

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations

Amend Sections 6720, 6732, 6734, 6738.4, 6771, and 6793

Pertaining to Safety of Employed Persons, Pesticide Decontamination Sites, Personal Protective Equipment Exemptions, and Minimal Exposure Pesticide Safe Use Requirements

This is the Initial Statement of Reasons 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 (CEQA).

SUMMARY OF PROPOSED ACTION / PESTICIDE REGULATORY PROGRAM
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR sections 6720, 6732, 6734, 6738.4, 6771, and 6793. This proposal will affect pesticide regulatory program activities pertaining to worker safety. In summary, the proposed action will amend decontamination requirements for employees handling pesticides, improve eyewash regulation compliance, and clarify language between sections that mention eyewash equipment or decontamination supplies. This proposed action will require that employees, who handle pesticides having a high potential for eye injury, have access to an eyewash station that meets the requirements found in the American National Standards Institute (ANSI) Z358.1-2014 standard. Additionally, it will require employers of employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity to provide a decontamination site at the mixing/loading site or fumigation site for employees, regardless of the pesticide signal word. The proposed action will also clarify language pertaining to decontamination equipment, remove duplicative requirements, and ensure standardization. Lastly, the proposed action will clarify a personal protective equipment (PPE) exemption that applies when handling liquid fumigants.

SPECIFIC PURPOSE AND FACTUAL BASIS

Background

DPR's mission is to protect human health and the environment from adverse effects of pesticide use. DPR regulates pesticide product evaluation and registration, statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers, and conducts environmental monitoring and pesticide residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

FAC sections 12980 and 12981 specifically require that DPR adopt regulations to ensure safe working conditions for persons handling pesticides and for employees working in and about pesticide-treated areas. DPR's current regulatory requirements for decontamination are designed to reduce the risk of pesticide exposure and injuries among employees who handle pesticides and other workers who may be exposed to pesticides in treated areas.

The U.S. Environmental Protection Agency (U.S. EPA) acts under the authority and mandate of the Federal Insecticide, Fungicide, and Rodenticide Act. U.S. EPA protects agricultural workers from exposure to pesticides through the Worker Protection Standard (WPS), which is in Title 40 of the Code of Federal Regulations (40 CFR), part 170, Agricultural WPS. In 2015, the federal WPS was updated to further reduce agricultural worker exposure to pesticides.

While DPR's worker protection regulations were already consistent with, or in some cases more restrictive than most of the regulatory changes mandated by the revised federal WPS, DPR adopted additional regulations and amended some of its existing worker safety regulations in 3 CCR to ensure they remained consistent with the revised federal WPS. These regulations went into effect on January 2, 2017 (Office of Administrative Law (OAL) File No. 2016-0902-02S). One of the changes involved modifications to the decontamination requirements for employers of employees handling pesticides for the commercial or research production of an agricultural commodity ("production agriculture") (3 CCR section 6734). This change added prescriptive requirements for eyewash facilities such as flow rate, volume of water, and time needed for emergency eyewash procedures.

Summary of Problem and Proposed Changes

Upon review of decontamination site requirements in 3 CCR section 6734, DPR identified a number of areas that should be amended to improve the usefulness of a decontamination site to employees who handle pesticides, increase enforceability, and better align DPR's pesticide worker safety regulations with the decontamination requirements for industries where workers may be exposed to comparable or less toxic substances in Title 8 of the CCR. By modifying this section to increase the stringency of the requirements of decontamination sites and to increase clarity of what is required of employers, DPR can ensure that employees will have access to decontamination sites that are effective, nearby, and well-maintained, which will improve the health of those employees and minimize the risks associated with exposure in handling pesticide products.

Existing subsection 6734(b)(6) requires an eyewash station at the mixing/loading site for employees handling pesticides used in the commercial or research production of an agricultural commodity if the product labeling requires protective eyewear or a closed mixing system is used.

As mentioned above, prescriptive requirements, such as flow rate, volume of water, and time needed for emergency eyewash procedures, are established for this eyewash station. These prescriptive requirements are impractical to enforce without specialized equipment. It is highly improbable that CACs would obtain or regularly use such equipment to verify that the current requirements for these systems are met. For example, the flowrate and time requirement (“system capable of delivering gently running water at a rate of least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about 15 minutes for emergency eye-flushing”) is not easily verifiable upon inspection. Because ANSI Z358.1-2014 requires the same flowrate and system capabilities as DPR’s current regulations, CACs will be able to determine whether an eyewash station is in compliance with these prescriptive requirements simply by verifying that the station is ANSI-compliant. Additionally, the water used and stored in these eyewash facilities for eye flushing is required to be of a “quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed” (existing subsection 6734(a)(1)) and is not required to be potable. This could be left up to interpretation and potentially result in the use of contaminated water that could exacerbate damage when used in the event of an emergency. Clarifying this requirement and adding specificity would benefit both an employer and their employee, as an employer could easily determine the proper water to be used and stored in an eyewash station, and because potable water is safe to drink. Furthermore, an eyewash facility that is compliant with the existing regulation could necessitate the use of the operator’s hands, which would not allow the operator to hold open their eyes to flush both eyes simultaneously in the event of an emergency. Because response time is critical to stop or slow progressive damage from ocular contact with a corrosive substance, a mechanism allowing both eyes to be flushed simultaneously could decrease the risk of permanent damage or prevent the transfer of pesticides from one eye into another if the person has to tilt their head to one side to use the eyewash station. The existing regulation also does not require the eyewash facility to activate in one second or less. Eyewash stations with this capability would allow employees to more immediately decontaminate their eyes potentially preventing infection or damage.

