," as they apply to pesticide handling equipment by referencing the American Society of Agricultural Engineers Standard S-525, November 1997, for enclosed cabs. The Director would retain authority to

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approve a specific cab that does not meet all aspects of the standard if shown to provide equivalent protection.

Current regulation provides an exemption from worker safety requirements if only consumer use products are used and employee exposure does not greatly exceed normal consumer exposure. The revised wording better reflects the original intent of the exemption.

Current regulations require that signs warning of restricted entry, posted around treated fields, be written in English and Spanish and be readable at 25 feet. This action would clarify that signs meeting federal alternative size requirements in Title 40, Part 170, Code of Federal Regulations are still considered to be readable at 25 feet and also allow for the replacement of Spanish with another language where a majority of the workforce reads the other language.

If you have any questions, please contact your Liaison Senior, or you may contact Roy Rutz by E-mail at rrutz@cdpr.ca.gov, or by telephone, at (916) 445-4279.

[Original signed by John S. Sanders]

John S. Sanders, Ph.D., Chief
Worker Health and Safety Branch
(916) 445-4222

Attachments
cacwpsk2.wpd

TEXT OF PROPOSED REGULATIONS
TITLE 3. CALIFORNIA CODE OF REGULATIONS
DIVISION 6. PESTICIDES AND PEST CONTROL OPERATIONS

Text that would be added is shown by underlining. Text that would be deleted is shown by ~~strikeout~~. Text that would remain unchanged is shown in normal type.

Amend section 6000 by amending, deleting, or adding, in alphabetical order, the following definitions as individually indicated:

6000. Definitions.

“Conflict with labeling” means any deviation from instructions, requirements, or prohibitions of pesticide product labeling concerning storage, handling, or use except:

- (a) A decrease in dosage rate per unit treated;
- (b) A decrease in the concentration of the mixture applied;
- (c) Application at a frequency less than specified;
- (d) Use to control a target pest not listed ~~on the label~~, provided the application is to a commodity/site that is listed on the label and the use of the product against an unnamed pest is not expressly prohibited;
- (e) Employing a method of application not expressly prohibited, provided other ~~label~~ directions are followed;
- (f) Mixing with another pesticide or with a fertilizer, unless such mixing is expressly prohibited; ~~or~~
- (g) An increase in the concentration of the mixture applied, provided it corresponds with the current published ~~recommendations~~ guidelines of the University of California; ~~or~~
- (h) The use of personal protective equipment consistent with the exceptions and substitutions in section 6738.

“Enclosed cab” means a chemical resistant barrier that completely surrounding the occupant(s) of the cab ~~that~~ and meets those portions of the requirements in American Society of Agricultural Engineers standard S-525 that pertain to dermal protection prevents contact with pesticides or treated surfaces outside the cab.

"Enclosed cab acceptable for respiratory protection" means an enclosed cab that incorporates a dust/mist filtering and /or a vapor or gas removing air purification system, as appropriate for the exposure situation, ~~and has been determined by the director to meet the following criteria:~~

- (a) ~~The cab shall provide equivalent respiratory protection as the type of respirator~~

~~listed on the pesticide product labeling, and~~

~~(b) The interior of the cab shall provide for positive pressure, compared to the outside environment, during use. Enclosed cabs certified by the manufacturer as meeting American Society of Agricultural Engineers standard S525 are acceptable under this definition. The Director may, upon request, approve other enclosed cabs as acceptable under this definition.~~

NOTE: Authority cited: sections 11502, 12111, 12781, 12976, 12981, and 14005 Food and Agricultural Code. Reference: sections 11498, 11410, 11501, 11701, 11702(b), 11704, 11708(a), 12042(f), 12103, 12971, 12972, 12973, 12980, 12981, 13145, 13146, and 14006, Food and Agricultural Code.

Adopt section 6716 to read:

6716. Sunset Review of Regulations.

Within five years from the effective date of adoption, the Director, in consultation with the Secretary for Environmental Protection, shall review the provisions of this subchapter 3 to determine whether it should be retained, revised, or repealed.

NOTE: Authority cited: Section 12981, Food and Agricultural Code. Reference: Sections 12980 and 12981, Food and Agricultural Code.

Amend section 6720(b) to read:

6720. Safety of Employed Persons.

(b) When only vertebrate pest control baits, solid fumigants (including aluminum phosphide, magnesium phosphide, and smoke cartridges), insect monitoring traps or non-insecticidal lures are handled, the employer is exempt from the requirements of Sections 6730 (Working Alone), 6732 (Change Area), and 6736 (~~Work Clothing Coveralls~~).

