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ENF 17-21

TO: County Agricultural Commissioners

SUBJECT: WORKER SAFETY REGULATIONS EFFECTIVE JANUARY 2017 - QUESTIONS AND ANSWERS

The Department of Pesticide Regulation (DPR) adopted amended regulations to the Worker Safety requirements in Title 3, California Code of Regulations (CCR) to ensure equivalency of the revised Federal Worker Protection Standard (WPS). California's worker safety revisions to CCR went into effect January 2, 2017. For an overview of the CCR revisions and a copy of the amended CCR text, see www.cdpr.ca.gov/docs/county/training/inspprod/inspect_proc.htm as well as DPR letters ENF 2016-07, 2016-29, and 2017-06.

DPR conducted ten training sessions throughout the state for over 400 County Agricultural Commissioner (CAC) inspectors. The most frequently asked WPS-related questions from those training sessions and other inquiries are addressed below:

General

- Question: Will there be another round of revisions to CCR to fully implement the federal WPS changes?**
 Answer: Yes, DPR will soon propose further revisions to CCR to include the additional training topics which would have been required by the federal WPS changes for 2018. At this time, U.S. EPA (EPA) intends to delay implementation of all of the national WPS revisions, but DPR is proceeding for California.
- Question: Will DPR be amending and updating the numerous guidance documents and publications to reflect the new WPS-related requirements?**
 Answer: Yes, DPR is revising and updating documents, such as the Compendium, outreach pamphlets, pocket guides, Pesticide Safety Information Series (PSIS) A-8 and A-9, licensing study guides, employer compliance guide, and others.

Training handlers and fieldworkers

- Question: What is the status of the 2017 train-the-trainer (instructors) courses and how can their certification be verified?**
 Answer: The train-the-trainer (T2) programs need to be revised to include the 2018 WPS training topics. DPR will be posting T2 programs approved for 2018 at www.cdpr.ca.gov/docs/license/trainers.htm. Trainers qualified under an old T2 program (not containing the 2018 requirements) will no longer be qualified to train after December 31, 2017. The recent certificates should have the T2 instructors name and 2018 DPR approval number for the T2 program. Certificates not having the 2018 DPR T2 approval number would indicate that the trainer has not been trained on the new regulations. The qualification to train via an approved T2 program can also be verified by a certificate of completion given to the attendees. These contain the first and last name of attendee; course title; course date; statement that participant has successfully completed the course, T2 Instructor's signature, printed name, company, and address; and the 2018 DPR approval number for the T2 program.
- Question: Are the blue training verification cards gone and, if so, will DPR bring back blue card (proof of training) especially for migrant workers?**
 Answer: Yes, the blue training card issued under the authority of the U. S. EPA was discontinued and therefore, CCR § 6764(c) was amended accordingly. DPR is considering developing a form which can be used to verify training has occurred.
- Question: If an employment staffing agency or farm labor contractor (FLC) is contracted by the property operator to provide workers to the property operator, who is responsible to train the employees?**
 Answer: The employer shall assure each employee working in a treated field or who handles pesticides is trained. Determine whether the property operator, employment staffing agency, or FLC is directing and controlling, or supervising the employee's activities. The person or firm who is directing and controlling, or supervising the employee is responsible to have and maintain all required records. See CCR § 6724, CCR § 6764, and Compendium Volume 8, Chapter 6, Worker Safety. New fact sheets on FLC pesticide safety tips and compliance requirements are available on DPR's website at Farm Labor Contractor Pesticide safety tips: www.cdpr.ca.gov/docs/dept/factshts/flc_pesticide_safety.pdf and Farm Labor Contractor Compliance requirements: www.cdpr.ca.gov/docs/dept/factshts/flc_compliance_req.pdf.
- Question: Is a trained pesticide handler considered trained for purposes of working as a fieldworker?**
 Answer: Yes, if the handler received training pursuant to CCR § 6724(c)) and the training is documented, the handler is considered trained as a fieldworker.
- Question: Do training materials for training handlers and fieldworkers have to be U.S. EPA-approved? Will there be new administrative requirements?**
 Answer: As confirmed by U.S. EPA in April 2017, the materials used by qualified trainers which comply with CCR in California do not need EPA approval. See DPR's December 2016 open letter to trainers which outlines the administrative requirements at www.cdpr.ca.gov/docs/license/wpresources.htm.
- Question: Since field workers are now required to be trained annually, effective January 2017, at what point does the training record need to show that the worker was trained within the last year?**
 Answer: EPA's intent is that updated annual training and training record retention for all workers will begin 2017. This does not preclude requiring compliance with the existing training and record keeping requirements.
- Question: Does the new requirement that trainers of handlers and fieldworkers be present throughout the training, include allowing training via live video or web streaming?**
 Answer: Yes this is allowed, as long as the trainer can conduct the training and answer questions during the training. The name and license number of the trainer would have to be written for record keeping.