ANSI is a private, not-for-profit organization that supports U.S. standards, including the Standard for Emergency Eyewash and Shower Equipment (ANSI Z358.1-2014), which was developed to standardize safety requirements for emergency eyewash and shower equipment in occupational settings. The ANSI Z358.1 Standard includes requirements for eyewash stations to have a minimum flowrate of 0.4 gallons per minute for 15 minutes, be capable of operating without the use of the operator’s hands, and be activated in one second or less. It also requires potable water, preserved buffered saline solution, or other medically acceptable solution, and requires them to be maintained between 60 and 100 degrees Fahrenheit. Many of these requirements address issues identified above and some are already consistent with existing requirements in 3 CCR section 6734. An ANSI Z358.1-compliant eyewash station would also increase enforceability as enforcement personnel could easily identify that an eyewash station

meets specific flowrates by checking to see if the station bears evidence of ANSI Z358.1 compliance. Additionally, an ANSI Z358.1-compliant eyewash station may be self-contained, which is an option that is portable and does not require plumbing. As such, the eyewash can be brought into fields, placed in the beds or hooked on the sides of trucks or any other environment where pesticides are being handled.

Eyewash stations that meet the requirements of ANSI Z358.1 are also required for similar industries, such as chemical manufacturing and refineries, at all work areas where the eyes of an employee may come into contact with a substance which can cause corrosion, severe irritation or permanent tissue damage or which is toxic by absorption. The California Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) requires safe working conditions for “General Industry” under 8 CCR. Though DPR has primary jurisdiction over the safety of workers handling pesticides or working in pesticide-treated areas, Title 8 includes protections against chemical and pesticide exposures. Because of this, there is jurisdictional overlap in many workplaces where pesticides are applied, including businesses that use or apply antimicrobial products. All workers, regardless of industry, deserve a safe work environment that provides adequate engineering controls to mitigate the hazards present. Many pesticide handlers that may use pesticides that are corrosive to the eyes or that have the potential to cause irreversible damage do not fall under the jurisdiction of Title 8. All workers in California, outside of industries that fall outside of Title 8, who work in comparably hazardous environments have access to ANSI-compliant eyewash stations. Therefore, it is integral that pesticide workers who handle products with the same potential for ocular damage are afforded comparable protections to workers in all other industries. Additionally, many industries where corrosive chemicals are not used, such as landfills and processing plants, are still required to provide ANSI-compliant eyewash stations to their workers to allow for the flushing of eyes in the event of ocular exposure to dust or particulate.

The requirement of an eyewash station meeting the ANSI Z358.1-2014 standard is being proposed as part of this rulemaking. This will expand the current regulation in section 6734, increase enforceability, and make it consistent with other regulations aimed at protecting occupational workers in similar industries where there is potential for eye injuries resulting from exposure to a substance that can cause corrosion, severe irritation, or permanent tissue damage. Some pesticide labels also have a first aid requirement to rinse the eye for 15 minutes in the event of an ocular exposure. The proposed requirement for eyewash stations meeting the ANSI Z358.1-2014 standard will ensure that eyewash stations for all employees handling pesticides have the capabilities to satisfy this requirement and that these capabilities can be easily enforced. Additionally, existing section 6734 only requires an eyewash station to be available for employees at the mixing/loading site. Some fumigant application scenarios do not involve mixing, and thus, do not require a typical mixing/loading site. Similar to the pesticides that currently require an eyewash station in section 6734, ocular exposure to a liquid fumigant

product may have the potential to cause significant eye injuries, such as corrosion, severe irritation, or permanent tissue damage. Therefore, changes are being proposed to ensure that an employee handling a liquid fumigant will have access to an eyewash station at a fumigation site. In addition to requiring the ANSI-compliant eyewash station, some terms and standards from the ANSI standard are being incorporated into the proposed regulations to ensure those affected by the proposed regulations understand what is required under the ANSI standard, including a temperature requirement for eyewash fluid and what qualifies as eyewash fluid.

