

Chapter 6

Worker Safety

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Section 6.1

History of Worker Safety Regulations

Interprets FAC sections 12980 through 12988

Background

In 1974, California adopted comprehensive worker safety regulations designed to protect agricultural pesticide handlers and field workers. That same year, the U.S. Environmental Protection Agency (U.S. EPA) adopted a worker protection standard that dealt only with the protection of field workers.

From 1986 through 1988, California revised its worker safety regulations and expanded the scope to include all pesticide handlers. The revisions clarified and increased requirements for handler training, medical supervision, personal protective equipment, field reentry, and worker reentry intervals.

California amended its worker safety regulations in January 1992 to include hazard communication requirements. Hazard communication regulations were developed to supplement existing worker safety regulations dealing with hazard communication for pesticide handlers and field workers. Incorporation of the regulations ensured that California's worker safety program was equivalent to the 1988 revisions of the Federal Hazard Communication Standard.

In August 1992, federal regulations were adopted, known as the Worker Protection Standard (WPS) (40 CFR part 170), designed to protect employees on farms, forests, nurseries, and greenhouses from occupational exposures to agricultural pesticides. At that time, California began to work with U.S. EPA to address interpretation issues and determine regulatory equivalency for several elements of California's existing worker safety regulations.

In May 1995, U.S. EPA gave interim approval of California's request for regulatory equivalency contingent upon incorporation of federal WPS requirements in California's worker safety regulations. Since 1995, California has continued to improve many of the requirements contained in its worker safety regulations.

Worker safety regulations apply only to employees; however, labeling requirements for pesticide safety and personal protective equipment apply to all users. Failure by any user, including growers and employers, to use the protective equipment specified by the label, is a violation of both State and federal law.

Section 6.2

Accessible

Interprets 3 CCR section 6723

Interpretation “Accessible” means that records required by regulations of the pesticide regulatory program can be easily obtained (i.e., within 48 hours) by employees who handle pesticides. This is not the same as “display” which is defined in 3 CCR section 6000.

Section 6.3

Closed System Criteria (Application of)

Interprets 3 CCR sections 6000, 6738, and 6746

Background

The definition of “closed system” in 3 CCR section 6000 includes a reference to the Director’s Criteria for Closed Systems (Director’s Criteria). DPR’s Worker Health and Safety Branch developed the Director’s Criteria. The current Director’s Criteria were developed to implement the requirement of 3 CCR section 6746 and therefore address only liquid pesticides. The Director’s Criteria is found in Compendium Volume 4, Inspection Procedures, Appendix 1.

Section 6738 allows any person handling pesticides through a closed system to reduce labeling-required PPE in specified situations. This provision applies to both liquid and dry pesticides and is not limited to mixing and loading. It extends to use of a closed application system as well. There is no further clarification in this section about what standards a closed system must meet.

A manufacturer’s certification that their system meets the Worker Protection Standard is one way to show proof in the absence of the Director’s Criteria.

Section 6746 requires a closed system to be used by employees who mix or load certain liquid pesticides. Both State and federal policy have long allowed for reduction of PPE when engineering controls are used. The provisions of section 6738 should be applied to section 6746.

Interpretation

When a liquid pesticide is being handled pursuant to either section 6738 or section 6746, the Director’s Criteria should continue to be applied. The absence of the Director’s Criteria for dry formulations of pesticides and for application does not preclude a person from taking advantage of the allowable exceptions and substitutions in section 6738. The definition in section 6000 should be used to evaluate closed systems for dry formulations, but disregarding the reference to the Director’s Criteria, which is not applicable and should not be used in this case. DPR does not anticipate approving closed systems for dry formulations of pesticides.

Section 6.4

Decontamination

Interprets 3 CCR sections 6701, 6734, and 6768

Interpretation How much water is enough? The term used in the California regulations is "sufficient." U.S. EPA guidelines recommend at least three gallons of water for each handler and one gallon for each field worker. The employer must determine how much water is sufficient. Section 6701 directs that we interpret our regulations consistent with federal regulations. Factors to consider include the number of handlers or field workers, the type of handling or field work activity, the amount of water needed for adequate decontamination after exposure, and the frequency of filling containers. A clear violation occurs when they run out of water. In other circumstances, the evidence available relating to the total situation must be evaluated.

Section 6.5

Employee Laundering Coveralls

Interprets 3 CCR sections 6736 and 6738

Interpretation An employer may contract with an employee to launder coveralls only under the following conditions:

1. The coveralls remain the property of the employer and employees are not allowed or directed to take potentially contaminated coveralls into their home.
2. Contaminated or potentially contaminated coveralls must be kept separate from other clothing and laundry and stored in a sealed container until laundering.
3. All clean coveralls must be either dried thoroughly or put in a well-ventilated place to dry.

It is recommended that laundering be done in a dedicated washer and dryer separate from any residential unit or laundromat.

Definition It is important to understand the difference between coveralls (PPE) and work clothing (3 CCR section 6000) to properly apply this interpretation. *Coverall differs from, and should not be confused with, work clothing that generally, is provided by the employee.* Although they may be physically similar, the difference is based on who provides it.

Employer instruction to person doing the laundering To protect themselves, their employees, and those with whom they may contract to wash coveralls, employers shall:

- Make sure the person laundering understands that the coveralls may be contaminated with pesticides;
- Instruct them on methods to prevent personal exposure;
- Provide the employee or contractor with the requirements specified in 3 CCR sections 6736 and 6738; and
- Conduct supervision of laundering, if needed.

Washing "work clothes" For information regarding the washing of pesticide work clothes, please reference the Pesticide Safety Information Series (PSIS) A-7 and N-7: *Washing Pesticide Work Clothing*. The PSIS can be downloaded from DPR's Web site at: <https://www.cdpr.ca.gov/docs/whs/psisenglish.htm>.

Section 6.6

Employee or Independent Contractor (Sharecropper)

Interprets FAC section 11510; 3 CCR section 6702

Interpretation Normally, if an interpretation of the specific employment relationship in question has been made by the U.S. Department of Labor, the State Employment Development Department, or a State or federal tax agency, DPR would use that determination for the application of pesticide laws and regulations designed to protect employees. In the absence of any formal determination relevant to the particular situation at hand, the following guidelines are presented. This interpretation is based on information from the U.S. Department of Labor, Field Operations Handbook, Parts 10b04-10b11 and California State Management Memo 92-20, jointly issued by the Department of Finance and the Employment Development Department.

A sharecropper is a person who rents a piece of property for a percentage of the harvested crop, rather than paying a monetary rental or lease fee. How the rent is paid is not at issue for our purposes. A sharecropper is considered an independent contractor or owner for purposes of pesticide laws and regulations.

An employee is one who is hired by another to work for wages or salary and whose work is largely directed by his or her employer. The principle test relied upon by the courts for determining whether an employment relationship exists has been whether the possible employer controls, or has the right to control, the work to be done by the possible employee to the extent of prescribing how the work shall be performed.

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Employee or Independent Contractor (Sharecropper), Continued

Interpretation (continued)

The factors which the Supreme Court has considered significant (although no single one is considered controlling) are:

1. The extent to which the services in question are an integral part of the possible employer's business;
2. The amount of the alleged contractor's investment in facilities and equipment;
3. The alleged contractor's opportunities for profit or loss;
4. The amount of initiative, judgment or foresight in open market competition with others required for the success of the claimed independent enterprise.

There are two pertinent questions for our purposes. First, who actually is the operator of the property, mainly for restricted material permitting purposes? In true rental or lease situations, the renter or lessee normally gains control of the property through the rental or lease agreement and is clearly the operator of the property. However, in sharecropping situations, the relationship may be less clear. Often, these management agreements leave considerable control with the umbrella corporation. You may have to carefully review the actual agreement to gain enough information to make a decision about who has the most significant control for the purposes of applying the regulations. Second, is the sharecropper an independent contractor (owner of his or her farming business) or is the relationship with the umbrella corporation more of an employer/employee relationship for the purposes of applying the worker safety regulations? If the sharecropper is clearly the operator of the property, it is likely that they are also an owner, rather than in an employee relationship.

