

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION
Pesticide Decontamination Sites
DPR Regulation No. 23-001

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend Title 3, California Code of Regulations (3 CCR) sections 6720, 6732, 6734, 6738.4, 6771, and 6793. This proposal will affect pesticide regulatory program activities pertaining to pesticide 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.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on May 2, 2023. Comments regarding this proposed action may also be transmitted via e-mail to <dpr23001@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written request to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's mission is to protect public 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, 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.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

FAC sections 12980 and 12981 specifically require that DPR adopt regulations to ensure safe working conditions for persons handling pesticides and 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 and agricultural pesticide handlers 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 2017, U.S. EPA updated the WPS to further reduce agricultural worker and agricultural pesticide handler exposure to pesticides. To ensure DPR's existing worker safety regulations remained consistent with the revised federal WPS, DPR adopted and amended certain regulations in 3 CCR. These regulations became effective on January 2, 2017, and included modifications to decontamination requirements for pesticide handlers and added prescriptive requirements for eyewash facilities (3 CCR section 6734).

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 areas treated with pesticides (3 CCR section 6700 et seq.). Existing regulations recognize compliance with applicable 8 CCR regulations (3 CCR section 6720), require employers to provide change areas (3 CCR section 6732) and decontamination facilities to these workers (3 CCR section 6734), establish PPE exemptions (3 CCR section 6738.4) and requirements for early entry of a treated field (3 CCR section 6771), and provide safety use requirements for handlers working with minimal exposure pesticides (3 CCR section 6793). Section 6734(b)(6) requires employers of employees handling pesticides for production agriculture uses to provide an eyewash station that meets prescriptive requirements if the product labeling requires protective eyewear or if a closed mixing system is used. In section 6734(c), employers are required to provide a decontamination site within 100 feet of the mixing/loading site if the pesticide label bears a signal word (indicating the level of toxicity) of "DANGER" and "WARNING" for employees handling pesticides for uses other than the commercial or research production of an agricultural plant commodity.

The proposed regulations modify current requirements in ways that will improve worker protections. Specifically, the proposed regulations will require eyewash stations that meet the ANSI Z358.1-2014 standard if the pesticide product labeling requires employees who are mixing or loading pesticides or handling a liquid fumigant to wear protective eyewear, or if employees are using a closed system. In addition, eyewash station requirements will be relocated from subsection 6734(b) to subsection 6734(a) so that they will apply to all employees handling pesticides and not just employees handling pesticides for production agriculture uses, and so decontamination site requirements will be expanded to apply to pesticide uses other than those for 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, 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. Additionally, the proposed action incorporates some terms and standards from the ANSI standard into the proposed regulations, including what qualifies as eyewash fluid and a technical clarification of a temperature range for eyewash fluid that will not cause injury or

illness to the user. As a result of the proposed amendments to section 6734, section 6720(c), which 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, will be modified to add the equivalent 8 CCR regulation for emergency eyewash requirements (8 CCR section 5162). Additionally, as a result of proposed amendments to section 6734, cross-references in section 6732 will be updated accordingly, section 6771 will be reworded to align with proposed changes to section 6734 and the ANSI standard, and a duplicative requirement concerning washing facilities will be removed from section 6793(b). Lastly, the proposed action will clarify that the PPE exemption in section 6738.4 applies when handling liquid fumigants.

The proposed regulations will benefit employees who handle pesticides. This proposal is likely to result in more worker protection from potential exposure to pesticides, including pesticides that could cause eye injury. The 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 standard. Eyewash equipment required by the current regulation omits 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. The equipment required by the proposed regulation provides additional worker protection measures including hands-free operation. Additionally, requiring an ANSI Z358.1-2014-compliant eyewash station will help enforce the safety and welfare of pesticide workers by way of standardization. Employees who mix and load pesticides 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, regardless of the signal word of the pesticide in use. The ability to properly decontaminate and change clothes in the event of an accidental exposure should decrease the severity of injuries and illnesses for these workers.

During the development of the proposed regulations, DPR conducted a search for similar regulations on this topic and concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations. Although DPR and DIR's Division of Occupational Safety and Health both have regulatory mandates to protect workers from health and safety hazards in workplaces, DPR enforces pesticide laws in workplaces where pesticides are used.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq.

OTHER NONDISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

DPR has determined that some nondiscretionary costs or savings imposed upon local agencies or school districts may result from the proposed regulatory action. Based on school site pesticide use data, some school districts and local agencies currently apply pesticide products that would necessitate the availability of an eyewash station and/or the availability of a decontamination site under the proposed regulations. If these school districts and local agencies continue to use these pesticide products, there may be costs related to the purchase of an ANSI Z358.1-compliant

eyewash station, including eyewash fluid, or decontamination site supplies. In some cases, alternative pesticide products and/or revised pest management practices may negate the need for the procurement of an eyewash station or decontamination supplies.

