

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6738.1

Pertaining to Heat Illness and Personal Protective Equipment – Chemical-Resistant Suits

UPDATE OF THE INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9(d), the Department of Pesticide Regulation (DPR) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking. No changes were made to the proposed regulations nor are any changes necessary to the Initial Statement of Reasons following the public comment period.

The proposed regulatory action was noticed in the *California Regulatory Notice Register* On September 12, 2025. During the public comment period, DPR received comment letters from two individuals or organizations on the proposed action. The comments are discussed under the heading “Summary and Response to Comments Received During the 45-Day Comment Period” of this Final Statement of Reasons.

DPR has amended Title 3, California Code of Regulations (3 CCR) section 6738.1. In summary, this action updates and clarifies chemical-resistant suit requirements and removes a duplicative and obsolete heat illness prevention requirement for employees who are required to wear chemical-resistant suits.

PUBLIC HEARING

No public hearing was scheduled or held, and none was requested.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

- **Erik Lindberg, SaveATree, LLC**

Comment no. 1: Over-Broad Requirement: Existing subsection 6738.1(e) applies coverall requirements to all *DANGER* and *WARNING* products regardless of exposure risk or label directions. For example, tree injections, systemic soil drenches, and systemic bark applications are highly targeted and specifically designed to minimize exposure and environmental runoff. In these situations, requiring a coverall does not meaningfully reduce applicator risk, but does introduce other hazards.

Response: This comment is outside of the proposed action. DPR previously addressed this comment in its response to a substantially identical Petition for Rulemaking under Government Code section 11340.6 to amend 3 CCR section 6738.1(e) submitted by Mr. Lindberg to DPR on September 26, 2025. After consideration of the arguments set forth by Mr. Lindberg, DPR denied his petition. The denial was published in the California Regulatory Notice Register on

November 7, 2025. (Cal. Reg. Notice Register 2025, No. 34-Z p. 1391).

However, in California, regardless of the label, employees handling Category I (DANGER) and Category II (WARNING) pesticides must wear coveralls unless they handle fumigants, in which case coveralls are only required if expressly required by the fumigant label. Fumigants have been exempted from this requirement. As for most fumigants, the route of exposure that is of greatest concern is the entrapment of gas against the skin and as such the ability of the toxic material to escape is preferred. However, with other pesticides, skin absorption from spills and sprays is the most common route of exposure and is of the greatest concern for worker safety.

The requirement to wear coveralls for Category I and II materials is to prevent exposure via augmenting work clothing. United States Environmental Protection Agency (U.S. EPA) establishes signal word labeling requirements by regulation. (*See* 40 CFR § 156.64, subd.(a).) Under federal law, Categories I and II are the most acutely toxic pesticides. The specific hazard of the material is not relevant, since U.S. EPA has determined that the material is dangerous to contact by their classification as Category I or II. The potential hazard from pesticides in these categories dictates the need for maximum protection.

The substitution of work clothing as personal protective equipment (PPE) is not a viable alternative to wearing a coverall. PPE is the responsibility of the employer (3 CCR § 6738(a)(1)) and is prohibited from being taken by the employee into their homes to be laundered (3 CCR § 6738(a)(6)). Allowing the use of work clothing to be used as PPE which can be potentially contaminated with Category I or II material, defeats the restriction that prevents highly toxic pesticides from being introduced into the handler's home.

Comment no. 2: Worker Safety Risks: Regarding the existing requirement in subsection 6738.1(e), unnecessary coverall use in California's hot climate increases the risk of heat illness, undermining worker safety rather than enhancing it.

Response: This comment is outside of the scope of the proposed rulemaking. DPR also previously addressed this comment in its response to a substantially identical Petition for Rulemaking under Government Code section 11340.6 to amend 3 CCR section 6738.1(e) submitted by Mr. Lindberg to DPR on September 26, 2025. As discussed in the initial statement of reasons, the issue of heat illness may be of concern when a full-body chemical-resistant suit, covering the torso, head, arms, and legs (3 CCR section 6738.1(g)), is required by the label as non-permeable surfaces, such as chemical-resistant material, impair the body's ability to cool, increasing the employee's risk of heat illness. However, existing subsection 6738.1(e) only requires a coverall, which is typically cotton or uncoated synthetic (3 CCR § 6000), to be worn when handling Category I or II pesticides and these coverall materials do not pose significant heat illness risk. The Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) has primary jurisdiction over heat illness prevention and has adopted regulations to protect outdoor workers, including pesticide handlers, from heat-illness.