Amend section 6720(e) to read:

6720. Safety of Employed Persons.

(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 use of~~ the product is not significantly greater than the ~~consumer exposure occurring during the primary typical~~ consumer use of the product.

NOTE: Authority cited: Section 12981, Food and Agricultural Code. Reference: Sections 11501, 12973, 12980 and 12981, Food and Agricultural Code.

Amend section 6738(b)(1) to read:

6738. Personal Protective Equipment.

(b)(1) Employees wear protective eyewear when required by pesticide product labeling (except as expressly provided in this section) or when employees are engaged in:

(A) Mixing or loading, except as provided in 6738(I);

(B) Adjusting, cleaning, or repairing mixing, loading, or application equipment that contains pesticide in hoppers, tanks, or lines;

(C) Hand Application by hand or using hand held equipment, except when:

1. Applying vertebrate pest control baits that are placed without being propelled from application equipment; ~~or~~

2. Applying solid fumigants (including aluminum phosphide, magnesium phosphide, and smoke cartridges) to vertebrate burrows; ~~or~~

3. Baiting insect monitoring traps; or

4. Applying non-insecticidal lures.

(D) Ground application using vehicle mounted or towed equipment, except when:

1. Injecting or incorporating pesticides into soil ~~using vehicle mounted or towed equipment~~;

2. Spray nozzles are located below the employee and the nozzles are directed downward; or

3. Working in an enclosed cab; or

(E) Flagging, except when the flagger is in an enclosed cab.

Amend section 6738(c)(1) to read:

6738. Personal Protective Equipment.

(c)(1) Gloves are worn when required by pesticide product labeling (except as expressly provided in this section) or (unless the pesticide product labeling specifies that gloves must not be worn), when employees are engaged in:

(A) Mixing or loading, except as provided in 6738(I);

(B) Adjusting, cleaning, or repairing contaminated mixing, loading, or application equipment; and

(C) Application by hand or using hand-held equipment, except when applying vertebrate pest control baits using long handled implements that avoid actual hand contact with the bait or potentially contaminated areas of equipment.

NOTE: Authority cited: Section 12981, Food and Agricultural Code. Reference: Sections 12980 and 12981, Food and Agricultural Code.

Amend section 6776(b) to read:

6776. Field Posting.

(b) The signs shall be of a size so that the wording specified in (2) and (3) is readable and the skull and crossbones symbol is clearly visible, to a person with normal vision, from a distance of 25 feet, and Signs complying with the size requirements of Title 40 Code of Federal Regulations, Part 170.120 are considered to be readable at 25 feet. The signs shall contain the following:

- (1) The skull and crossbones symbol near the center of the sign;
- (2) The words "DANGER" and "PELIGRO" and "PESTICIDES" and "PESTICIDAS" in the upper portion of the sign;
- (3) The words "KEEP OUT" and "NO ENTRE" in the lower portion on the sign;
- (4) Whenever the sign is used to indicate a restricted entry interval of more than 7 days, the following information in the lower portion of the sign:
 - (A) The date of unrestricted entry;
 - (B) The name of the operator of the property; and
 - (C) The field identification, (if any); and
- (5) All letters and the symbol shall be of a color which sharply contrasts with their immediate background.
- (6) The Spanish portion of the sign may be replaced with another non-English language which is read by a majority of workers who do not read English. The replacement sign must be in the same format and meet the same size and other requirements as the original.

NOTE: Authority cited: Section 12981, Food and Agricultural Code. Reference: Sections 12980 and 12981, Food and Agricultural Code.

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Sections 6000, 6720, 6738, and 6776
Adopt Section 6716
Pertaining to Worker Protection Standard Clean-up

PROBLEM, ADMINISTRATIVE REQUIREMENT, CONDITION, OR
CIRCUMSTANCE ADDRESSED

Several issues have been raised about specific aspects of the comprehensive Worker Protection Standard (WPS) implementation regulations that became effective on January 1, 1997. Some of these issues have been resolved through the issuance of a question and answer document, but some require regulatory action. In addition, the U.S. Environmental Protection Agency (U.S. EPA) has since made changes in its regulations. There is a need to incorporate the recent federal changes into California regulations.

SPECIFIC PURPOSE AND FACTUAL BASIS

The purpose of this action is to clarify specific points of uncertainty in the new regulations and incorporate changes in federal regulations into Title 3, California Code of Regulations (3 CCR). This action clarifies that pesticide handlers who utilize specific equipment types and configurations currently specified in 3 CCR section 6738, and dispense with personal protective equipment (PPE) otherwise required by the labeling, are not considered to be using the pesticide in conflict with its labeling. This clarification is accomplished by adding a specific reference, incorporating the exceptions listed in section 6738, to the definition of (pesticide use in) "conflict with labeling" in 3 CCR section 6000.

