

INITIAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6678
Pertaining to Service Container Labeling

This is the Initial Statement of Reasons required by Government Code section 11346.2 and the public report specified in section 6110 of Title 3, California Code of Regulations (3 CCR). Section 6110 meets the requirements of Title 14, CCR section 15252 and Public Resources Code section 21080.5 pertaining to state regulatory programs certified under the California Environmental Quality Act.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM
ACTIVITIES AFFECTED

The Department of Pesticide Regulation (DPR) proposes to amend 3 CCR section 6678. This proposal will affect pesticide regulatory program activities regarding hazard communication work requirements. In summary, the proposed action will amend the language specifying requirements for the display of service container labeling.

SPECIFIC PURPOSE AND FACTUAL BASIS

DPR protects human health and the environment by fostering sustainable pest management and regulating pesticides. DPR's strict oversight includes: product evaluation and registration; statewide licensing of commercial and private pesticide applicators, pest control businesses, dealers, and advisers; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

FAC section 12980 requires that DPR work jointly with the Office of Environmental Health Hazard Assessment (OEHHA) to develop regulations to ensure safe working conditions for persons handling pesticides and working in and around pesticide-treated areas. FAC section 12981 requires DPR to adopt regulations to accomplish the Legislature's intent relative to ensuring safety in the pesticide workplace. DPR's current regulatory requirements for pesticide safety training, personal protective equipment, field posting, and notice of completed applications are designed to reduce the risk of pesticide exposure and injuries among pesticide handlers and workers exposed to pesticides.

Service containers are defined in FAC section 12757.5 as any containers, other than the original labeled container of a registered pesticide provided by the registrant, that is utilized to hold, store, or transport the pesticide or the use-dilution of the pesticide. FAC section 12859 directs the Director to adopt regulations governing the labeling of service containers, stating the regulation shall provide that the labeling only include: (1) the name and address of the person or firm responsible for the container; (2) the identity of the pesticide in the container; and (3) the word "DANGER", "WARNING", or "CAUTION" in accordance with the label on the original container. Further, FAC section 12859 provides that service container labeling regulations shall

not apply to containers used by a person engaging in the business of farming when the containers are used on the property that the person is farming.

Existing 3 CCR section 6678, adopted pursuant to FAC section 12859, establishes labeling requirements for service containers. Service containers, other than those exempted under FAC section 12859, are required to be labeled with basic pesticide ownership (name and address of the person or firm responsible for the container), identity of the pesticide in the container, and acute toxicity information for the intended use by employees, regulatory officials, emergency responders, and the public, which is provided through one of three signal words in accordance with the label on the original container. These labeling requirements are part of the hazard communication for pesticide work operations and are intended to inform workers and others who is responsible for the container, what is in a container, and any risks to employees, regulatory officials, emergency responders, and the public. Accordingly, it is important that these labels are easily found on a container and are legible.

The existing service container labeling regulation in 3 CCR section 6678 was intended to enable workers, members of the public, regulatory officials, and emergency personnel to easily observe and read a service container label and identify important information concerning the identity of the contents and owner of the service container. The wording of 3 CCR section 6678 has created confusion and ambiguity as to what constitutes a lawful label for service containers. As a result, situations have arisen where labels that are illegible, hidden from view, or even placed inside the container have been found to be technically compliant as long as the required information is included. For example, in 2023, the Placer County Agricultural Commissioner (CAC) issued an administrative civil penalty for a violation of 3 CCR section 6678 for failure to label a service container. During a hearing on this matter, the respondent submitted that the service container label was present at the time of the documented violation, but it was located behind the strap of a backpack sprayer, where it was not visible to either the applicator wearing the backpack or county inspector. The hearing officer found against Placer CAC and determined that 3 CCR section 6678 does not require the service container labeling to be visible. Unlabeled, improperly or illegibly labeled service containers can contribute to personal injury, property loss, and environmental damage incidents. For example, an applicator may be unknowingly exposed to a material for which they are not adequately protected.

These amendments are being promulgated to clarify the intent of 3 CCR section 6678 and expressly require prominence and legibility requirements for service container labeling in current regulation. Merriam-Webster's Dictionary defines "prominent" as readably noticeable or standing out; and "legible" as capable of being read. The proposed change to this regulation would add to the importance of being able to identify the contents of a service container by ensuring label placement on the container can be easily seen and read.

Without an expressly stated prominence and legibility requirement, the service container labeling regulation cannot fulfill its intended purpose of requiring that information on the pesticide contents be apparent to people who view the container.