In addition, for employees handling pesticides for uses other than the commercial or research production of an agricultural commodity, including, but not limited to, structural pest control, landscape maintenance, applications to rights-of-way, vertebrate pest control, and fumigation of food and non-food commodities, 3 CCR section 6734(c) currently only requires employers to provide a decontamination site near the mixing/loading site if the pesticide label bears the signal word (indicating the level of toxicity) “DANGER” (high toxicity) or “WARNING” (moderate toxicity). If an employee is accidentally exposed to a large volume (such as by a pressurized hose rupture) of pesticides labeled with a different signal word, including the signal word “CAUTION” (low toxicity) or no signal word, they may experience significant irritation to their skin and eyes. In 2017, approximately 10,000 individuals applied pesticides with the signal word “CAUTION” for uses other than the commercial or research production of an agricultural plant commodity (<https://www.cdpr.ca.gov/docs/pur/purmain.htm>). Between 2008 and 2017, 57 cases resulting in injury or illness from exposure to a pesticide product with the signal word “CAUTION” were reported to DPR’s Pesticide Illness Surveillance Program (<https://apps.cdpr.ca.gov/calpiq/>). The proposed regulations provide employees the ability to quickly decontaminate and change clothes after an accidental exposure to any pesticide, which should decrease the severity of injuries and illnesses for these workers.

Currently, section 6734 is structured to specify decontamination site requirements for all employers of employees handling pesticides in subsection (a), with specific requirements for production agricultural use in subsection (b) and specific requirements for uses other than the commercial or research production of an agricultural plant commodity in subsection (c). DPR proposes to move some of the requirements currently only applicable to employees handling pesticides for the commercial or research production of an agricultural commodity in subsection (b) to subsection (a) and extend the requirements to apply to all employees handling pesticides. Currently, different decontamination site requirements apply to these two groups even though they may be handling similar types of pesticides and therefore need access to decontamination sites and eyewash fluid to avoid injury should they be exposed. The changes will provide a more consistent level of protection to employees handling pesticides, regardless of workplace or pesticide signal word. Making these changes will improve worksite safety for employees handling pesticides, regardless of whether the pesticides are being used for production agriculture or not.

Sections 6720, 6732, and 6793 currently include cross-references to section 6734. The proposed amendments in 3 CCR section 6734, specifically the reorganization and eyewash station requirement, will result in minor changes to the exemptions in section 6720(c) for employers of employees handling antimicrobial agents, section 6732, which establishes change area requirements for handlers, and section 6793(b), which establishes safe use requirements for minimal exposure pesticides. The proposed changes to these sections will clarify language pertaining to decontamination equipment, remove duplicative requirements, and ensure standardization.

Section 6738.4 permits PPE exemptions to handlers during specific and unique application scenarios. In 2015, DPR adopted section 6738.4(a)(4) (OAL File No. 15-0305-04S), which exempts handlers from wearing chemical-resistant gloves and protective eyewear when working in situations where there is no liquid contact with a fumigant. Recently, there has been some concern that the current wording of section 6738.4(a)(4) may create unintentional ambiguity and be misinterpreted as a broad exception. The proposed change to section 6738.4(a)(4) will remove such ambiguity and clarify the scope of the exemption.

Lastly, section 6771, which designates requirements for early-entry employees, will be reworded to align with proposed changes to section 6734 and the ANSI standard.

Proposed Amendments

The following proposed amendments apply to worker safety regulations. These are worker safety regulations because the requirements protect workers who handle pesticides and may be at increased risk of exposure to pesticides by ensuring that these employees have the appropriate decontamination site supplies available to them in the event of a pesticide exposure.

- **Section 6720.**

Subsection 6720(c) recognizes compliance with applicable sections in 8 CCR, under the authority of the California Department of Industrial Relations (DIR), as compliant with 3 CCR pesticide worker safety requirements, including section 6734. DPR proposes the addition of 8 CCR section 5162 as a corresponding requirement for 3 CCR section 6734 when employees handle antimicrobial agents, used only as sanitizers, disinfectants, or medical sterilants, or pool and spa chemicals. As described below, DPR is proposing to amend 3 CCR section 6734 to align with the ANSI-Z358.1 eyewash station requirement in 8 CCR section 5162. Proposed 3 CCR section 6734(a)(3) will require an employer to provide employee access to an ANSI-Z358.1-compliant eyewash station when certain criteria are met, which may include scenarios where employees handle antimicrobial agents or pool and spa chemicals. DPR has examined the

corresponding requirements in 8 CCR section 5162 and found them to align with the requirements proposed in 3 CCR section 6734(a)(3). To ensure employers of employees handling antimicrobial agents, used only as sanitizers, disinfectants, or medical sterilants, or pool and spa chemicals, only need to comply with one set of requirements, it is necessary to add 8 CCR section 5162 as a corresponding requirement for 3 CCR section 6734.

- **Section 6732.**

Section 6732 requires change areas for employees who handle pesticides for the commercial or research production of an agricultural plant commodity to have sufficient water, soap, single-use towels, and one clean change of coveralls. Due to the proposed restructuring of section 6734, DPR proposes to update the cross-references in section 6732 to reflect the correct corresponding code sections. Cross-references to subsections 6734(a), (b)(1), and (b)(2) will be updated to subsections 6734(a)(1) and (b)(1) to ensure that change areas for employees who handle pesticides for the commercial or research production of an agricultural commodity continue to meet the same decontamination site requirements, which include sufficient water for routine washing and emergency decontamination, a clean change of coveralls, soap, and single-use towels. The proposed change has no regulatory effect and will also ensure that the requirements of section 6732 are equivalent with the federal WPS requirements in 40 CFR section 170.509(b).