On average, the cost of an ANSI Z358.1-compliant eyewash station is \$250. Regarding eyewash fluid, costs may be negligible if using potable water or may be an average of \$50 annually if using buffered saline solution. Based on school site pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed regulations will initially be \$181,000 for all school sites if they choose to use potable water and up to \$217,200 for all school sites if they choose to use buffered saline solution. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$181,000 for all school sites if they choose to use potable water and up to \$362,000 if they choose to use preserved buffered saline solution. Based on local agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed regulations that necessitate the procurement of an eyewash station will initially be \$581,250 for local agencies if they choose to use potable water and up to \$697,500 if they choose to use preserved buffered saline solution. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$581,250 for all local agencies if they choose to use potable water and up to \$1,162,500 if they choose to use preserved buffered saline solution.

The average cost of decontamination supplies is \$55. Additionally, if all decontamination supplies are replaced annually, with the exception of water containers, DPR estimates an equal cost of \$35 per decontamination site per year. Based on school site pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed decontamination site regulations will initially be \$193,105 for all school sites. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$684,645 for all school sites. Based on local agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed decontamination site regulations will initially be \$108,625 for all local agencies. Over the lifetime of these regulations, mitigation and other regulatory costs are anticipated to be \$385,125 for all local agencies.

COSTS OR SAVINGS TO STATE AGENCIES

DPR anticipates some increased costs to state agencies will result from the proposed regulatory action. A total of 12 state agencies are estimated to currently use pesticide products that would necessitate the availability of an ANSI Z358.1-compliant eyewash station or decontamination site supplies under the proposed regulations. On average, the cost of an ANSI Z358.1-compliant eyewash station is \$250. Regarding eyewash fluid, costs may be negligible if using potable water or may be an average of \$50 per year if using a costlier option like buffered saline solution. Based on state agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed eyewash station regulations will initially be \$310,000 for all state agencies if they choose to use potable water and up to \$372,000 for all state agencies if they choose to use buffered saline solution. Over the lifetime of these regulations, mitigation and other regulatory costs associated with the eyewash station regulations are anticipated to be \$310,000 for all state agencies if they choose to use potable water and up to \$620,000 if they choose to use preserved buffer saline solution.

Regarding the decontamination site requirements, an equal cost of \$55 for decontamination supplies is estimated for a decontamination site. Additionally, assuming all decontamination

supplies will be replaced annually, with the exception of water containers, an equal cost of \$35 per decontamination site per year is anticipated. Based on state agency pesticide use data, DPR estimates that the mitigation and other regulatory costs of the proposed decontamination site regulations will initially be \$104,500 for all state agencies. Over the lifetime of these regulations, mitigation and other regulatory costs associated with the decontamination site regulations are anticipated to be \$370,500.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR made an initial determination that adoption of these regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

In reasonable compliance with the proposed regulations, farmers and pest control businesses may be affected by the proposed amendments to the eyewash station requirement. Some businesses affected by this requirement may already have ANSI-compliant eyewash stations. However, those that do not already have these stations will have to purchase them and may incur initial costs of approximately \$250 per eyewash station. The recurring costs of upkeep may be negligible if using potable water, or may be minor (approximately \$50 per year) if using supplemental additives to sterilize the eyewash fluid.

Pest control businesses, who handle pesticides for purposes other than the commercial or research production of an agricultural plant commodity, and that do not currently use pesticides with the signal word “DANGER” or “WARNING,” may be affected by the proposed requirements that update decontamination site supply and location requirements. The proposed action will require decontamination sites to be available for employees using any pesticide, regardless of signal word. Many businesses affected by this requirement already have decontamination sites. For those who do not have decontamination sites, the cost of decontamination supplies (excluding eyewash fluids) is estimated to be \$55 for pest control businesses, and would only need to be replenished if used. The recurring costs of replenishing the decontamination supplies is estimated to be \$35 annually.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR determined that it is not likely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of

businesses currently doing business with the State of California. This action clarifies the existing eyewash equipment requirement and aligns it with other standards and regulations that are currently in place for other similar industries. The decontamination facility expansion is expected to cost \$100 or less for most businesses that use pesticides for purposes other than the commercial or research production of an agricultural plant commodity and is therefore not expected to affect creation, elimination, or expansion of jobs/businesses.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulations will benefit employees who handle pesticides. This proposal is likely to result in more worker protection from potential exposure to pesticides, including pesticides that could cause eye injury. The 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 standard. This equipment provides additional worker protection measures including hands-free operation. Additionally, requiring equipment that meets the ANSI standard will help reinforce the safety and welfare of pesticide workers. Employees who mix and load pesticides 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, regardless of the signal word of the pesticide in use. The ability to properly decontaminate and change clothes after an accidental exposure should decrease the severity of injuries and illnesses for these workers. The proposed regulations will not affect the health and welfare of California residents or the state's environment.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law. 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 eyewash station, while maintaining equivalency with U.S. EPA's WPS, 40 CFR, part 170. Additionally, the proposed changes to decontamination facility requirements for uses other than the commercial or research production of an agricultural plant commodity will provide increased worker protection that is not found in other laws or regulations.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 12981.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 12973, 12980, and 12981.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulations may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulations permanent if they remain substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulations; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Senior Environmental Scientist (Specialist)
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted below:

Emily Bryson, MPH, Senior Environmental Scientist (Supervisory)
Worker Health and Safety Branch
916-324-6344

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

DEPARTMENT OF PESTICIDE REGULATION



Director