Carefully review the definitions of "operator of the property," "employee," and "employer" in 3 CCR section 6000 and apply them to the situation. It would be possible, at least in theory, to determine that the sharecropper has sufficient control over the aspects of the operation of the property important for permitting to be the operator of the property and yet be in an employee relationship with the umbrella corporation due to other limitations. There are several questions to ask when deciding whether a sharecropper is an owner or an employee for worker safety purposes, and if they can be considered an operator of the property for permitting purposes. You must use your judgment in applying the following factors to the situation. You should also consider whether this is a situation that may be common to other counties and therefore, in the interest of uniformity, should DPR be involved in the determination.

**Independent Contractor/Employee Status
Common Law Determination Factors**

Factors	Employment	Independent Contractor
1. Instructions	A worker who is required to comply with instructions about when, where, and how to work is ordinarily an employee. The instructions may be in the form of manuals or written procedures that show how the desired result is to be accomplished. Some employees may work without receiving instructions because they are highly proficient and conscientious workers. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.	An independent contractor decides how to do the job, establishes his or her own procedures and is not supervised. The entity engaging his or her services is only interested in the end result.
2. Training	Training of a worker by an experienced employee working with him or her, by correspondence, by required attendance at meetings, and by other methods, is a factor of control indicating that the employer wants the services performed in a particular manner. This is especially true if the training is given periodically or at frequent intervals.	An independent contractor ordinarily uses his or her own methods and receives no training from the purchaser of services. He or she is not required to attend meetings.
3. Integration	If the individual's services are so integrated into an employer's operations that the success or continuation of the business depends on the performance of the services, it generally indicates employment.	If the individual's performance of service and those of the assistants establish or affect his or her own business reputation and not the business reputation of those who purchase his or her services, it is an indication of an independent contractor relationship.
4. Services rendered professionally	If the services must be rendered personally, it indicates the employer is interested in the methods, as well as the results.	An individual's right to substitute another's services without the employer's knowledge suggests the existence of an independent relationship.
5. Hiring assistants	An employee works for an employer who hires, supervises, and pays assistants. If an employee hires and supervises assistants at the direction of the employer, he or she is acting as an employee in the capacity of a foreman for or representative of the employer.	An independent contractor hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor.

**Independent Contractor/Employee Status
Common Law Determination Factors**

Factors	Employment	Independent Contractor
6. Continuing relationship	The existence of a continuing relationship between an individual and the person for whom he or she performs services indicates an employer-employee relationship. If the arrangement consists of continuing or recurring work, the relationship is considered permanent, even if the services are rendered on a part-time basis, are seasonal in nature, or if the person actually works for only a short time.	The relationship between an independent contractor and his or her client ends when the job is finished.
7. Set hours of work	The establishment of set hours of work by the employer is a factor of control. If the nature of the occupation makes fixed hours impractical, a requirement that the worker work at certain times is an element of control.	An independent contractor is the master of his or her own time.
8. Full-time work	Full-time work for the business is indicative of control by the employer since it restricts the worker from doing other gainful work. Full time does not necessarily mean an eight-hour day or five day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and the customs in the locality. These conditions should be considered in defining full-time. Full-time services may be required even though not specified orally or in writing.	An independent contractor is free to work when he or she chooses, and to set his or her daily or weekly schedule. An independent contractor would normally perform service less than full time for one principal.
9. Work done on premises	Doing the work on the employer's premises, or on a route, or at a location designated by an employer implies employer control, especially where the work is of such a nature that it could be done elsewhere. The use of desk space and of telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision unless the worker has the option as to whether he or she wants to use these facilities. However, the fact that the work is done off the premises does not indicate freedom from control since some occupations, e.g., employees of construction contractors, are necessarily performed away from the premises of the employer.	Doing work away from the employer's premises when it could be done on the employer's premises indicates a lack of control, especially when the work is free from supervision.

**Independent Contractor/Employee Status
Common Law Determination Factors**

Factors	Employment	Independent Contractor
10. Order or sequence set	If a person must perform services in the order or sequence set by the employer, it shows that the worker is not free to follow an independent pattern of work, but must follow the established routines and schedules of the employer. Often, because of the nature of the occupation, the employer either does not set the order of the services or sets them infrequently. Control is sufficiently shown, however, if the employer retains the right to do so.	If the person engaging the services is not interested in the order or sequence by which the individual completes the work, there is an indication that there is lack of control over the manner and means by which the work is performed.
11. Reports	The submission of regular oral or written reports indicates control since the worker must account for his or her actions.	An independent contractor is not required to file reports, which constitutes a review of his work. (However, reports related only to an end result are not an indication of employment or independence.)
12. Payments	Payment by the hour, week or month represents an employer-employee relationship. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings tends to indicate the existence of an employer-employee relationship.	Payment on a commission or job basis is customary where the worker is an independent contractor. Payment by the job includes a lump sum computed by the number of hours required to do the job at a fixed rate per hour.
13. Expenses	Payment of the worker's business and travel expenses by the employer indicates control over the worker.	A person who is paid on a job basis and who has to take care of all incidental expenses is generally an independent contractor. Since the person is accountable to no other person for the expenses, the person is free to work according to his or her own methods and means.
14. Tools and materials	The furnishing of tools, materials, etc., by the employer indicates control over the worker. In some occupations and industries, it is customary for individuals to provide their own tools, which are usually small hand tools; in that case, workers may also be considered to be employees.	When a worker furnishes tools and materials, especially when a substantial sum is involved, there is an indication of independence.

**Independent Contractor/Employee Status
Common Law Determination Factors**

Factors	Employment	Independent Contractor
15. Investment	<p>The furnishing of all necessary facilities by the employer tends to indicate an employment relationship.</p> <p>Facilities include, generally, equipment or premises necessary for the work, but not tools, instruments, clothing, etc., that are commonly provided by employees in their particular trade.</p>	<p>A significant investment by the worker in facilities used by him or her in performing services for another tends to show an independent status.</p> <p>In order to be significant, the investment must be real, essential, and adequate.</p>
16. Profit or loss	<p>When workers are insulated from loss or are restricted in the amount of profit they can gain, they usually are employees. The opportunity for higher earnings, such as from pay on a piecework basis or the possibility of gain or loss from a commission arrangement, is not considered profit or loss.</p>	<p>The possibility of a profit or loss for the worker as a result of his or her services generally shows independent contractor status. Profit or loss implies the use of capital by the individual in an independent business. Whether a profit is realized or loss suffered generally depends on management decisions: that is, the one responsible for a profit or loss can use his or her own ingenuity, initiative, and judgment in conducting the business or enterprise. Factors that affect whether or not there is a profit or loss are whether the worker hires, directs, and pays assistants; has his or her own office, equipment, materials, or other facilities for doing the work; he or she has continuing and recurring liabilities or obligations; his or her success or failure depends on the relation of his or her receipts to his or her expenditures; he or she agrees to perform specific jobs for prices agreed upon in advance; and he or she pays expenses incurred in connection with the work. Independent contractors typically can invest significant amounts of time or capital in their work without any guarantee of success.</p>

**Independent Contractor/Employee Status
Common Law Determination Factors**

Factors	Employment	Independent Contractor
17. Works for more than one person or firm	It is possible that a person may work for a number of people or firms and still be an employee of one or all of them because he or she works under the control of each firm.	Work for a number of persons or firms at the same time usually indicates an independent contractor status because the worker is usually free, in such cases, from control by any of the firms.
18 Offers services to general public	If a worker performs service for only one person, does not advertise his or her services to the general public, does not hold licenses or hire assistants, and performs services on a continuing basis, it is an indication of an employment relationship.	The availability of services to the general public usually indicates independent contractor status. This may be evidenced by the worker having his or her own office and assistants, hanging out a “shingle” in front of his or her home or office, holding business licenses, maintaining business listings in telephone directories, or advertising in newspapers, trade journals, magazines, etc.
19. Right to fire	If an employer has the right to discharge an individual at will without liability, that worker is considered an employee. The employer exercises the control through the ever-present threat of dismissal, which causes the worker to obey instructions. A restriction on the employer’s right to discharge in a labor union contract does not detract from the existence of an employment relationship.	An independent contractor cannot be discharged as long as he or she produces a result that measures up to his or her contract specifications. However, the relationship can be terminated with liability.
20. Right to quit	The <u>right to quit</u> at any time without incurring liability indicates an employer-employee relationship.	An independent contractor usually agrees to complete a specific job and he or she is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job. If the principal terminates an independent contractor on a contract job without cause, the principal is still liable to the independent contractor for the job price.