- **Section 6734.**

The title of this section, “Handler Decontamination Facilities,” is being changed to “Decontamination Sites for Employees Handling Pesticides.” This is necessary to ensure that consistent wording is used throughout the regulations and more clearly identifies that the decontamination supplies must be stored together in one area, or a “site.” Additionally, the term “handler” lacks a definition in 3 CCR and the FAC. While there is a definition for the term in the federal WPS (40 CFR 170.305) for the commercial or research production of an agricultural commodity, California’s pesticide worker safety regulations are broader and cover all employees handling pesticides. The change from “handler” to “employee handling pesticides” throughout will bolster clarity, enforceability, and will be consistent with the broad scope of section 6734 and definitions in section 6000.

6734(a)(1). DPR proposes to delete and relocate the first sentence of existing subsection (a), which requires employers to assure that sufficient water, soap and single-use towels for routine washing of hands and face and for emergency eye flushing and washing of the entire body is provided to employees as specified in the section, to more pertinent areas in section 6734, and renumber the subsection to (a)(1). This change is necessary to avoid redundancy in the regulatory text and add clarity to the requirements for decontamination sites.

DPR proposes to establish in subsection (a)(1) that it is the employer's responsibility to notify any employee handling pesticides of the location of the decontamination site prior to the employee handling pesticides and provide the decontamination supplies listed subsequently. The notification requirement is being relocated from existing subsection 6734(b)(4) and is being expanded to include employers of employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity. This is necessary so that any employee handling pesticides can quickly locate and access the decontamination site if an incident occurs. The requirement to provide decontamination supplies is an existing requirement in current subsection (a).

6734(a)(1)(A). This subsection establishes that sufficient water for routine washing and for washing of the entire body in case of emergency decontamination be at the decontamination site. This is an existing requirement that is being relocated from existing subsection (a)(1), and is necessary to clarify decontamination site requirements by listing it underneath the language stating what an employer must provide.

Currently, 6734(a)(1) requires water for emergency eye flushing to "be of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes." Because no specific temperature is listed, the appropriate temperature may be left up to interpretation. Specifying the temperature of water that will not cause injury to the user when used for washing will clarify what the appropriate temperature is, making this requirement easier for employers to comply with and increasing enforceability. This is a technical clarification that is necessary to prevent injuries and ensure equivalency with DIR's eyewash requirements and alignment with the ANSI standard. The proposed temperature range is from the ANSI Z358.1-2014 standard's definition of "tepid," which is "a flushing fluid temperature conducive to promoting a minimum 15-minute irrigation period. A suitable range is 16–38 C (60–100 F)." Temperatures above 100 degrees Fahrenheit can cause an acceleration of chemical reactions and can be injurious to the user. This is also necessary to ensure consistency with the ANSI Z358.1 standard for temperature proposed later in the regulations.

Additionally, DPR proposes to make minor grammatical corrections. These corrections do not have any regulatory effect.

6734(a)(1)(B). DPR proposes to delete duplicative language as the requirement for specified materials to be available at the decontamination site is being incorporated into proposed section 6734(a)(1). This change is necessary to reduce duplication and redundancy.

6734(a)(1)(C). The proposed requirement for soap and single-use towels is being relocated from existing subsection 6734(a) to increase clarity, making it easier for employers to identify the supplies required at a decontamination site. Additionally, DPR proposes that soap and single-use

towels be in quantities to meet employee needs. This change specifying that the employer must provide soap and single-use towels in quantities that are sufficient to meet employee needs is necessary to align with the federal WPS requirement in 40 CFR 170.509(b)(2).

The prohibition of hand sanitizing gels and wet towelettes satisfying the requirement for soap and single-use towels is being relocated from existing subsection 6734(b)(2) to make it a general requirement that applies to all employees handling pesticides, and not to production agriculture employees only. This change is necessary because pesticides used for production agriculture and for uses other than the commercial or research production of an agricultural plant commodity can have similar toxicities. It is imperative that employees working in settings where they are handling pesticides for production agriculture or for uses other than the commercial or research production of an agricultural plant commodity be provided the same decontamination supplies, including soap and single-use towels, in case of accidental exposure to pesticides.

6734(a)(2). The requirement establishing that sufficient water be available for emergency eye flushing at the decontamination site is being relocated from existing subsection 6734(a) to this subsection. At a decontamination site, this water is used with the eyewash system specified in existing subsection (b)(6) or as the one pint of water specified in existing subsection (b)(5). As a result, DPR proposes to clarify that eyewash fluid shall be provided by the employer in these scenarios (when an eyewash station is required by subsection (a)(3) or a personal eyewash unit is required by subsection (b)(3)). In addition, DPR proposes to specify what eyewash fluid consists of and how it must be stored and maintained. Currently, the fluid, as an existing requirement in section (a), must meet the quality requirement in existing (a)(1). “Quality” may be left up to interpretation; therefore, specifying what the eyewash fluid consists of will clarify the quality of water that will not cause injury to the user when used for washing, making this requirement easier for employers to comply with and increasing enforceability. Specifying that the eyewash fluid, “includes potable water, preserved buffered saline solution or other medically acceptable solution,” is necessary to be consistent with the ANSI Z358.1-2014 standard definition of “flushing fluid.” Although ANSI uses the term “flushing fluid,” DPR proposes to use the term “eyewash fluid” to indicate that this fluid is only intended for use on eyes. The proposed text also retains language from existing section 6734(a), clarifying that the eyewash fluid is to be used for emergency eye flushing.