Hazard Communication

- Question: When will the EPA poster be available, and will the poster contain all the information contained in PSIS A-8 and PSIS A-9?**

Answer: The EPA poster is not applicable in California. PSIS leaflet A-8 and A-9 is equivalent to the EPA poster. DPR is in the process of updating the A-8 and A-9.

11. **Question: Do the Application Specific Information records that must be retained for two years need to be available for workers?**
Answer: Yes.
12. **Question: Can the Safety Data Sheets (SDS) which is required to be displayed with Application Specific Information simply be maintained?**
Answer: No, there are two requirements for Application-Specific information (ASI) for pesticide handlers and fieldworkers.
- > For pesticide handlers.
 - > CCR § 6723.1 requires for production agriculture, the operator of the property to display the ASI, including the SDS at the central location until the area no longer meets the definition of a treated field or the handler is no longer on or within a ¼ mile of the treated field.
 - > The information required by CCR 6723.1, including the SDS, must be retained for two years.
 - > For fieldworkers,
 - > CCR § 6761.1 requires for production agriculture, the operator of the property display the ASI, including SDS, at a central location while fieldworkers are in treated fields on the operator's property until the area no longer meets the definition of a treated field or the fieldworker is no longer on or within a ¼ mile of the treated field. The information must be displayed when the notice of the completion is received and before fieldworkers enter a treated field.
 - > The information required by CCR § 6761.1, including SDS, must be retained for two years.
13. **Question: Now that hoop houses are included in the definition of "Enclosed Space," if there is an application to several adjacent hoop houses, does each one have to be posted or just the outer ones?**
Answer: There was no change in the posting location requirements, including allowing reduced posting if employee access is controlled.
14. **Question: Is it the product label restricted entry interval (REI) or the CCR REI duration which determines the new posting requirement (e.g., the requirement to post if REI is 48 hours or greater)?**
Answer: Currently, the California regulations do not specify, which means that either the label REI or the CCR REI, whichever is most restrictive, determines the posting. However, DPR is proposing to revise CCR to refer only to the label REI for determining the posting requirement.