**Additional Independent Contractor/Employee
Common Law Determination Factors
For State Employment Tax Purposes**

Factors	Employment	Independent Contractor
21. Custom in industry and location	If the work is traditionally done by employees under the direction of a supervisor, it is an indication of employment.	If the work is usually done by independent contractors, it is an indication of independence.
22. Required level of skill	A low level of technical skill is strong evidence of employment, since as the skill level declines there is less room to exercise the discretion necessary for independence.	A high level of technical skill is important when combined with other factors such as owning a separate and distinct business.
23. Belief of parties	<p>It is an indication of employment if:</p> <ul style="list-style-type: none"> • Both the worker and the employer believe the relationship is employment. • If either party believes that the relationship is employment. 	If all parties agree that the relationship is one of independence, it may be. However, consideration should be given to the fact that many individuals do not know how an employee determination is made, and believe they are an independent contractor because they were told they are.

Section 6.7

Employer Identification

Interprets FAC section 12980; 3 CCR section 6702

Discussion Is it the grower (property operator) or Farm Labor Contractor (FLC) who is the employer that can be held liable for violations of the California pesticide laws and regulations concerning worker safety requirements?

General There are two general areas where action can be taken against the employer for a violation of California pesticide laws and regulations. The first area is the pesticide worker safety regulations, which impose requirements for the safety of employees on employers. 3 CCR section 6000 defines “employer” as: “any person who exercises primary direction and control over the services, or activities of an employee”.

The second area occurs when there is an employee’s violation of a pesticide law or regulation. 3 CCR section 6000 defines “employee” as: “any person who, for any kind of compensation, performs work, services, or activities covered by Division 6 – Pesticides and Pest Control Operations”.

In this case, the employer can be held responsible for the violation under the principle that the employer is responsible for the acts of its agents.

When a grower hires an employee through a FLC and a violation of California pesticide laws and regulations occur, the determination of the employer (grower or FLC) for enforcement action must be made.

Determining who's the employer -- grower or FLC The employer can be determined by identifying who has direction and control of the contract employee’s work activities.

When contract employees are hired by a grower through a FLC, the contract employees supplement the grower’s permanent work force. Sometimes the contract employees work under the direction and supervision of the FLC (or the FLC’s management personnel) and sometimes they work under the direction and supervision of the grower (or the grower’s management personnel). 3 CCR section 6000 clearly states that the employer is the person who exercises primary direction and control over the employee’s work activities.

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Employer Identification, Continued

**Determining
who's the
employer --
grower or FLC
(continued)**

When the contract employee's work activities are under the control, direction or supervision of the grower, there is both a general employment relationship between the FLC and the contract employee and a special employment relationship between the grower and the contract employee. The contract employee, in essence, has dual employers -- the FLC and grower.

The concept of duality of employers has long been recognized in workers' compensation law and work place health and safety law under the California Occupational Safety and Health Act (Cal/OSHA). Under this concept, the person who is receiving services from a contract employee is known as the **secondary** or special employer. The person who supplies the contract employee for a fee is known as the **primary** or general employer. The primary employer typically pays the wages of the contract employee; withholds taxes; and provides employee benefits that generally are associated with an employer/employee relationship, including workers' compensation coverage. The primary employer also may maintain time records of the contract employee, but does not control, direct, or supervise the work activities of the contract employees. The secondary employer provides the work place and controls how the work is to be done, directs what work is to be done, or supervises the work activities of the contract employee. The secondary employer cannot discharge the contract employee. The secondary employer can only request that the contract employee be replaced by another worker.

Under general provisions of the Labor Code (section 6400, et seq.) and California regulations, employers have primary responsibility for employee safety. This includes the primary employer as well as the secondary employer.

Thus, when the secondary employer (i.e., the grower who receives services from the contract employee) has the control, direction or supervision of the contract employee's work activities the grower acts as the employer and is responsible for any worker safety violation that may occur. Conversely, when the primary employer (i.e., the FLC) has control, direction or supervision over the contract employee's work activities the FLC is the employer and is responsible for compliance of the FAC regulatory requirements relative to worker safety and pest control licensing. (See attached flow chart at the end of this section.)

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Employer Identification, Continued

Employer's worker safety requirements

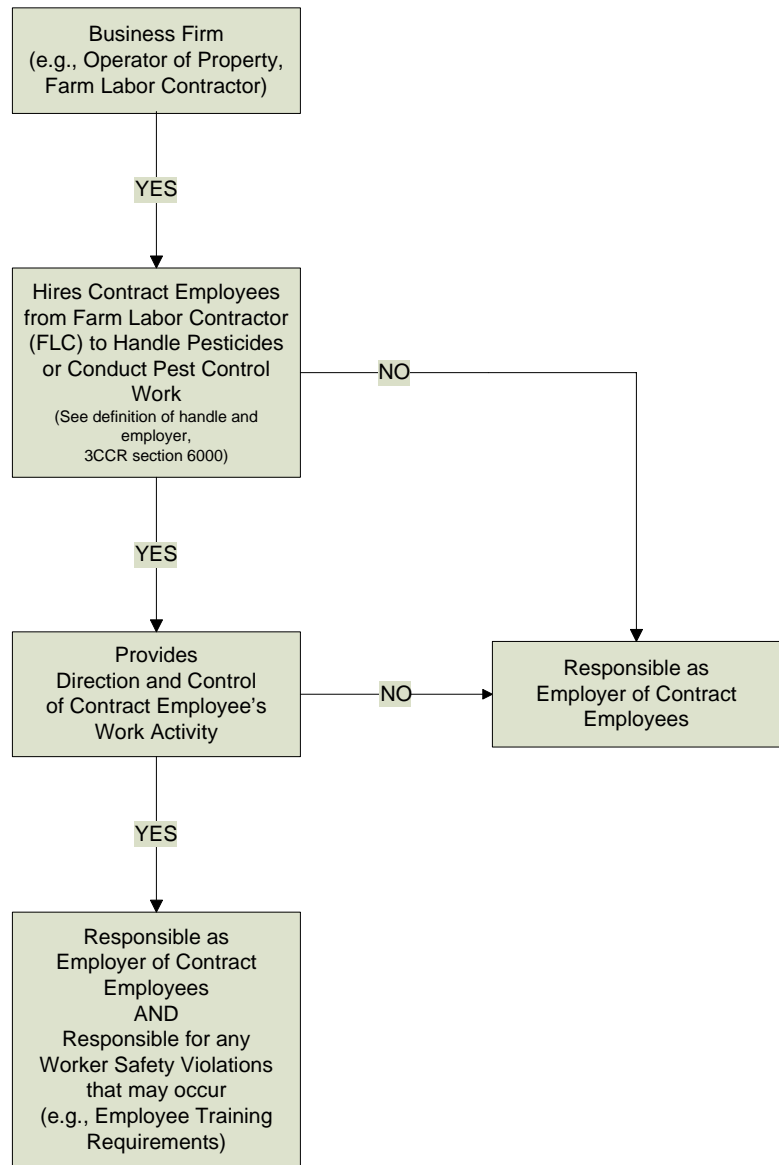
To meet these worker safety responsibilities, it is necessary for the FLC to determine the specific work activities that a contract employee will be called upon to perform for the grower and to determine whether the FLC or the grower will be responsible for directing and controlling or supervising those activities. Likewise, it is necessary for the grower to inform the FLC of the work activities that the contract employee will be performing and whether the grower or the FLC will be responsible for directing and controlling or supervising those activities. For example, it is necessary for the FLC to know if the contract employee will be mixing and loading pesticides to ensure that the FLC provides only a contract employee that has been properly trained, provides and ensures the contract employee wears any necessary safety equipment, and provides a supervisor to supervise and direct the work activities, if the grower specifies that supervision is a service that the grower wants and for which a fee will be paid to the FLC. (See also Pest Control Business licensing requirements in Volume 1.)

When determining the work activities that the contract employee will be performing for the grower, it is desirable for the grower to put in writing the work activities and who will be responsible for supervision of the contract employee (the FLC or the grower). This should be provided to the FLC before any work activities are performed by the contract employee. This will minimize the possibility of misunderstandings between the FLC and the grower as to who is responsible for the control and supervision of the contract employees' work activities.

Consistent with federal OSHA law

The 3 CCR section 6000 definition of "employer" is also consistent with federal Occupational Safety and Health Act (OSHA) law. The principal test relied upon by the courts for determining whether an employment relation exists has been whether the employer controls or has the right to control the work to be done by the employee.