Additionally, this section specifies that this fluid must be stored separately from water used for mixing with pesticides. Currently, the fluid, as an existing requirement in section (a), must meet the storage requirements in existing (a)(1). However, this fluid is different from the water that may be used for other decontamination, such as the water specified in proposed section 6734(a)(1)(A), because ocular tissue is especially sensitive, making it necessary for this fluid to be stored separately even if the tank holding the water has valves to prevent backflow. This provision also specifies that the fluid must be maintained at a temperature ranging between 60

and 100 degrees Fahrenheit to be consistent with the ANSI Z358.1-2014 standard as described above.

6734(a)(3). The proposed changes in this subsection will relocate the eyewash station requirement from existing subsection 6734(b)(6) and require those eyewash stations to meet the ANSI Z358.1-2014 standard. It will also extend the eyewash station requirement to employers of employees handling pesticides (including liquid fumigants) for uses other than the commercial or research production of an agricultural plant commodity. This change is necessary to make the proposed requirements as protective as DIR's regulations, while maintaining equivalency with the 2017 federal WPS revisions (40 CFR, part 170). ANSI is a private, not-for-profit organization that supports U.S. standards, including the Standard for Emergency Eyewash and Shower Equipment (ANSI Z358.1-2014). The requirements currently listed in 3 CCR section 6734 are similar to ANSI Z358.1-2014 standards with some key differences. For example, the current regulation does not require an essential safety feature of an ANSI Z358.1-2014-compliant eyewash station: once activated, the eyewash station must be able to perform without the use of the operator's hands. This function is necessary so that the operator can use their hands to hold their eyes open while flushing. Additionally, the ANSI standard has specific testing requirements to assure the eyewash equipment is functioning properly. While the current regulation describes the requirements of the eyewash equipment (e.g., 0.4 gallons per minute for at least 15 minutes), there is no requirement to test this equipment. In addition, this requirement is difficult to enforce without appropriate equipment to monitor the capabilities of an eyewash station. Eyewash stations that meet the ANSI standard will immediately remedy these issues since, to obtain the ANSI approval, it must meet all aspects of the standard (e.g., flow rate, use without hands, testing, and performance). This will improve enforceability of the flow rate as the eyewash station can simply be checked for compliance with ANSI Z358.1. Other regulatory agencies, including DIR, require all eyewash equipment to meet the requirements of the ANSI standard. This requirement can be found in 8 CCR section 5162 "Emergency Eyewash and Shower Equipment." To ensure that DPR's regulations are as protective as DIR's regulations, which cite the ANSI standard, and to better protect employees handling pesticides, DPR proposes including the same requirement for eyewash stations in 3 CCR section 6734.

The ANSI standard is a performance standard, not a prescriptive requirement. No specific technology or equipment is required as a result of incorporating the ANSI standard.

Additionally, the relocation of existing section 6734(b)(6) is necessary to expand the eyewash station requirement to be provided to employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity. Requiring eyewash equipment for all employees ensures that the same protections and equipment are provided to employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity who may handle pesticides with the same potential hazards.

Additionally, because liquid fumigant application scenarios may not involve mixing, these scenarios do not typically require a mixing/loading site. There is potential for eye injuries resulting from ocular exposure to a liquid fumigant product whose labeling requires protective eyewear or the use of a closed system, such as corrosion, severe irritation, or permanent tissue damage. Therefore, the proposed addition of “fumigation site” and “handling a liquid fumigant” ensures that employees handling liquid fumigants will have the same access to eyewash stations at fumigation sites as employees handling non-fumigant products at mixing/loading sites.

6734(a)(3)(A). DPR proposes to add a requirement to follow manufacturer’s instructions. Manufacturer’s instructions provide information, including how to properly use and maintain the equipment. For ANSI-compliant eyewash stations, maintenance may include specific testing and routine checks of the eyewash station to ensure that it is properly functioning, and regularly changing expired eyewash fluid. Since the manufactured eyewash station must meet ANSI standards, requiring employers to maintain the station in compliance with the manufacturer’s instructions is necessary to ensure it functions appropriately, continues to provide the intended level of employee protection, and continues to meet the requirements of the ANSI Z358.1-2014 standard over time and not just when it is first acquired.

6734(a)(3)(B). To ensure employees know how to operate eyewash stations in case of an incident, DPR proposes to require employers to instruct employees at least annually. This is consistent with the requirements in 3 CCR section 6724(b)(13) for employees handling pesticides.