Both state and federal law generally require that a pesticide be used according to labeling instructions. Certain specific exceptions from this general requirement are incorporated into the definition of "(use in) conflict with labeling." The WPS incorporated specific exceptions from, and substitutions of PPE that are allowed provided that engineering controls are in place to provide alternative protections to

workers. It is generally accepted in industrial hygiene practice that engineering controls are preferred and should be used as the first priority to make the workplace safer. Only after these steps have been taken should PPE be considered if further protection is needed. Engineering controls are desirable because they provide routine passive protection, while the use of PPE demands a separate action each time it is required. In addition, PPE tends to be cumbersome and uncomfortable, which often discourages its use. California has long been a leader in the effort to encourage the use of engineering controls to make the pesticide workplace safer.

Section 6738 provides for reductions in required PPE if an enclosed cab is used. The term "enclosed cab" is defined in section 6000. The American Society of Agricultural Engineers (ASAE) has adopted a standard (S-525) for enclosed cabs based on the substantially similar U.S. EPA definition of enclosed cab. U.S. EPA has recognized this ASAE standard. To avoid confusion and ensure consistency with federal standards, DPR is proposing to reference the ASAE standard for both cabs that provide dermal protection and cabs that also incorporate respiratory protection.

Section 6720 currently contains an exemption from the worker safety requirements when only consumer products are occasionally used by employees. This exception is framed in terms of exposure rather than use. This provision is unclear. The argument is made that a significant increase in exposure may be avoided by using PPE above what is required on the consumer product labeling, thereby allowing a greater amount of use of the pesticide before the restriction is triggered. While this may be generally true, the effective use of PPE or other protections requires training and other precautions that are included in the exemptions. The appropriate protection requires that this exemption be based on overall amount of use. A correction in a reference to section 6736 is also being made at this time.

Section 6776 requires posting of warning signs around treated fields. U.S. EPA has made changes in WPS relating to the signs used to post pesticide-treated fields. These changes address reduced size and the substitution of Spanish with another language when another language is predominate in the workplace. DPR believes that language more clearly incorporating these new sign provisions into California regulations would be beneficial despite the fact that the California standard has always required that the signs be readable at 25 feet by a person with normal vision, and DPR has by policy acknowledged that signs meeting the federal standard are

assumed to be readable at 25 feet. In order to make this policy clear and available to the regulated community, DPR believes that it should be incorporated into the regulations.

While Spanish is the most widespread language spoken (other than English) in California agriculture, there are areas where another language is more prevalent. In these situations, it is in the best interest of protecting field workers to allow that other predominant language to be used on the sign.

In compliance with Executive Order W 144-97, DPR is adopting a provision in section 6716 that requires DPR, in consultation with the Secretary for Environmental Protection, to review the worker safety regulations within five years to determine whether the regulations should be retained, revised, or repealed. This provision places a directive on DPR and does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of this proposed action.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen impacts on small businesses and invites the submission of suggested alternatives. Some of these changes are only technical in nature and do not result in significant regulatory change. Others incorporate changes in federal requirements that ease the regulatory burden on employers without significant reduction in protection afforded to employees.

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REQUIREMENTS

California's implementation of WPS replaced, rather than duplicated, federal requirements. DPR believes that this course of action minimized the regulatory burden on employers by eliminating the need to understand and comply with two separate, although similar, regulatory standards. An employer in compliance with California regulations will automatically be in compliance with federal requirements.

DATA RELIED UPON

1. Case Reports Received by the California Illness Surveillance Program in Which Ground Applicators' Eye Problems Were Attributed to Pesticide Exposure, 1986-1995, DPR Worker Health and Safety Branch.
2. CFR 40, Part 170.120.
3. U. S. EPA, Pesticide Misuse Review Committee Advisory Opinion # 293.
4. ASAE Standard S-525, Agricultural Cabs. November 1997.
5. Letter, James W. Wells to Felicia Marcus, December 19, 1997, Use of Engineering Controls in Lieu of PPE.