Determining Employer/ Worker Safety Responsibilities



Section 6.8

Enclosed Cab and Cooled Chemical Suit

Interprets 3 CCR section 6738

- Interpretation** When a chemical-resistant suit is required by pesticide labeling or regulation (section 6738(g)) and the temperature exceeds 80°F (degrees Fahrenheit) by day (85°F at night), a cooled chemical suit is normally required. However, a cooled chemical suit would not be required when all of the following conditions are met:
1. Is working in an enclosed cab (under the exemption in section 6738); and
 2. Wears the chemical-resistant suit only while making minor equipment adjustments; and
 3. The minor equipment adjustments take no more than five minutes in a 60-minute period.
-

Section 6.9

Equipment Cleaning and Decontamination

Interprets 3 CCR sections 6736, 6738, 6739, and 6771

Interpretation DPR does not approve products for cleaning and decontamination of application equipment or PPE. Thorough washing with detergent and water for PPE or a product such as Nutra-Sol for application equipment is usually adequate decontamination. The washwater from application equipment is considered hazardous waste unless it is applied onto the labeled application site.

Section 6.10

Fumigation -- Accident Response Plan

Interprets 3 CCR section 6780

Interpretation The accident response plan requires the employer to anticipate what hazards might develop in an accident or spill and provide written instructions on how employees should respond. This plan must be at the worksite. This requirement was not meant to have growers or applicators develop a comprehensive plan attempting to mitigate all possible scenarios resulting from an accident. However, the plan must include the availability of information regarding the security of the area where the problem has occurred and whom to contact in the event of a problem. Emergency information should be documented and available, especially the emergency telephone number. This needs to be more specific than simply calling 9-1-1.

Through the Label Improvement Program and new registration standards, general information on spills and leaks is available on the label.

Section 6.11

Fumigation -- Tarp Pullers as Handlers

Interprets 3 CCR section 6000

Interpretation Tarp pullers (structural and field) are considered handlers because they are removing treatment site coverings. They can be considered non-handlers only if they handle uncontaminated tarp material before the introduction of any pesticide. When tarps are being installed in conjunction with the application (for example, soil fumigation), they are handlers. The regulations that apply to handlers, therefore, apply to these employees.

Section 6.12

Fumigation -- Respiratory Protection and SCBA Backup

Interprets FAC section 12973; 3 CCR sections 6000, 6739, and 6782

Interpretation If self-contained breathing apparatus (SCBA) is required in an enclosed space by labeling or regulation, two NIOSH-approved units are required to be present; the routine use unit (must begin the workday with a minimum of 80% of the manufacturer's maximum recommended air tank capacity) and an emergency use unit (that must be charged to 100% of the manufacturer's recommended air tank capacity). If an employee must enter an enclosed space to begin aeration prior to clearing, he/she must wear SCBA and have a back-up person at the site. The back-up person must be similarly equipped (3 CCR sections 6782 and 6739(j)).

16 CCR section 1971(a)(1)(B) specifically requires two appropriate pieces of respiratory protection for structural applicators. These same standards would apply to the interpretation of that section.

Note: However, the 80% capacity tank need not be the one in the harness; if a third tank of less than 80% capacity is in the harness, it may be used until the low pressure warning device activates, at which time the air tank must be replaced. The interpretation (the "*three tank rule*") allows partial tanks to be used, yet still comply with section 6739(j).

Section 6.13

Fumigation -- Spot Injection

Interprets 3 CCR sections 6738 and 6739

Interpretation If the labeling requires PPE to be used only "in case of a spill or leak," PPE need not be routinely worn during applications to outdoor, unconfined sites, including tree site fumigation. However, a self-contained breathing apparatus (SCBA) must be available to stabilize an emergency situation. Unless specifically required by labeling, a second SCBA is not necessary.

The emergency response plan should specify that only the SCBA-equipped person is responsible for correcting leaks and spills and the second worker evacuates the area and does not reenter until the SCBA-equipped person determines it is safe.

Note: If the "in case of a spill or leak" unit is considered an emergency unit, i.e., non-routine use, then it must be at 100% of the manufacturer's recommended pressure.

Section 6.14

Fumigation -- Two Trained People

Interprets 3 CCR section 6784

Interpretation If two trained people are required by labeling or regulation during a fumigation, the two persons may be two employers, two employees, or one of each. The second person is often required by fumigant labeling and, in the case of employees, by regulation (*3 CCR section 6784*). This requirement should not be confused with the need for a certified applicator when restricted materials are used. The certified applicator may be one of the two people only if physically present at the use site

Section 6.15

Formaldehyde

Interprets FAC section 12973; 3 CCR section 6000; and 8 CCR sections 5203 and 5217

Interpretation The formaldehyde Occupational Safety and Health Administration (OSHA) standard is found on the labeling of pesticides which have formaldehyde as an active ingredient. These products are registered for use in citrus packinghouses and poultry confinement buildings.

Formaldehyde is a regulated carcinogen under 8 CCR section 5217. Under the Memorandum of Understanding between DIR/DPR/CACs, Cal/OSHA is responsible for this pesticide. Pesticide illness reports and employee complaints involving these products should be referred to Cal/OSHA.

Exposure levels of personnel handling the product must be monitored according to specific instructions listed on the labeling and the requirements of 8 CCR section 5217. When performing inspection on the use of these products, you should determine if personnel are being monitored. If handlers are not being monitored, you should investigate the lack of monitoring as a possible labeling violation. You should request that the employer provide evidence that the operation has qualified for an exemption. If the employer has documentation from OSHA which indicates that the specific site being inspected has qualified for an exemption from monitoring, the operation can be considered in compliance with that portion of the labeling. If any other type of documentation is offered by the employer as qualifying for an exemption, the inspector should refer the case to their EBL. The EBL will consult OSHA on the validity of the documentation.

OSHA has indicated that this exemption is valid only if the employer has site-specific data which documents that personnel will not be exposed to levels of formaldehyde above the allowed levels. Approval of any exemption to the formaldehyde monitoring requirement of 8 CCR section 5217 is the responsibility of OSHA.

Section 6.16

Handle

Interprets 3 CCR sections 6000, 6700, and 6720

A. Generally The next four parts are general information.

1. Unopened containers The term "handle" does not include movement or transportation of pesticides in the registrant's original unopened containers. Pesticide dealer employees such as salespersons, warehouse persons, and forklift drivers are covered under Cal/OSHA regulations. However, pesticide dealer employees who mix or load pesticides or calibrate equipment in the field are handlers and under FAC jurisdiction.

Note: Pest control business licensing may also be needed in this case.

2. Field transplant workers Several field agricultural crops are grown using transplants from nursery seedbeds. Most current agricultural practice involves the transplants being set into the soil concurrent with an at-plant pesticide application. Transplant operations are usually accomplished using one of the following two methods:

1. Manual transplanting with concurrent pesticide application where the employees plant the seedlings in advance of the spray-rig, with the spray-rig following behind applying the pesticide; or
2. Mechanical transplant/application where equipment is a combination planting apparatus and application rig (commonly called a "transplant rig") attached to and pulled by a tractor on which employee(s) sit and feed seedlings onto the planting arm or wheel (depending on the equipment) which mechanically sets plants into the soil while at the same time a pesticide is applied. Additionally, there may be an employee(s) following the transplant rig to assure that the rig is operating and setting the plants in the soil properly.

Note: there are several variations of these transplant type operations where planting occurs at the same time as the pesticide applications (dip solutions, etc.).

Continued on next page

Handle, Continued

3. "Field workers" not involved in the application

For field transplant operations such as described in number one (1) in *Field transplant workers* above, the employees are considered field workers since they are solely performing hand-labor tasks as transplanters and are **not involved** in the "pesticide application process" itself.

- If workers can keep in front of the treated area (that area to where the pesticide is being directed or has been directed) and the employer and handler assure that the workers do not come into contact with the pesticide or pesticide-treated surfaces while transplanting (directly or through drift), then the operation would not constitute a violation of 3 CCR section 6762(b) Field Work During Pesticide Application.
- As field workers, the employer has the responsibility to comply with the following:
 1. Other 3 CCR field worker requirements, e.g., hazard communication, application-specific information, emergency medical care, decontamination facilities, field reentry after pesticide application, early entry field workers, and restricted entry intervals.
 2. Assure that the workers who are transplanting seedlings constantly remain in front or outside of the treated area.
 3. Assure workers do not enter or remain in the treated area during the application of a pesticide.
 4. Notify the workers of the pesticide application (3 CCR section 6618(b)).