6734(b)(1)-(2). DPR proposes to reword this subsection, revise a cross-reference to the correct subsection, move current requirements in subsections (b)(2) and (b)(4) to subsection (a)(1), as these requirements will now be applicable to all employees handling pesticides, and renumber subsequent subsections accordingly. These changes will ensure consistent language is used throughout the regulations. The use of the term “employee” clarifies the employer-employee relationship and is consistent with the term currently used in subsection (b). These changes do not have any regulatory effect.

6734(b)(3). DPR proposes to reword the subsection and make grammatical changes to ensure consistent language throughout the regulations. DPR also proposes to modify the terminology of the personal eyewash by referring to the one pint of water as “personal eyewash fluid,” which, as mentioned previously in the section regarding eyewash fluid, includes potable water, preserved buffered saline solution, or other medically acceptable solution, to more closely align with DIR’s regulations and the ANSI Z358.1-2014 standard (DIR uses the term “personal eyewash unit” and ANSI uses the term “personal wash unit”). The proposed changes also replace the term “handler” with “employee.” This clarifies the employee-employer relationship and is consistent with the

language currently used in subsection (b). These changes are necessary to add clarity to the requirements for personal eyewash fluid.

6734(b)(3)(A). To ensure employees know how to utilize the personal eyewash fluid and are aware of emergency eye flushing techniques in advance of a potential incident, DPR proposes to adopt a requirement for employers to ensure that employees are trained on these topics pursuant to the “Handler Training” requirements found in 3 CCR section 6724(b)(13).

6734(c). The proposed change makes the decontamination site availability requirement for employers of employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity uses the same as for employers of employees handling pesticides for production agricultural uses. Requiring a consistent decontamination site location for all employees ensures that the same protections and equipment are provided to employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity who may handle pesticides with the same potential hazards. Additionally, because some fumigant handling scenarios for uses other than the commercial or research production of an agricultural plant commodity do not involve mixing, these types of application scenarios do not require a typical mix/load site. Therefore, the addition of “fumigation site” ensures that these types of handlers will have the same access to decontamination sites as non-fumigant handlers and is necessary for the same reasons described above regarding the proposed fumigant language in section 6734(a)(3).

For employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity, the current regulation does not require employers to provide a decontamination site near the mixing/loading site or fumigation site unless the pesticide label bears the signal word “DANGER” or “WARNING.” If an employee is accidentally exposed to a large volume (such as by a pressurized hose rupture) of pesticides, regardless of signal word, they may experience irritation to their skin and eyes. The proposed regulation requires that a decontamination site be located at all mixing/loading sites and fumigation sites so that employees have the ability to properly decontaminate and change clothes after an accidental exposure to any pesticide. This should decrease the severity of injuries and illnesses for these workers in the event of an exposure.

- **Section 6738.4.**

DPR proposes to reword the exemption for readability and clarify that this exemption applies when the employee is handling a liquid fumigant and has no contact with the liquid fumigant. The ambiguity of the current text may lead to a misinterpretation of the exemption as being applicable to handlers handling any pesticide (including fumigants and non-fumigants) where there is no anticipated liquid contact with a fumigant. As such, the current language is

inconsistent with pesticide product labeling. Pesticides, including their product labeling, must be approved and registered by U.S. EPA before they are registered in California. All labels must bear a misuse statement (40 CFR section 156.10(i)(2)(ii)), which explains that the label is the law, and the use of any pesticide shall not conflict with labeling (FAC section 12973). Fumigant pesticide product labeling exempts handlers from wearing safety glasses and gloves when there is no "liquid contact potential." Furthermore, as established in 3 CCR section 6701, regulations in Division 6, Chapter 3, Subchapter 3, which includes section 6738.4, should be interpreted as at least as strict as and consistent with the federal WPS. This clarification is also necessary to maintain consistency with and not be less restrictive than 40 CFR 170.607. Overall, this change clarifies the intended applicability of the exemption and increases enforceability by aligning the exemption with sections 6738 through 6739, the federal WPS, and pesticide product labeling.

- **Section 6771.**

6771(a). DPR proposes to reword the sentence for readability. This change adds clarity and has no regulatory effect.

6771(d)-(e). The proposed change moves the existing requirement for laundering personal protective equipment in subsection (e) to subsection (d) for clarity, as subsection (d) already discusses requirements for laundry. Non-substantive grammatical changes are also being made for better readability. These changes have no regulatory effect.

6771(f)-(h). DPR proposes to reword sentences, and align these subsections with proposed changes to section 6734 and the ANSI standard by updating "eyeflush water" to "eyewash fluid," specifying what eyewash fluid includes, and adding the temperature for water that will not cause illness or injury when it contacts the skin, eyes, or if it is swallowed. These changes are necessary to align with the eyewash fluid and personal eyewash fluid changes proposed in section 6734 and to improve enforceability of the regulations by clarifying the employer's responsibilities. Non-substantive grammatical changes are also being made for better readability and consistency.

- **Section 6793.**

Section 6793(b) requires washing facilities as specified in section 6734, where minimal exposure pesticides are mixed or loaded, regardless of the toxicity category of the product used. DPR proposes to remove subsection 6793(b) to avoid duplicity, as the proposed changes to section 6734 will now require decontamination sites, which include washing facilities, for all employees handling pesticides, regardless of toxicity category. Additionally, as a result of this deletion, DPR proposes to renumber the other subsections accordingly.