Peter M. Rooney
Secretary for
Environmental
Protection

Department of Pesticide Regulation

James W. Wells, Director
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Pete Wilson
Governor

DPR Regulation No. 97-012

TITLE 3. FOOD AND AGRICULTURE

AMENDED NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF PESTICIDE REGULATION

Worker Protection Standard Clean-up

December 4, 1998

TITLE 3. FOOD AND AGRICULTURE
Worker Protection Standard Clean-up
DPR Regulation No. 97-012

AMENDED NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend sections 6000, 6720, 6738, and 6776 and adopt section 6716 in Title 3 of the California Code of Regulations (3 CCR). The proposed regulation changes relate to clarifying the definition of (pesticide use in) conflict with labeling and the scope of the consumer products exemption and incorporating recent changes in federal regulations related to field posting into California regulations. This amended Notice extends the closing date and corrects the address for submission of public comments. All other aspects of the original Notice remain valid.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing, relevant to the proposed action, to the agency contact person named in this notice. Comments regarding this proposed action may also be sent via e-mail (dpr97012@cdpr.ca.gov). Comments must be received no later than 5:00 p.m., January 18, 1999.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the close of the written comment period, if no public hearing is requested, DPR may adopt the proposal substantially as set forth without further notice.

DPR has determined that the proposed regulatory action does not adversely affect small businesses. This action will have a neutral to slightly positive impact on small businesses by increasing the options available to them to meet current regulatory requirements.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Current law prohibits use of a pesticide in conflict with its approved labeling. Current regulations in 3 CCR define the term "conflict with labeling." When the federal Worker Protection Standard (WPS) was incorporated into California regulations, provisions relating to specific substitutions and exceptions from the need for labeling requiring personal protective equipment (PPE) were included. However, these provisions were not referenced in the definition of "conflict with labeling." This results in uncertainty and confusion about the status of these provisions. This action would add a reference to the PPE exception and substitution provisions to the definition of conflict with labeling and make other related technical changes.

Current regulation defines the terms "enclosed cab" and "enclosed cab suitable for respiratory protection" as they apply to pesticide handling equipment. This action would modify the definitions by instead referencing the American Society of Agricultural Engineers Standard S-525, November 1997, for enclosed cabs. The director would retain authority to approve a specific cab that does not meet all aspects of the standard if shown to provide equivalent protection.

Current regulation provides an exemption from worker safety requirements if only consumer use products are used and employee exposure does not greatly exceed normal consumer exposure. This action would replace the word "exposure" with the word "use" in this exemption.

Current regulations require that signs warning of restricted entry, posted around treated fields, be written in English and Spanish and be readable at 25 feet. This action would establish that signs meeting federal alternative size requirements are still considered to be readable at 25 feet and also allow for the replacement of Spanish with another language where a majority of the workforce reads the other language.

IMPACT ON LOCAL AGENCIES AND 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 the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that this regulatory action will result in no savings or increased costs to any state agency.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that this regulatory action will have no effect on federal funding to the State.

EFFECT ON HOUSING COSTS

DPR has determined that this regulatory action will have no effect on housing costs.

IMPACT ON PRIVATE PERSONS AND BUSINESSES

DPR has determined that the adoption of this regulation will not have a significant adverse economic impact on private persons or businesses, including the ability of California businesses to compete with businesses in other states.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of any jobs, the creation of new business or the elimination of existing business, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed, or would be as effective

and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to authority vested by sections 11502, 11701, 12111, 12781, 12976, 12981 of the Food and Agricultural Code .

REFERENCE

This action is to implement, interpret, or make specific sections 11498, 11410, 11501, 11701, 11702(b), 11704, 11708(f), 12103, 12971, 12972, 12973, 12980, 12981, 13145, 13146, 14006 of the Food and Agricultural Code.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

DPR has prepared an Initial Statement of Reasons for the proposed action and has available the express terms of the proposed action written in plain English--all of the information upon which the proposal is based--as well as a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and the text of the proposed regulations regarding this rulemaking action are also available on DPR's Web site (<http://www.cdpr.ca.gov>). The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified in this notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

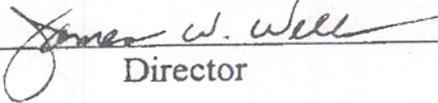
After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does modify the regulation, the modified text will be made available for at least 15 days prior to adoption. During this time, DPR will accept written comments on the modifications. Requests for the modified text should be made to the agency contact person named in this notice.

AGENCY CONTACT

Written comments relevant to the proposed action, requests for the Initial Statement of Reasons, and the proposed text of the regulation may be directed to

Mr. Roy Rutz, Program Supervisor
Worker Health and Safety Branch
Department of Pesticide Regulation
830 K Street
Sacramento, California 95814-3510
(916) 445-4279.

ORIGINAL SIGNED BY



Director

11/20/98

Date