4. "Handlers" involved in the application

When field transplant operations are *combined* with pesticide applications which may require additional employees to be within the area treated or to participate in the treatment (such as dipping), DPR considers the entire operation to be part of a "pesticide application process." Therefore, the employees are considered handlers and are not subject to restrictions associated with remaining outside of the treated area. As handlers, including those following the rig, the employer must provide the following:

1. All workers taking part in such a transplant operation must be trained as handlers as required by 3 CCR section 6724.
2. The employer must provide and assure all workers wear coveralls when required by 3 CCR section 6736.
3. The employer must provide and assure all workers wear personal protective equipment as required by 3 CCR section 6738 and labeling for the pesticide used.

Continued on next page

Handle, Continued

4. "Handlers" involved in the application (continued)

4. Additionally, the employer has the responsibility to comply with other 3 CCR handler requirements, e.g., hazard communication, application specific information, emergency medical care, medical supervision, and decontamination facilities.
-

B. Government personnel

Government personnel handling insecticidal lures or baiting traps that have pesticides are handlers and required to comply with the applicable worker safety regulations even though trapping for monitoring purposes is not a pesticidal use. When insect monitoring traps or non-insecticidal lures are handled, the employer is exempt from the requirements of 3 CCR section 6730 (*Working Alone*), section 6732 (*Change Area*), and section 6736 (*Coveralls*).

Government personnel conducting inspections are not handlers or field workers. These employees are protected by Cal/OSHA regulations.

C. Regularly handle

There are two interpretations of the definition of "regularly handle" that can be reasonably drawn from the wording of the regulation.

In one interpretation (call it the "fixed period interpretation") there are fixed 30-day periods starting the first day a handler works with an organophosphate (OP) or carbamate (Carb). In a worst-case scenario, using this interpretation, a handler could be exposed up to 12 consecutive days in two consecutive 30-day periods without triggering medical supervision requirements. The "fixed period" interpretation circumvents the intent of medical supervision by allowing more than six days exposure without triggering medical supervision.

The second interpretation (sliding period) means the 30-day period changes every day. Thus, the prohibition against working seven days in a 30-day period must be reevaluated each day.

Because the "fixed period" interpretation does not meet the intent of the medical supervision program, DPR has adopted the "sliding period" interpretation. Thus, any time an employee handles category I or II OP or Carb pesticides for more than six days in **any** 30-day period (that is 30 consecutive days), that employee falls under the requirements of the medical supervision program.

Section 6.17

Hazard Communication

Display

Interprets 3 CCR sections 6000, 6723, 6723.1, and 6761

For grower's employees who handle pesticides, the completed written Hazard Communication Program (PSIS A-8, *Safety Rules for Pesticide Handlers on Farms*) must be displayed (see 3 CCR section 6000 for definition of "display") at a central location. For grower's employees who are working in a treated field, the PSIS A-9 (*Pesticide Safety Rules for Farmworkers*) must be displayed at the worksite. If workers gather at a central location prior to transport to the worksite, the PSIS A-9 may be displayed at that central location. Also, if requested, the employer must read the information contained in the document to the employee.

A. Grower responsibility

Interprets 3 CCR section 6761

The grower is responsible for providing specific information to employees of a labor contractor. The operator of the property must provide, upon request of his or her employee, or an employee of a labor contractor, access to use records, Material Safety Data Sheets (MSDS), and PSIS leaflets.

B. MSDS availability

Interprets 3 CCR section 6723

An MSDS may not exist for every pesticide manufactured. It is the responsibility of the pesticide dealer (*Labor Code section 6393*) to provide the purchaser with the appropriate MSDS, if it is available from the registrant. However, 3 CCR section 6723 requires the employer to make a written inquiry to the registrant of the pesticide as to the availability of an MSDS within seven days of receiving a request for an MSDS from an employee.

Continued on next page

Hazard Communication, Continued

B. MSDS availability (continued)

Outlets such as nurseries, lumber stores, and hardware stores that sell pesticides do not need to have MSDS available. These outlets do not need to provide MSDS to purchasers of pesticides that are intended for use by the consumer. Also, MSDSs do not need to be provided when a pesticide is incidentally sold to an employer that is in the same form, approximate amount, concentration, and manner as it is sold to consumers (*Labor Code section 6393*). For example, a retailer selling snail bait to maintenance gardeners does not have to distribute an MSDS. However, maintenance gardeners who have employees who handle this pesticide are still required to provide an MSDS, on request, if it is available from the registrant. The requirement for the registrant or dealer to provide MSDS is contained in the Labor Code and is the jurisdiction of Cal/OSHA.

Regulations are specific. If an employee requests an MSDS, the employer is required to make a written inquiry to the registrant of the pesticide as to the availability of the MSDS. Upon receiving a request for an MSDS, the employer must provide original information to a requester. A “summarized copy” of an MSDS may not be consistent with the registrant’s printed MSDS for the pesticide.

C. Program

Interprets 3 CCR sections 6720 and 6723

All employers who assign employees to handle pesticides need to keep a written Hazard Communication Program. Employers of people in restaurants, industrial facilities, schools, hospitals, agricultural operations, etc., must post a completed Hazard Communication Program (PSIS A-8). It must be posted at a location where employees assigned to handle pesticides usually start the work day. If employees do not start their activities at one locale, the employer must maintain one copy of the program at a central location at the workplace and accessible to employees. When only antimicrobial agents are handled, and employers have, and are in compliance with, a current Hazard Communication Program and Injury and Illness Prevention Program as required by the Department of Industrial Relations Cal/OSHA regulations, the employer is exempt from specifically complying with 3 CCR section 6723.

Continued on next page

Hazard Communication, Continued

D. Records

Interprets 3 CCR sections 6723 and 6761

Companies that farm in multiple counties may keep records at a centralized location (i.e., place where the business maintains other records such as purchase orders, training records, etc.) in just one county, but the employer must provide, upon request of an employee, employee representative, or employee's physician, access to any records or documents (within 48 hours) the employer is required to keep concerning hazard communication. Also, employee records and documents must be made available to the CAC in each county where the company operates.

Section 6.18

Immediate Family

Interprets 3 CCR sections 6700 and 6701

**WPS definition
of "immediate
family"**

The federal WPS defines "immediate family" as including only spouse, children, parents, and siblings. These relationships include either legal (in-law) or blood (genetic) status. DPR uses the federal definition to interpret 3 CCR worker safety regulations and pesticide labeling requirements.

Section 6.19

Medical Supervision

A. Medical supervision -- ethephon

Interprets 3 CCR sections 6000 and 6728

The regulations require medical supervision whenever an employee regularly handles a pesticide with the signal word "DANGER" or "WARNING" that contains an organophosphate or carbamate for the commercial or research production of an agricultural plant commodity. Both *organophosphate* and *carbamate* are defined in 3 CCR section 6000.

U.S. EPA reviewed ethephon and determined it to be an organophosphonate. Organophosphonates do not fall within the definition of organophosphate in 3 CCR section 6000 and therefore are not currently covered by the medical supervision requirements.

Based on a review of the toxicity, ethephon does inhibit cholinesterase. It is not a potent inhibitor, but does consistently inhibit cholinesterase in animal studies.

B. Medical supervision -- records location

Interprets 3 CCR section 6728

3 CCR section 6728(c)(3) lists the records the employer is required to keep:

- The agreement (with the medical supervisor).
- The use (exposure) records.
- Recommendations from the medical supervisor.
- The results of cholinesterase (ChE) tests performed.

These records must be maintained for three years and be made available for inspection by specified officials. DPR has historically interpreted this section to require that these records be retained at the employer's headquarters location. We have been asked if the medical supervisor could retain the records, on behalf of the employer. The need for confidentiality of personal medical information is cited as a reason for having the doctor hold the records.

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Medical Supervision, Continued

B. Medical supervision -- records location
(continued)

When this section was originally adopted in 1973, confidentiality was not the issue that it is today. There have been several State and federal laws adopted in recent years protecting the confidentiality of personal information. The interpretation and application of 3 CCR section 6728 must be reevaluated in light of these more recent laws. It is reasonable for the employer to have the medical supervisor retain the confidential medical information (the test results).