Comment no. 3: Public Perception: In urban and ornamental landscapes, requiring coveralls pursuant to section 6738.1(e) for low-exposure applications (tree injections, systemic soil drenches, systemic bark applications) creates a false impression of high hazard and reduces

public trust in professional tree care practices.

Response: This comment is outside of the scope of the proposed rulemaking. DPR also previously addressed this comment in its response to a substantially identical Petition for Rulemaking under Government Code section 11340.6 to amend 3 CCR section 6738.1(e) submitted by Mr. Lindberg to DPR on September 26, 2025. However, Category I and II pesticides have been determined by the U.S. EPA to be the most acutely toxic pesticides.

DPR is not aware of any evidence to support the contention that the coverall requirement creates a “false impression of high hazard” regarding “low-exposure” applications or that any such perception would justify regulatory action to remove worker safety protections.

Comment no. 4: Inconsistency with Federal Standards: The federal Worker Protection Standard and FIFRA rely on the EPA-approved product label as the binding PPE requirement. Every other U.S. state follows this approach; California’s additional blanket rule in subsection 6738.1(e) is inconsistent and imposes unique burdens.

Response: This comment is outside of the scope of the proposed rulemaking. DPR also previously addressed this comment in its response to a substantially identical Petition for Rulemaking under Government Code section 11340.6 to amend 3 CCR section 6738.1(e) submitted by Mr. Lindberg to DPR on September 26, 2025. However, pursuant to 40 CFR §170.609, U.S. EPA has determined that DPR’s worker protection regulations, including 3 CCR section 6738.1, are the equivalent of or provide greater protection than the federal worker protection standards and has authorized DPR to implement the California worker protection regulations in lieu of the federal worker protection standards.

Comment no. 5: No Added Protection: In some cases, such as propiconazole tree injections, the *WARNING* signal word is based on eye irritation potential, which a coverall does not mitigate. This demonstrates that subsection 6738.1(e) does not align with actual exposure pathways.

Response: This comment is outside of the scope of the proposed rulemaking. DPR also previously addressed this comment in its response to a substantially identical Petition for Rulemaking under Government Code section 11340.6 to amend 3 CCR section 6738.1(e) submitted by Mr. Lindberg to DPR on September 26, 2025. However, the requirement to wear coveralls for Category I and II materials is to prevent exposure via augmenting work clothing. United States Environmental Protection Agency (U.S. EPA) establishes signal word labeling requirements by regulation. (*See* 40 CFR § 156.64, subd.(a).) Under federal law, Categories I and II are the most acutely toxic pesticides. The specific hazard of the material is not relevant, since U.S. EPA has determined that the material is dangerous to contact by their classification as Category I or II. The potential hazard from pesticides in these categories dictates the need for maximum protection. The potential for risks via eye irritation does not provide justification to amend the regulation as presently written. Furthermore, tree injections often utilize pressured systems to deliver the pesticide directly into a tree’s vascular system which may create risk for dermal exposure.

Comment no. 6: Proposed Alternative: I request DPR amend § 6738.1(e) to limit the coverall requirement to situations where:

- The product label specifically requires a coverall, or
- The exposure scenario involves mixing, loading, or applications with a high likelihood of significant dermal contact (e.g., broadcast sprays, aerial applications).

Response: This comment is outside of the scope of the proposed rulemaking. DPR also previously addressed this comment in its response to a substantially identical Petition for Rulemaking under Government Code section 11340.6 to amend 3 CCR section 6738.1(e) submitted by Mr. Lindberg to DPR on September 26, 2025. However, Category I and II pesticides have been determined by the U.S. EPA to be the most acutely toxic pesticides.

Amending section 6738.1(e) to require coveralls only when explicitly specified on the pesticide product label or when the application method presents a high likelihood of significant dermal exposure would rollback important protections for California workers by leading to increased dermal exposure to the most acutely toxic pesticides.

- **Ihab Ahmad Khaleel Abu Hassan**

Comment no. 7: Commenter provided an attachment of a July 2025 U.S. Food and Drug Administration paper pertaining to the pharmaceutical industry titled, “Quality Management Initiatives in the Pharmaceutical Industry: An Economic Perspective.”

Response: This comment is outside the scope of the proposed action.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the regulatory action does not impose a mandate on local agencies or school districts.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons or businesses than the adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law.

POSTING REQUIREMENT

3 CCR section 6110, states in part that, “The public report shall be posted on the official bulletin board of the Department for 45 days.” DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>.