Decontamination

15. **Question: When there are multiple decontamination facilities at one site servicing 11 or more employees, can the PSIS A-8 be posted and the A-9 displayed at just one decontamination facility or is it required at each decontamination facility at the site?**
Answer: CCR § 6723 and § 6761 require the PSIS A-8 to be posted and the A-9 to be displayed as defined in § 6000 at every decontamination facility servicing 11 or more handlers or fieldworkers.
16. **Question: Because there are several new requirements for decontamination water, how are the following addressed?**
Answer:
- a. How much water is required for a decontamination facility?
 - > Handlers. CCR § 6734 requires the employer to assure there is sufficient soap, single use towels, one clean change of coveralls, and at least three gallons of decontamination water per handler at the beginning of each handler's work day.
 - > Fieldworkers. CCR § 6768 requires the employer to assure soap, single use towels, and at least one gallon of decontamination water is available per employee at the start of each work day.
 - > Early entry workers. CCR § 6768 requires the employer to assure there is at least three gallons of water per employee available for decontamination at the beginning of each work day.
 - b. How much water is required for an eye-flush system?
 - > When labeling requires handlers to wear protective eyewear or when a closed mixing system is used, CCR § 6734(b)(6) requires the employer to assure there is at least one eye-flush system at the mix/load site that can deliver at least 0.4 gallons of per minute of gently running water or at least six gallons of water providing a gentle eye-flush for at least 15 minutes.
 - c. Can the decontamination water of two or more decontamination facilities be combined?
 - > Fieldworkers. CCR § 6768(a) the employer shall assure at the start of each work day decontamination supplies (water, soap, and single use towels) are located together.
 - > Fieldworkers. CCR § 6768(a)(1) requires the employer to assure there is one gallon of water per employee at the start of each work day.
 - d. Can drinking water be used as decontamination water?
 - > CCR § 6768 does not state that decontamination water must be separate from drinking water, but the employer shall assure the required amount of water is available at the decontamination site.
 - e. Can the eye-flush water (at least six gallons) at the mix/load site be used for decontamination for fieldworkers, handlers, or both handlers and fieldworkers working at the same site?
 - > Yes, the minimum decontamination water required for both the eye-flush system and decontamination can be combined as long as each of the water quantity requirements has been met. In summary, a minimum of six gallons of water for the eye-flush system and at least an additional three gallons per handler, or per early entry worker, and one gallon per employee for decontamination.
 - > CCR § 6734(b)(1) requires at least three gallons of water to be available per handler at the beginning of each work day and there is sufficient water at the decontamination site. When pesticide labeling requires protective eyewear, 3 CCR § 6734(b)(6) states an eye-flush system of providing at least six gallons of water for about 15 minutes or 0.4 gallons of water for at least 15 minutes.
 - f. Does the decontamination water have to be potable (drinking water quality)? Answer: Neither U.S. EPA or CCR require that decontamination water to be potable, only that it is of a quality that does not cause illness or injury when it contacts skin or eyes or is swallowed. However, other agencies' requirements may require that anything identified as drinking water be potable.

Application Exclusion Zone (AEZ)

17. **Question: For fumigation applications through irrigation conveyance systems, such as drip tape, does the AEZ measure from the injection pump or from the drip tape, or both?**
Answer: Generally, the AEZ is the area that extends from the application equipment. Currently, when a fumigant is applied through an irrigation system such as drip tape, the application equipment is the irrigation system including equipment introducing the fumigant to the irrigation system and the drip tape delivering the fumigant.
18. **Question: Are aluminum phosphide rodent control burrow applications considered fumigations and, therefore, subject to the new worker safety regulations?**
Answer: This has been an ongoing question depending on the method of application. At this time, a final determination has not been made by either U.S. EPA or the states. In any case, the label and any permit conditions must be followed, as well as the general protective regulations in CCR.
19. **Question: The definition of AEZ says it is to be free of all persons, but the requirement in CCR § 6762 only pertains to employers directing employees. Where is the protection for non-employees?**
Answer: For purposes of the AEZ, the employer-employee requirement was added to CCR. Existing regulations in California, such as

CCR § 6614 and CCR § 6600 already provide for protecting non-target areas and for protecting bystanders from pesticide application drift. Any current requirements pertaining to neighboring properties are unchanged. The federal WPS added the AEZ concept to make applicators nationwide more aware and responsible to halt an application with potential to drift onto people and to encourage applicators to make good decisions about whether or not to continue an application.

20. **Question: Is the AEZ (application exclusion zone) another term for buffer zone?**

Answer: No, the AEZ is a new concept which describes the area surrounding the application equipment during an application. As the application equipment moves, the AEZ moves with it. For fumigant applications, the AEZ is in effect at the time at which the fumigant is first delivered/dispensed into the soil in the application block. The AEZ is no longer in effect after the fumigant has stopped being delivered/dispensed into the soil and soil has been sealed; drip lines have been purged (if applicable). The labeled or permit-conditioned buffer zones must still be complied with.