With the exception of the ChE test results, there should be no confidentiality issues generated by retention of these records. It is DPR's interpretation that these records must be retained by the employer at a business location within the State, with the exception of ChE test results. The employer must maintain a record identifying the employee and the dates of tests when having the actual test results retained by the medical supervisor.

Enforcement of medical supervision requirements should focus first on it being in place when required and secondly on the employer implementing the recommendations of the medical supervisor. The other required records should allow you to effectively enforce this section without routinely reviewing the actual ChE test results. If you have concerns about the completeness of the employer's records, follow-up with the medical supervisor may be necessary. The identity of the medical supervisor can be obtained from available records (the contract).

If you or other officials have a need to review the actual test results, the records can be obtained from the medical supervisor through legally provided procedures. DPR's Worker Health and Safety Branch can provide guidance in this area.

Section 6.20

Notice of Application

A. Generally **Interprets FAC section 12978; 3 CCR section 6618**

In some situations (such as, employees that gather at one location before going to the field), notification required by *3 CCR section 6618* may be fulfilled by posting the information at a central location. In order to fully satisfy the requirement, all workers, employees or contractors who may walk within ¼ mile of the treated field must start their work day at the central location where the notification is posted.

“Likely to enter,” as it applies to property such as golf courses, parks, college campuses, rights-of-way, and school buildings, refers to persons who have access to the property and who commonly enter it, while a labeling reentry restriction (REIs generally apply only to fields) is in effect. For example, persons playing golf, students on campus, students using school hallways, the public who has access to a park are “likely to enter” and, therefore, notification is required. Also need to consider the likelihood of persons such as contractors, utility workers, and government employees conducting inspections, etc., who could enter the site. However, if an area, right-of-way, school hallway, is posted or blocked off, entry is unlikely.

FAC section 12978 uses the term “exposure (entry) is foreseeable” and is talking about public property. In practical terms, these two terms are considered to have similar objectives and are interpreted to mean the same thing. It is assumed that it is necessary to enter in order to have exposure.

B. Posting the area **Interprets 3 CCR section 6618**

Field posting can be used to give notice to persons likely to enter pursuant to *3 CCR section 6618* even when a field is not required to be posted by label or regulation (unless both oral notification and posting are required by the labeling). The posting must be removed before workers are allowed to enter the field.

Continued on next page

Notice of Application, Continued

B. Posting the area (continued)

The property operator should comply with notification requirements when persons are likely to enter a treated area in the following manner:

- The property operator is required to give notice to all persons known to be on or are likely to enter a treated area on the date a pesticide application was made, or while the REI is in effect; identity of the pesticide by brand name or common chemical name; and the precautions (e.g., reentry).

The regulations do not specify how persons are to be notified. If so desired, the property operator can give either oral or written (i.e., posting) notification. Posting or a barrier is required on public property if the reentry interval is 24 hours or greater (see *Notice of Application-Public Property*).

C. Public property

Interprets FAC section 12978

Posting is required on public property when both of the following conditions exist:

- There is a reentry interval of 24 hours or longer for the pesticide used (The REIs for agricultural fields would not normally apply to this type of property).
- There is foreseeable exposure to the public (a barrier eliminates foreseeable exposure, and is an alternative).

Please pay special attention to pesticide labels on products that may be used on public school grounds, parks, or other rights-of-way. This provision is not limited to applications made by public agencies, but covers public property. Pesticide applications by Caltrans (California Department of Transportation) on public highways are exempt from this notice requirement.

Section 6.21

Personal Protective Equipment

A. Underwear **Interprets FAC section 12973; 3 CCR section 6000**

Some pesticide labeling requires "coverall worn over short-sleeved shirt and short pants." The phrase "short-sleeved shirt and shorts" does not refer to undergarments. There are no requirements addressing the presence or absence of undergarments in laws or regulations. For a list of acceptable PPE to wear when this and other statements are found on pesticide labeling, see Compendium Volume 4, Inspection Procedures, Appendix 1.

B. Coveralls and chemical-resistant suit **Interprets 3 CCR sections 6000, 6736, and 6738**

The worker safety regulations contain two quite different standards for employer-provided body protection. The requirement for coveralls (*3 CCR section 6736*) requires body covering of tightly woven cloth, or equivalent, extending from the neck to wrists to ankles. Specialty fabrics, such as uncoated Tyvek, KleenGuard, and several others, are at least equivalent to cloth in their protective ability. Coveralls made of these materials are fully acceptable for meeting the coverall requirements of *3 CCR section 6736*.

The language referring to chemical-resistant suit, rain suit or waterproof pants and coat (*3 CCR section 6738(g)*) requires body covering that is, in practical effect, "chemical proof" for the period of use. This protective clothing must cover torso, head, arms and legs. Clothing made of rubber, neoprene, polyethylene or similar materials are required to meet this level of protection. The desire for disposable or limited use clothing that meets this more stringent chemical-resistant requirement caused DPR to evaluate specialty fabrics that might meet this requirement. So far, three acceptable materials have been found: 1) Tyvek (spun bonded olefin) laminated to either Saranex or polyethylene; 2) polypropylene laminated with polyethylene; and 3) Encase II. Several manufacturers of protective clothing who use these materials have begun identifying their products as being constructed of one of these materials or as meeting the standards of *3 CCR section 6738(g)*. DPR does not require a manufacturer to label these products, so garments without this labeling may possibly be acceptable for this use. If in doubt, the manufacturer of the coveralls should be able to identify the material used. Because of the greater complexity and hazards involved, requests for evaluation of other materials that might meet this requirement should be referred to the Worker Health and Safety Branch.

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Personal Protective Equipment, Continued

C. Employees laundering coveralls

See page 6-7 in this chapter.

(D)1. Eyewear and antimicrobials

Interprets 3 CCR sections 6720 and 6738

Employee eye protection is required for all disinfectant pesticide applications even when, for example, the hand-held application equipment is a sponge or mop. Except for those activities described in 3 CCR section 6738(b)(1)(C), all employees are required to wear eye protection while applying any pesticide. Language in section 6720 refers to Title 8. The applicable section of 8 CCR section 3382 reads, "(a) Employees working in locations where there is a risk of receiving eye injuries such as punctures, abrasions, contusions, or burns as a result of contact with flying particles, **hazardous substances**, projections or injurious light rays which are inherent in the work or environment, **shall be safeguarded by means of face or eye protection.**" ... "**The employer shall provide and ensure that employees use protection suitable for this exposure.**" General safety requirements 3 CCR section 6720(c) exempt the employer from the requirements of 3 CCR section 6730 (*Working Alone*), section 6732 (*Change Area*), and section 6746 (*Closed Systems*) when antimicrobial agents or pool and spa chemicals are handled. However, 3 CCR section 6738(b)(1) (*Eye Protection*), must be complied with when employees apply antimicrobial pesticides.

(D)2. Eyewear and closed systems

Interprets 3 CCR sections 6738 and 6793

Eye protection must be worn when preparing to use closed systems, such as loading pesticides from a rig to the application equipment (the aircraft), when opening containers and inserting probes. Protective eyewear is also required when using closed systems that operate under positive pressure. When using a closed system, protective eyewear must be available on site.

Continued on next page

Personal Protective Equipment, Continued

**(E)1.
Disposable
gloves**

Interprets FAC section 12973; 3 CCR sections 6000 and 6738

Lightweight disposable gloves are generally not suitable for hand protection while handling pesticides. Even though it may be argued that they meet the regulatory requirement when new, they would have a limited applicability and short use life because of their fragile construction. A few minutes of light-duty use would probably breach the physical and chemical integrity of this type of glove and would not provide a level of protection required by regulation. Any legitimate use would be limited to short-term, single-use situations where little stress is placed on the gloves and does not result in any permeability by the pesticide.

**(E)2. Glove
liners**

Interprets FAC section 12973; 3 CCR sections 6000 and 6738

Background:

On September 1, 2004, 40 CFR part 170 was revised to allow the use of glove liners by handlers and early entry field workers. An exemption for pilots wearing gloves when entering or leaving an aircraft used to apply pesticides was also added.

DPR recommendations:

Since these changes were made to increase compliance by making the use of PPE more comfortable, DPR is recommending that CACs allow the use of glove liners and the pilot exemption under the conditions listed in the federal regulations until 3 CCR section 6738 is revised to reflect the federal standard.