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

As discussed above, 3 CCR sections 6720, 6732, 6734, 6738.4, 6771, and 6793 are regulations relating to pesticide worker safety. Therefore, DPR and the California Office of Environmental Health Hazard Assessment (OEHHA) jointly and mutually developed the proposed regulations as specified in FAC sections 12980 and 12981. 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 the proposed regulations, as specified in FAC section 11454 and the January 15, 2019, Memorandum of Agreement developed per FAC section 11454.2.

DPR consulted with the University of California and the California Department of Industrial Relations.

Potentially requiring the usage of ANSI Z358.1-2014 compliant eyewash stations was an agenda item discussed at the January 18, 2019 meeting of the Pesticide Registration and Evaluation Committee (PREC), a committee whose members include representatives from public agencies that have jurisdiction over activities or resources that may be affected by the use of pesticides. The proposed regulations, including ANSI Z358.1-2014 eyewash station requirements and decontamination sites, were also discussed at the PREC meeting on December 11, 2020. Copies of the PREC minutes are contained in the rulemaking file.

DPR has also consulted with California's county agricultural commissioners, including two presentations on the proposed rulemaking on February 5 and February 10, 2021. In addition, DPR has presented the proposed rulemaking at the California Structural Pest Control Board meeting on March 9, 2021, and the California Agricultural Commissioners and Sealers Association (CACASA) Pesticide Regulatory Affairs Committee meeting on May 26, 2021.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION [GOVERNMENT CODE SECTION 11346.2(b)(4)]

DPR has not identified any feasible alternatives to the proposed regulatory action that would lessen any adverse impacts, including any impacts on small businesses, and invites the submission of suggested alternatives. The adoption of these regulations will bring California worker safety regulations into alignment with DIR's eyewash regulations in 8 CCR section 5162, which requires an ANSI-Z358.1 eyewash station, while maintaining equivalency with the federal

WPS (40 CFR, part 170). This action also clarifies the existing eyewash equipment requirement, aligns decontamination site requirements for all pesticide handling scenarios, and clarifies an exemption for PPE use.

ECONOMIC IMPACT ON BUSINESS [GOVERNMENT CODE SECTION 11346.2(b)(5)(A)]

The proposed regulations will not have a significant economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states. DPR is proposing to amend requirements for pesticide decontamination facilities, improve eyewash regulation compliance, clarify language between sections that mention eyewash equipment, and clarify an exemption for PPE use. In addition, the proposed action includes a requirement for employees handling specific categories of pesticides to have access to an eyewash station and requires a decontamination site to be available to all employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity. Many businesses affected by these regulations already have decontamination sites and ANSI-Z358.1 compliant eyewash stations. Those that do not already have these stations will have to purchase them and may incur an upfront cost of approximately \$250 per eyewash station. The recurring costs of upkeep may be negligible if using potable water, or may be minor if using supplemental sterilants for the eyewash fluid. The cost of decontamination supplies is about \$50 for businesses required to purchase them. The proposed amendments will bring DPR's worker safety regulations into alignment with DIR's eyewash regulations in 8 CCR section 5162, which requires an ANSI-Z358.1 eyewash station, while maintaining equivalency with the federal WPS (40 CFR, part 170).

The document relied upon to make this determination is the "Economic Analysis of Amending 3CCR 6720 (Safety of Employed Persons), 6732 (Change Area), 6734 (Handler Decontamination Facilities), 6738.4 (Personal Protective Equipment Exemptions), 6771 (Requirements for Early Entry Workers), and 6793 (Minimal Exposure Pesticide Safety Use Requirements)." This document 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)

The proposed action would not create or eliminate jobs in California, result in the creation of new businesses or the elimination of existing businesses within the State of California, or result in an expansion of businesses currently doing business with the State of California. This action clarifies the existing eyewash equipment requirement, aligns existing regulations with other standards and regulations that are currently in place for other similar industries, aligns decontamination site requirements for all pesticide handling scenarios, and clarifies an exemption for PPE use.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

This proposal is likely to result in more worker protection from potential exposure to pesticides, including pesticides that could cause eye injury. The 2017 federal WPS requirements for eye decontamination that were incorporated into 3 CCR in 2017 will be enhanced by requiring equipment that meets the ANSI Z358.1-2014 standard. This equipment provides additional worker protection measures including continuous performance of the equipment with no further worker activity. Additionally, standardizing eyewash equipment will help enforce the safety and welfare of pesticide workers.

Employees who mix and load pesticides labeled with the signal word “CAUTION” or with no signal word for uses other than the commercial or research production of an agricultural plant commodity will benefit from these regulations by having access to a decontamination site. The ability to routinely decontaminate and change clothes after handling pesticides serves to minimize potential exposure. Additionally, the ability to decontaminate in the event of an emergency or accidental exposure should decrease the severity of injuries and illnesses for these workers.