21. **Question: Is it okay for employees to perform field work in an untreated section of a field when there is a pesticide treatment in another section of the field, as long as the workers are outside of the AEZ?**

Answer: Generally, fieldworkers should not be in a field being treated. There are a few specified situations, such as for transplanters and pruners described in compendium volume 8 "Guidelines for Interpreting Pesticide Laws, Regulations, and Labeling" Sections 6.16 Handler and 6.26 Treated Field, which allow an employee to be in the untreated portion of a field. In any case, employees cannot be in the AEZ.

Respiratory protection in Enclosed Cab

22. **Question: Is an enclosed cab still acceptable as respirator protection?**

Answer: 3 CCR § 6738.4(e) requires handlers in enclosed cabs to wear the type of respirator required by pesticide product labeling. The only exception is if the labeling only requires either a filtering face-piece respirator (NIOSH approval number prefix TC-84A) or a dust/mist filtering respirator, then those specific types of respirator are not required to be worn in an enclosed cab provided the cab has a properly functioning and maintained air ventilation system.

Definitions

23. **Question: Why was the term "greenhouse" deleted from several CCR sections?**

Answer: Although the term greenhouse appears to have been deleted, the term "enclosed space" replaced it, as well as encompassing partially enclosed spaces such as hoop houses.

24. **Question: Does the field checker working with a PCA have to maintain the decontamination facilities, PPE, etc., only under early entry requirements (before the REI has expired) or at all times?**

Answer: Field checkers meet the definition of a handler. The employer is required to meet all handler worker safety requirements for field checker employees.

Other

25. **Question: For the ventilation criteria, when will CCR include "fine spray"?**

Answer: DPR will be proposing to add "fine spray" to CCR § 6769 in the rulemaking for 2018 worker safety WPS-related changes.

26. **Question: Now that hoop houses are considered enclosed spaces, are the ventilation criteria in CCR § 6769 (previously pertaining only to greenhouses) applicable?**

Answer: Yes, the ventilation criteria apply to all types of enclosed spaces, whether entirely enclosed (such as a greenhouse) or partially enclosed.

27. **Question: Were there any changes pertaining to the Notice of Intent (NOI) for application of a restricted material?**

Answer: No.

28. **Question: Because the new regulations contain some new terminology and definitions such as "enclosed space" instead of "greenhouse", will product labels be revised to match this?**

Answer: No, the EPA has confirmed that currently registered product labels won't be revised to incorporate the new terminology; however, new labels may contain the new terms.

29. **Question: Should the federal U.S. EPA Inspection Guidance document be used in California?**

Answer: No, the requirements in California are outlined in the CCR for worker protection and safety. Some of these are not exactly the same as federal regulations, but have been granted equivalency to comply. Training materials and documents should be based on the California state requirements.

30. **Question: Will private applicators receive information about the new requirements when being certified?**

Answer: Yes, there is a DPR letter to private applicators, PML 17-01, describing the new CCR requirements and the revisions which are being made to their study materials.

31. **Question: Is it possible to revise or delete the definition of application exclusion zone in CCR §6000 since it appears to be redundant with specific requirements found elsewhere in the CCR?**

Answer: Because the AEZ definition, which was recently added to CCR, creates uncertainty about compliance with protective measures in CCR § 6762 and conflicts with long standing policy that worker are not allowed within a treatment site (except for certain transplanting and pruning activities), DPR will be pursuing future rulemaking to clarify.

32. **Question: Is it possible to add in the term "sufficient" water back into CCR 6768(a)?**

Answer: Because the term was inadvertently deleted, DPR will be proposing to add the term "sufficient" water back into CCR 6768(a).

If you have any questions, please contact the Enforcement Branch Liaison assigned to your county.

Sincerely,

Original Signature by:

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cc: Mr. Joe Marade, DPR Agricultural Commissioner Liaison
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