Conditions of use:

The use of glove liners is allowed only when the following conditions are met:

- Pesticide product labeling does not prohibit the use of glove liners.
 - Glove liners must be separable from the chemical-resistant glove.
 - Liners may not extend outside of the chemical-resistant gloves.
 - Liners must be replaced immediately if directly contacted by a pesticide.
 - Liners must be discarded at the end of each workday.
 - Contaminated liners must be disposed of in accordance with federal, state or local regulations.
-

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Personal Protective Equipment, Continued

(E)2. Glove liners
(continued)

Pilots:

Wearing chemical-resistant gloves when entering or leaving an aircraft used to apply a pesticide is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves must be kept in an enclosed container that prevents contamination of the inside of the cockpit.

Enforcement:

DPR recommends that CACs enforce 3 CCR section 6770 (Field Entry After Pesticide Application) and section 6738(c) (Personal Protective Equipment) in a manner that allows the proper use of separable glove liners. The allowed exemptions apply to both non-agricultural uses as well as agricultural uses. Only new glove liners that are separate from the chemical-resistant glove may be used. Previously laundered liners are not sufficiently protective because there is no certainty that laundering a glove liner would remove all contaminants. Any contaminants left behind would be in close, occluded contact with the worker's skin the next time the liners and glove are put on.

If persons are using glove liners improperly, CACs should cite for violation of 3 CCR section 6738(c)(2).

Continued on next page

Personal Protective Equipment, Continued

**(F)1.
Respirator
designation**

Interprets FAC section 12973; 3 CCR section 6000

The National Institute for Occupational Safety and Health (NIOSH) has regulations in *42 CFR part 84* "... for certifying non-powered, air-purifying, particulate-filter respirators." Part 84 creates three levels of filter efficiency and three categories of resistance to filter efficiency degradation. The three levels of filter efficiency are 95%, 99% and 99.97%. The three categories of resistance to filter efficiency degradation are N, R and P:

1. **N** for Not resistant to oil / NO OIL IN MIX; dispose of filter at end of the day
2. **R** for Resistant to oil / OIL IN MIX; dispose of filter after 8 hours per day
3. **P** for oil-Proof / OIL IN MIX; dispose of filter at end of the day

Organic vapor respirator -- dispose of the filter at the end of the day. If no oil particles are present in the work environment, use a filter of any series, N, R, or P. If oil particles are present, use an R- or P-series filter. If oil particles are present and the filter is to be used for more than eight hours, use only a P-series filter. All NIOSH-approved particulate respirators of the TC-84A series will have the NIOSH logo (the letters "NIOSH") and the type/efficiency rating (e.g., N95 or P99) somewhere on the body of the respiratory protective device. NOTE: N-series filters cannot be used if oil particles are present.

For more information, see <http://www.cdc.gov/niosh>.

**(F)2. Employer
responsible for
respirators**

Interprets FAC section 12973; 3 CCR section 6739

The employer shall assure that employees use approved respiratory protection equipment when pesticide product labeling or regulations require respiratory protection or when respiratory protection is needed to maintain employee exposure below an applicable exposure standard found in *8 CCR section 5155*.

The intent of this section is to regulate respiratory protection for employees required to wear it by labeling or regulation. Therefore, an employer is not required to comply with the cited regulations if the employee chooses to supply and wear a respirator when it is *not* required by labeling or regulation, i.e., voluntary use (*3 CCR section 6739(b)*).

Continued on next page

Personal Protective Equipment, Continued

(F)2. Employer responsible for respirators
(continued)

When respiratory protection equipment is provided by the employer for voluntary use, the employer is responsible for the maintenance, cleaning, and employee's medical clearance, except as exempted in *3 CCR section 6739(b)(3)* regarding filtering facepiece particulate masks.

(F)3. Respirator inspection

Interprets 3 CCR section 6739

The employer shall assure that respirators maintained for stand-by or emergency use are inspected monthly or before use, if occasions for possible use are more than one month apart. A record of the most recent inspection shall be maintained on the respirator or its storage container. The intent of *3 CCR section 6739(j)* is to inspect a respirator maintained for unanticipated use (stand-by or emergency) monthly.

Continued on next page

Personal Protective Equipment, Continued

**(F)4.
Respirator
maintenance**

Interprets 3 CCR section 6739

Respirator air-purifying elements must be changed according to specific pesticide labeling directions or the respirator manufacturer's recommendation in relationship to a specific pesticide, whichever is more frequent. Generally, the pesticide label does not include such information as cartridge change-out schedules; neither do the respirator manufacturer's instructions usually include cartridge change-out schedules or pesticide-specific recommendations. These manufacturers are reluctant to include specific instructions because of their liability.

Therefore, DPR adopted regulations to specify that in the absence of any instructions on service life (i.e. change-out schedules), the air-purifying elements must be changed at the end of each day's work period. As an added precaution, DPR requires the cartridges to be changed prior to the end of the work day if the respirator user senses odor, chemical taste, or irritation. The recommendation to change air-purifying elements at the "first indication of odor, taste or irritation" is common to the instructions of probably all manufacturers of respiratory equipment. This precautionary wording is standard "boilerplate" language, but the use of warning properties is no longer considered by Cal/OSHA as an adequate means to determine cartridge-life (see 8 CCR section 5144(d)(3)(D)). Additionally, few pesticides have adequate warning properties, so this recommendation is of limited value and cannot be used to determine routine change-out schedules for air-purifying elements of respirators used for protection against most pesticides. This recommendation must remain since it may have some applicability for certain pesticides and, as a backup precaution for others. These considerations were the basis for development of the regulation covering the changing of elements.

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Personal Protective Equipment, Continued

**(F)4.
Respirator
maintenance
(continued)**

The respirator manufacturer's instruction to change cartridges at the first indication of odor, taste or irritation should not be viewed as a recommendation regarding service life. Because of the lack of objective data (as required by Cal/OSHA), DPR assumes that a cartridge or filter will last one work period, as short (5 minutes) or as long (12 hours) as that period may be. Thus, the hierarchy of replacement, as defined in 3 CCR section 6739(o), must be followed unless pesticide-specific change-out information is available. In the majority of cases, this will not be available. However, for a limited number of chemicals that have use in other industries (e.g., phosphine), such information may be available from the respirator manufacturer. Also, respirator manufacturers may submit data to DPR/WH&S Branch in support of extended change-out schedules. This information will be posted to DPR's website.

**G. Respiratory
protection and
dusting sulfur**

Interprets FAC section 12973; 3 CCR sections 6000 and 6739

Sulfur dust product labeling often includes the precautionary wording "avoid breathing dust." These products are sometimes applied by motorized backpack dusters that preclude avoiding contact with the dust (see Chapter 3 for a more general discussion of the application of this wording).

A paper dust mask is adequate protection for handlers of these sulfur dust products if the mask is NIOSH/MSHA approved for protection from dusts and mists and the manufacturer's directions for selection, fit testing, and replacement are followed. Masks that are not NIOSH-approved do not provide adequate respiratory protection for sulfur dust. There is, however, a recognized exposure standard for particulates not otherwise regulated (i.e., 10 mg/meter³ for sulfur dust) established in 8 CCR section 5155.

In general, the agricultural application of sulfur dust rarely results in air concentrations that approach or exceed the exposure standard. If the applicator cannot avoid breathing the dust, the use of approved respiratory protective equipment is required and the employer must comply with 3 CCR section 6739.

Section 6.22

Pesticide Illness -- Reasonable Grounds to Suspect

Interprets 3 CCR section 6726

Interpretation The following should be used to help determine: (1) “reasonable grounds to suspect” that an employee has a pesticide illness, or (2) when an exposure to a pesticide has occurred that might “reasonably be expected to lead” to an employee’s illness as those terms are used in 3 CCR *section 6726(c)*.

If any employee that is working with or around pesticides develops symptoms consistent with exposure to any of the pesticides he/she is working with or around, the regulation requires they be taken to a physician. Since typical pesticide exposure symptoms are often general in nature, this would mean most illness situations.

If an employee is visibly contaminated, such as being splashed or drenched in pesticide, the employee should be immediately decontaminated and taken to a physician. If an employee has had a significant respiratory exposure episode, that employee should also be taken to a physician.