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

The Secretary of Natural Resources determined that DPR’s pesticide regulatory program, including the adoption, amendment, and repeal of pesticide regulations, qualifies as a certified regulatory program under Public Resources Code section 21080.5 and 14 CCR section 15251(i). This determination means DPR’s pesticide regulatory program is functionally equivalent to CEQA requirements for preparing environmental impact reports (EIRs), negative declarations, and initial studies, and is therefore exempt from such requirements. This initial statement of reasons serves as the public report required under 3 CCR section 6110 and satisfies the requirements of DPR’s CEQA certified regulatory program for rulemakings at 3 CCR sections 6110-6116.

DPR’s public report, as the substitute document satisfying CEQA functional equivalency requirements, must include a description of the proposed activity, and either (A) alternatives to the activity and mitigation measures to avoid or reduce any significant effects that the project might have on the environment, or (B) a statement that DPR’s review of the project showed that the project would not have any significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. (3 CCR section 6110.) DPR shall not adopt a regulation that would cause a

significant adverse environmental impact if there is a feasible alternative or mitigation measure that would substantially lessen those significant adverse environmental impacts. (3 CCR section 6116.)

Under existing law, DPR has established requirements to ensure and protect the safety of workers who handle, store, or transport pesticides, or may be exposed by working in fields treated with pesticides (3 CCR section 6700 et seq.). Existing law requires employers to provide decontamination facilities to these workers (3 CCR section 6734) and establishes requirements for early entry of a treated field (3 CCR section 6771). The proposed regulations modify these requirements in ways that will improve worker protections. Specifically, the proposed regulations require eyewash stations to meet the ANSI Z358.1-2014 standard, relocate eyewash station requirements from subsection (b) to subsection (a) so that they apply to all employees handling pesticides and not only those handling production agricultural pesticides, specifying temperature and immediacy requirements for better clarity and enforceability, and expanding the decontamination site requirements to apply to all pesticides regardless of signal word. The proposed regulations also make a number of editorial changes intended to clarify the meaning of the regulatory text, remove redundancies, add consistency, and improve enforceability. The proposed regulations would have potentially beneficial environmental or human health effects. Specifically, DPR considered the following potential environmental or human health effects:

- Human Health
- Flora & Fauna, including protected species
- Water Quality
- Agriculture and Forestry Resources
- Air Quality, including greenhouse gas emissions

This proposal would have a potential benefit on human health. By improving the stringency and clarity of DPR's regulations for decontamination sites, employers will provide improved eye flushing equipment and access, which will lead to contaminated workers being able to rinse off pesticides to minimize adverse health effects. Additionally, requiring a consistent decontamination site location for all employees handling pesticides ensures that the same protections and equipment are available to employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity who may handle pesticides with the same potential hazards. Improving the clarity and enforceability of these regulations may also increase employer compliance with the regulations to the benefit of those workers.

DPR's proposed regulations will not have any effect on flora and fauna, water quality, agricultural or forestry resources, or air quality because they only involve requirements for

decontamination sites and early entry workers, and do not increase or decrease the pesticides used, change how those pesticides are or may be used, or alter any other requirement that could possibly have an environmental impact.

Absent these proposed regulations, workers would be less protected from potential exposure to pesticides. Against this environmental and regulatory baseline, no possible significant adverse effect to human health or the environment can reasonably be expected to occur from implementing the proposed regulations because the proposed regulations increase the stringency of eyewash station requirements and make clarifying changes that will improve compliance with decontamination site and early entry worker requirements in existing law. This will likely have a positive benefit to human health. It will not have any effect on the surrounding environment. Therefore, the proposed regulations are categorically exempt from environmental review under 14 CCR section 15061(b)(3). Because no significant adverse effect to California's environment can reasonably be expected to occur from implementing the proposed regulations, 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 40 CFR section 170 that contain requirements for production agriculture pesticide workers. The proposed changes offer additional protections beyond what is required in the federal WPS. Although there are some similarities in the regulatory requirements, California and DPR maintain a separate regulatory structure from the Federal standards. As such, what duplication may occur with the Federal regulations is unavoidable and necessary to allow California to have a fully operational and independent program of worker safety, when pesticides are used, that is enforceable under California law.

DOCUMENTS RELIED UPON

1. American National Standard for Emergency Eyewash and Shower Equipment. ANSI Z358.1-2014.
2. California Code of Regulations, Title 8, Subchapter 7: General Industry Safety Orders. Group 16: Control of Hazardous Substances. Article 109: Hazardous Substances and Processes. Subsection 5162: Emergency Eyewash and Shower Equipment.
<https://www.dir.ca.gov/title8/5162.html>
3. Memorandum from Emma Colson to Lauren Otani, California Department of Pesticide Regulation. 2021. Economic Analysis of Amending 3CCR 6720 (Safety of Employed Persons), 6732 (Change Area), 6734 (Handler Decontamination Facilities), 6738.4 (Personal Protective Equipment Exemptions), 6771 (Requirements for Early Entry Workers), and 6793 (Minimal Exposure Pesticide Safety Use Requirements).

4. Steinmann, Kimberly. 2020. Number of distinct license numbers reporting non-agricultural PURs for each signal word.