Proposed Changes

DPR proposes to amend 3 CCR section 6678 to clarify that service container labeling is required to be prominent and legible. The prominent and legible identification of service containers is necessary to warn workers, members of the public, regulatory officials, and emergency personnel of the identity of the pesticide and the hazard designation of that pesticide in the case of a pesticide related incident or accident that may involve harm or be hazardous to human health or the environment. The name and address of the responsible person or firm is necessary for property identification in case of loss, recovery from theft, or pesticide-related incident. Regulatory and law enforcement officials conducting inspections or investigations associated with service containers rely on such information to associate the ownership of the service container with an alleged violation or incident that may involve harm or be hazardous to human health and/or the environment. A prominence and legibility requirement is necessary to preserve the service container label's hazard communication value. The proposed amendment would clarify and make specific the service container label requirements in section 6678 by mandating the required service container information be prominently and legibly labeled, ensuring it is readily observable and easily readable to employees, regulatory officials, emergency personnel, and the public.

DPR also proposes to amend the authority cited in 3 CCR section 6678 to include reference to FAC section 12981, as this is a regulation relating to pesticide worker safety that was jointly and mutually developed by DPR and OEHHA.

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

As discussed above, 3 CCR section 6678 is a regulation relating to pesticide worker safety. Therefore, DPR and OEHHA jointly and mutually developed the proposed regulations as specified in FAC sections 12980 and 12981. DPR and OEHHA have set forth the rulemaking process used to meet these statutory requirements in a Memorandum of Agreement dated August 13, 2008.

CONSULTATION WITH OTHER AGENCIES

DPR consulted with the California Department of Food and Agriculture during the development of the text of the proposed regulations, as specified in FAC section 11454 and the Memorandum of Understanding updated on January 15, 2019, that was developed per FAC section 11454.2.

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

DPR has also consulted with several county agricultural commissioners.

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

DPR has not identified any feasible alternatives to the proposed regulatory action that would achieve the purpose of the regulation with less possible adverse economic impacts, including any

impacts on small businesses, and invites the submission of suggested alternatives. The proposed regulations will amend 3 CCR section 6678 to add language requiring the service container label to be prominently and legibly displayed.

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

The proposed 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. The proposed amendment intends to enhance hazard communication, which will reduce long-term public costs related to occupational injuries, property damage, and emergency response. The proposed amendment will impose a negligible one-time cost on any members of the regulated public who must re-label containers to come into compliance.

ECONOMIC IMPACT ASSESSMENT PURSUANT TO SECTION 11346.3(b)

Creation or Elimination of Jobs within State of California: The proposed action would not create or eliminate jobs in California because the proposed amendments to the regulation are clarifying and designed to specify the manner in which service container label requirements are displayed.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California: This proposal is not likely to result in the creation of new businesses or the elimination of existing businesses within the State of California since the proposed regulations are clarifying and designed to specify the manner in which service container label requirements are displayed. The proposed amendment will require businesses out of compliance to move or replace a label on the container, which will be minimal in cost.

The Expansion of Businesses Currently Doing Business with the State of California: This proposal is not likely to result in an expansion of businesses currently doing business within the State of California since the proposed regulations are clarifying and designed to specify the manner in which service container label requirements are displayed. The proposed amendment will impose a short-term cost on any member of the regulated public who must re-label service containers to be prominently and legibly displayed.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulations are designed to promote the public health and welfare of California residents, promote worker health and safety and safeguard California's environment and natural resources by strengthening the manner in which service container label requirements are displayed. The proposed regulations clarify and make specific that service container label requirements must be displayed prominently and legibly, reducing the ambiguity of current service container label requirements and increasing the ability of the county agricultural commissioners to enforce pesticide laws and regulations involving service containers.

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

The Natural Resources Secretary determined that DPR's pesticide regulatory program, including the adoption, amendment, and repeal of pesticide regulations, qualifies as a certified regulatory program under Public Resources Code section 21080.5 and California Code of Regulations, Title 14 (14 CCR) section 15251, subdivision (i). This determination means DPR's pesticide regulatory program is functionally equivalent to California Environmental Quality Act's (CEQA) requirements for preparing environmental impact reports (EIRs), negative declarations, and initial studies, and is therefore exempt from such requirements. This initial statement of reasons serves as the public report required under California Code of Regulations, Title 3, section 6110 and satisfies the requirements of DPR's CEQA certified regulatory program for rulemakings at California Code of Regulations, title 3 sections 6110-6118.