Section 6.23

Posting

A. Along rights-of-way

Interprets 3 CCR section 6776

When a treated field is adjacent to an unfenced right-of-way or easement, additional signs shall be posted at each end of the treated field and at intervals not exceeding 600 feet along the treated field's border with the right-of-way. A public right-of-way is any road, path, trail, or area that is not privately owned and where the public is not considered to be trespassing when they are upon it. The posting requirements of 3 CCR section 6776(d) are applicable to any pesticide application made adjacent to a right-of-way, regardless of the proximity to sensitive areas.

If there is a significant separation between the field and the right-of-way, such as a large steep-sided ditch or canal, the field is considered to be adjacent to the barrier rather than the right-of-way. If the CAC determines that the ditch, canal, or other impediment is sufficient to keep unauthorized people out of the treated field, the grower may be allowed to post only the entry points or corners as provided in 3 CCR section 6776(d).

B. Restricted entry interval -- interplanted fields

Interprets 3 CCR sections 6772 and 6776

When an orchard interplanted with two crops, such as citrus and pears, has a pesticide applied, such as Guthion which has a restricted entry interval (REI) that is different for each crop, the more restrictive REI is applicable. Since the REI is not only related to the specific crop, but also to the field itself, posting based on the longer REI applies.

Section 6.24

Restricted Entry Interval

A. Beginning **Interprets 3 CCR sections 6769 and 6772**

The restricted entry interval (REI) begins upon completion of the application. The REI and greenhouse ventilation criteria are independent of each other. No person, other than a properly trained and equipped handler, may enter a greenhouse until the ventilation criteria have been met.

B. Termination **Interprets 3 CCR sections 6772 and 6774**

A restricted entry interval may be shortened to not less than the restricted entry interval specified on the pesticide product labeling upon verification by the CAC. However, authorization may only be granted if DPR has established a safe work level for the specific pesticide and crop combination. At this time DPR has established the following safe levels:

- Methomyl/grapes at 0.1 (micrograms per square centimeter of leaf surface)
- Propargite/grapes at 0.1 (micrograms per square centimeter of leaf surface)

Contact the Worker Health and Safety Branch to determine if any additional safe levels have been established.

The following procedures should be followed in the issuance of the authorization:

1. The authorization should be written on county letterhead.
2. Suggested language for the authorization is: “Pursuant to Title 3 California Code of Regulations, section 6774(c)(4) the person named is authorized to collect or supervise the collection of samples and arrange for analysis from the following described location(s). The sampling and analysis must be conducted by a procedure acceptable to the Department of Pesticide Regulation.”
3. The locations to be sampled should be described on the authorization and include acreage, variety, field number, ranch name, and any other information necessary to identify the sample location. The location description should be consistent with any permit location description whenever possible.

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Restricted Entry Interval, Continued

B. Termination (continued)

4. Include the following information in the authorization:
 - a. The name and address of the operator of the property;
 - b. The name, address and phone number of the laboratory that will be used;
 - c. The sampling method to be used to collect the sample (Consult Chapter III, Evidence Collection from Volume 5, *Investigation Procedures*, of the Compendium. Contact the Worker Health and Safety Branch for additional guidance.);
 - d. The signature of the CAC or designee; and
 - e. The date of the authorization.

Monitoring the collection of the samples is at CAC discretion and depends upon resources and other priorities. However, since DPR does not expect many growers to request a reduction of a reentry interval, we encourage you to monitor a majority of these authorizations based on the origin of the request and size of the location to be sampled.

When the authorized person submits the final laboratory analysis results to your office, you should review them and determine whether the reentry interval can be terminated. The amount of analyte reported must be at or below the safe level established by DPR.

After determining that the amount of analyte is acceptable, you should sign a statement granting the termination of the reentry interval to the person who received the authorization. The granting document should include a statement acknowledging compliance with section 6774(c)(4) and the sampling protocol and be counter-signed by the person who received the authorization. The suggested wording is: "Pursuant to Title 3, California Code of Regulations section 6774(c)(4) and based on the final laboratory results of samples collected according to accepted protocols, authority is hereby granted to terminate the reentry interval for the above described location(s)."

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Restricted Entry Interval, Continued

C. REI and notification -- forest

Interprets 3 CCR sections 6618 and 6776

All persons, including visitors such as hunters and field workers who are likely to enter a forest area that is being treated or under an REI, need to be given notification. If they are likely to enter an area under an REI, they must be notified of the location and description of the treated area, duration of the REI, and instructions not to enter until the REI is expired.

For purposes of providing notice under 3 CCR section 6618, the notification can be either oral or written (posting) unless the pesticide label requires both. Since the labeling requirement for dual notification applies only to workers, other visitors need not be provided with dual notification. Also, the operator of the forest must make accessible to forest workers at the work site a completed copy of PSIS A-9, *Pesticide Safety Rules for Farmworkers*.

Posting signs is required in forests when either:

1. A pesticide application results in an REI greater than seven days; or
 2. Posting is required by the label.
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Section 6.25

Training

A. Field worker **Interprets 3 CCR section 6764**

Either the farm labor contractor or the grower can be held responsible to assure that their employees receive pesticide safety training. The grower-employer who hires the services of a farm labor contractor's employees to perform work on the grower's property must assure that those employees have received the required training. Generally, the agricultural employer who directs and controls the employees is the responsible party.

B. Field worker from out-of-state **Interprets 3 CCR section 6764**

California will accept field worker training from another state. The employer must be assured that the employee has received pesticide safety training within the past five years. If the employee possesses a valid U.S. EPA Training Verification Card (Blue Card) issued in another state, then the requirement for pesticide safety training is met.

C. Handlers and delayed effects **Interprets 3 CCR section 6724**

The employer must provide training so that each employee understands the hazards associated with exposure to pesticides with known or suspected chronic effects as identified in MSDS, pesticide labeling, and PSIS leaflets. If these sources do not list the delayed effects (i.e., tumors, cancer, birth defects), then the employer would not be required to seek further information provided the referenced materials were current. The employer could identify in the training records that there are no known long-term hazards identified in the MSDS, pesticide labeling, or PSIS that were available at training time.

D. Handlers from out-of-state **Interprets 3 CCR section 6724**

Handler training from another state will not be recognized, due to the many unique aspects of California's requirements.

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Training, Continued

E. Non-English speaking handlers

Interprets 3 CCR sections 6724 and 6764

If the non-English speaking employee has been properly trained and the label has been fully translated, the review of the label does not have to occur each time the pesticide is used. Frequency of review and translation of the label would depend on a number of factors, including type of application, label changes, competency of employee, etc.

F. Training Verification Program

Interprets 3 CCR section 6764

The U.S. EPA Training Verification Program enables trainers who meet certain qualifications to issue training verification cards to field workers who have been trained in WPS. Participation in the card program is voluntary. Qualified trainers must submit an application to DPR and contract for inventory control and record requirements.

Section 6.26

Treated Field

Interprets 3 CCR section 6000

Interpretation When field workers are in the field pruning early in the season before the field meets the definition of a treated field, and immediately following (30 feet behind the pruners) are pesticide handlers applying pesticide by a paint brush to the cut surfaces, the entire field is not considered a “treated field,” but only that area actually being treated. In this circumstance, the treated field is only that area of the plants that was actually treated (see *Handle, Transplanters*).

When producing some commodities, growers will treat only part of a field the first day and another part the second day, and so on. The REI and "treated field" expires in the same rotation. Often, the grower wants to put workers into the "cleared" portions immediately. When growers use this procedure, they must have maps with dates and areas treated to show the CAC and must post reflecting the different areas.

A field is considered a "treated field" until 30 days have passed after the REI has expired, whether or not the crop that was treated has been harvested and removed from the field.

Section 6.27

Worker Protection Standard Labeling

Interprets FAC section 12973; 3 CCR section 6000

Interpretation All pesticides labeled for use in agricultural production sites are required to comply with Worker Protection Standard (WPS) labeling requirements that include personal protective equipment (PPE), restricted entry intervals (REI), and other worker safety requirements. Generally, these requirements are located in a distinct section of the label (often referred to as "inside the box") and specify that they apply to agricultural production operations.

When a dual-use pesticide is being used in a non-agricultural production site, the WPS (inside the box) requirements do not apply. However, the rest of the labeling does apply to all uses and must be complied with.

Section 6.28

Worksite and Workplace

Interprets 3 CCR section 6700, et seq.

Interpretation “Worksite” is meant to describe the exact location of a work activity, e.g., mixing and loading site, field, etc. “Workplace” is meant to identify in more general terms the work area (e.g., the business operation or employer headquarters). They do not have the same meaning.