DPR's public report, as the substitute document satisfying CEQA functional equivalency requirements, must include a description of the proposed activity, and either (A) alternatives to the activity and mitigation measures to avoid or reduce any significant effects that the project might have on the environment, or (B) a statement that DPR's review of the project showed that the project would not have any significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on the environment. (3 CCR § 6110, subds. (a)(3), (a)(4).) DPR shall not adopt a regulation that would cause a significant adverse environmental impact if there is a feasible alternative or mitigation measure that would substantially lessen those significant adverse environmental impacts. (3 CCR § 6116, subd. (a)(2).)

The proposed amendment to 3 CCR section 6678, adding that label requirements on service containers be prominent and legible, clarifies and makes specific the meaning of the regulatory text and increases the ability of county agricultural commissioners to enforce pesticide laws and regulations involving service containers. The proposed amendment clarifies and makes specific the service container label requirements, 3 CCR section 6678, subdivisions (a) - (c), must be written prominently and legibly on the container itself. The purpose of this amendment is to improve the transparency, efficiency, and enforceability of communicating hazard information displayed on service containers to the public, pesticide workers, regulatory officials, and emergency personnel, by ensuring service container labels are readily observable and easily readable. This amendment ensures pesticide applicators and others can easily identify the pesticide in the container, who is responsible for the container, and the hazard and handling risks of the pesticide. Readily observable and easily readable identification of service containers is necessary to protect the safety of workers, the public, regulatory officials, and emergency personnel by warning people of the identity and hazard designation of the pesticide contained within. The prominent and legible display of the name and address of the person or firm responsible for the container is needed for property identification in the event of loss, recovery from theft, or a pesticide-related incident. Regulatory and law enforcement officials conducting inspections or investigations associated with service containers rely on this information to associate ownership of the service container with an alleged violation or pesticide-related incident that may involve harm or be hazardous to human health, the environment, or property.

The proposed amendment is also intended to reduce ambiguity to the public, regulated community, and county agricultural commissioners as to what is considered an acceptable display of service container label requirements. Thus, this clarification will increase clarity and consistency in the local enforcement of pesticide laws and regulations involving pesticide service containers.

The proposed amendment to 3 CCR section 6678, which adds FAC section 12981 to the authority cited in 3 CCR section 6678, clarifies that this regulation is also promulgated pursuant to FAC section 12981, as it is a regulation relating to pesticide worker safety that was jointly and mutually developed by DPR and OEHHA. The purpose of this addition is to ensure the appropriate authority for which this regulation is promulgated is included in its citation.

DPR's proposed regulations will not have any effect on flora and fauna, water quality, agricultural or forestry resources, or air quality because the regulations only involve requirements for service container labels, and do not increase or decrease the pesticides used, change how those pesticides are or may be used, or alter any other requirement that could possibly have an environmental impact.

The proposed regulation would have potential beneficial human health and environmental effects. Specifically, adding the requirement that service container label requirements be prominent and legible aids the health and safety of pesticide workers, the public, regulatory officials, and emergency personnel by ensuring applicators and others know the pesticide in the container, who is responsible for the container, and the hazards and handling risks associated with the pesticide. Further, this proposal promotes public health and safety as it strengthens the county agricultural commissioner's enforcement of pesticide laws and regulations involving service containers, a violation of which could be harmful or hazardous to human health, the environment, or property.

California Code of Regulations, title 14 section 15061, subdivision (b)(3) provides that an activity "is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

The proposed regulatory amendments to 3 CCR section 6678 as detailed above will promote the health and safety of workers, the public, regulatory officials, and emergency personnel and the environment by clarifying, making specific, and strengthening service container labeling requirements, thereby also strengthening local enforcement of the pesticide laws and regulations involving service containers. No possible significant adverse effects to California's environment can reasonably be expected to occur from implementing the proposed regulation. Therefore, the proposed regulatory amendments are categorically exempt from environmental review under 14 CCR section 15061, subdivision (b)(3).

Because there is no possibility of a significant adverse effect to California's environment occurring from implementing the proposed regulation, no alternatives or mitigation measures are proposed to lessen any significant adverse effects on the environment.

EFFORTS TO AVOID CONFLICT OR DUPLICATION OF FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with the Code of Federal Regulations. The US EPA does not specify labeling requirements or construction standards for service containers or other secondary containers, although other labeling requirements or relevant requirements in the Federal Insecticide, Fungicide and Rodenticide Act may apply. Although there are some similarities in the regulatory requirements between the Federal pesticide law and regulation, California's statutory and regulatory scheme (see generally, FAC Division 6 and Division 7 and 3 CCR section 6000 et seq.), DPR maintains a separate regulatory structure from the Federal standards.

DOCUMENTS RELIED UPON

1. 009-ACP-PLA-23/24 Hearing Officer Decision.